

ORDINANCE NUMBER O- 20715 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 10 2016

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 8 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING AND AMENDING SECTION 22.0801; BY AMENDING SECTIONS 22.0802 AND 22.0803; BY RETITLING AND AMENDING SECTIONS 22.0804, 22.0805, AND 22.0806; BY AMENDING SECTION 22.0807; BY RETITLING AND AMENDING SECTIONS 22.0808 AND 22.0809; BY RETITLING AND AMENDING SECTIONS 22.0810, 22.0811, 22.0812, 22.0813, AND 22.0814; BY ADDING NEW SECTIONS 22.0815, 22.0816, 22.0817, 22.0818, AND 22.0819; BY RETITLING AND AMENDING SECTION 22.0820; AND BY DELETING SECTIONS 22.0821, 22.0822, 22.0823, 22.0824, 22.0825, AND 22.0826, ALL RELATING TO DEBARMENT.

WHEREAS, it is in the public's interest to ensure that the City of San Diego only awards contracts to and does business with responsible businesses; and

WHEREAS, Chapter 2, Article 2, Division 8 of the San Diego Municipal Code sets forth the grounds and process for debarment and suspension of bidders and contractors (Debarment Ordinance); and

WHEREAS, the City wishes to amend the Debarment Ordinance, which has not been updated since 2005, to address performance evaluations and to clarify the process for debarment and suspension; and

WHEREAS, the City also wishes to include in the Debarment Ordinance a process for debarment determinations based on final performance evaluations; and

WHEREAS, the Debarment Ordinance will be amended to specify that an independent hearing officer, instead of the City Council, will determine whether grounds exist to permanently debar a bidder or contractor; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by retitling and amending section 22.0801 to read as follows:

§22.0801 Purpose and Intent

- (a) In order to promote integrity in the City's contracting processes and to protect the public interest, the City shall only do business with responsible *bidders and contractors*.
- (b) This Division sets forth the grounds for *debarment and suspension*.

Section 2. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by amending sections 22.0802 and 22.0803 to read as follows:

§22.0802 Definitions

All defined terms in this Division appear in italics. For purposes of this Division: *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate means:

- (a) the assignee, successor, subsidiary of, or parent company, of another *person*; or,
- (b) a *controlling stockholder* of a *person*; or,
- (c) a *person* who has the same or similar *management* of the *debarred* corporate or other legal entity; or,
- (d) a *person* who directly or indirectly controls, or has the power to control, another *person*, or is directly or indirectly controlled by another *person*.

Indicia of control include interlocking *management* or ownership, identity of interests among *relatives*, shared facilities and equipment, and common use of employees; or,

- (e) a business entity organized following the *debarment, suspension*, or proposed *debarment* of a *person* which has the same or similar *management*, ownership or principal employees as the *bidder* or *contractor* that was *debarred, suspended* or proposed for *debarment*, or the *debarred person* or the business entity created after the *debarment, suspension*, or proposed *debarment* operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division.

Bidder means a *person* who submits a bid, proposal, or other document to the City seeking award of a *contract*. The term *bidder* does not include a *subcontractor*.

Contract means any written agreement between the City and a *person* for public works, goods, services, franchise, or consultant services.

Contractor means a *person* who has contracted with the City to provide public works, goods, services, franchise, or consultant services for or on behalf of the City. The term *contractor* includes a *subcontractor*, vendor, franchisee, consultant, or any of their respective officers, directors, shareholders, partners, managers, employees, or other individuals associated with the *contractor, subcontractor*, consultant, or vendor.

Controlling stockholder [No change in text.]

Debar or *Debarment* means an action taken by the City which results in a *bidder* or *contractor* being prohibited from any of the following: bidding or proposing on a *contract*; being awarded a *contract*; or performing work on a *contract* for a defined period of time. A *bidder* or *contractor* subject to such prohibition is *debarred*.

Debarment Hearing Board means a board established by the City Manager to hold hearings, to take evidence, and to make *debarment* determinations for the City.

Department means a City department acting through the department director or designee.

Final Performance Evaluation means a City-issued final evaluation of a *contractor's* overall performance which is generally issued subsequent to completion of performance on the *contract*.

Management means the officers, partners, owners, foremen, or other individuals responsible for a corporate or other legal entity's financial and operational policies and practices.

Person [No change in text.]

Preponderance of the evidence [No change in text.]

Prime contractor means a *person* who enters a *contract* directly with the City.

Relative [No change in text.]

Subcontractor means:

(a) through (b) [No change in text.]

Suspend or Suspension means the *debarment* of a *bidder* or *contractor* for a temporary period of time pending the completion of an investigation and any proceedings before a *Debarment Hearing Board* or independent hearing officer and any appeals therefrom.

§22.0803 Scope of Division

- (a) This Division establishes procedures for determining whether a *bidder* or *contractor* is to be *debarred*, *suspended*, or both.
- (b) [No change in text.]
- (c) [No change in text.]
- (d) The City Manager shall adopt procedures and regulations to implement this Division, including procedures for the conduct of *debarment* hearings, *suspension* meetings, and appeals of *final performance evaluations*.

Section 3. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by retitling and amending sections 22.0804, 22.0805, and 22.0806 to read as follows:

§22.0804 Debarment Hearing Board

- (a) Upon a recommendation from a *department* for *debarment* other than *debarments* set forth in sections 22.0808(a)(1) and 22.0808(a)(2), the City Manager shall appoint a *Debarment Hearing Board* to hear and determine whether a *bidder* or *contractor* should be *debarred*.
- (b) The City Manager shall appoint three individuals to serve on each *Debarment Hearing Board*. These individuals may be City employees, but shall not be employees who have participated in the decision to

recommend the *debarment*, or employees who work in the department recommending *debarment*.

§22.0805 Suspension While Debarment Proceedings are Pending

- (a) The City Manager may *suspend a bidder or contractor* pending a *debarment* decision if the City Manager determines that *adequate evidence* of one of the grounds for *debarment* listed in section 22.0807 exists.
- (b) The City Manager shall, upon 72 hours' notice, provide a *suspended bidder or contractor* with an opportunity to appeal the *suspension* at an informal meeting.
- (c) The City Manager shall notify the *bidder or contractor* of the *suspension* in accordance with section 22.0806.
- (d) The *suspension* is effective until the *Debarment Hearing Board* makes a final decision on the proposed *debarment*, until there has been a final ruling by an independent hearing officer in accordance with section 22.0809, or until a *bidder or contractor* is *debarred* under section 22.0811(e).

§22.0806 Notices Required Under This Division

- (a) Notice shall be by any of the following methods:
 - (1) Personal delivery with service effective on the date of delivery; or,
 - (2) Certified mail, postage prepaid, return receipt requested.Simultaneously, the same notice may be sent by regular mail. If a notice that is sent by certified mail is returned unsigned, then

service shall be deemed effective five calendar days after mailing by regular mail, provided the notice that was sent by regular mail is not returned; or

(3) Regular mail, if not returned, with service effective five calendar days after mailing; or,

(4) [No change in text.]

(b) Proof of delivery of notice shall be made by the certificate of any officer or employee of the City or by declaration under penalty of perjury of any person over the age of eighteen years. The proof of delivery shall show that delivery was done in conformity with this Division.

(c) [No change in text.]

Section 4. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by amending section 22.0807 to read as follows:

§22.0807 Grounds for Debarment

(a) Grounds for Permanent Debarment

(1) A judgment, settlement, stipulation, plea agreement, final conviction, including a plea of nolo contendere, or final unappealable civil judgment, of any of the grounds listed below, constitutes grounds for permanent *debarment* of the *bidder* or *contractor* who is subject to, or the *affiliate* of, the *bidder* or *contractor* who is subject to the judgment, settlement, stipulation, plea agreement, final conviction, or final unappealable civil judgment:

- (A) under any local, state, or federal law or regulation for embezzlement, theft, bid rigging, perjury, forgery, bribery, falsification or destruction of records, conspiracy, collusion, or receiving stolen property; or,
 - (B) any offense, action, or inaction indicating a lack of business integrity or business honesty; or,
 - (C) for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private *contract or subcontract*, or in the performance of such *contract or subcontract*.
- (2) A Fair Political Practices Commission enforcement order against a *bidder or contractor*, either following a hearing or by stipulation, imposing a penalty for a violation of California Government Code sections 84300(c) or 84301, or a City of San Diego Ethics Commission enforcement order against a *bidder or contractor*, either following a hearing or by stipulation, imposing a penalty for a violation of San Diego Municipal Code sections 27.2941, 27.2943, or 27.2944.
- (3) The *bidder or contractor* violated San Diego Charter section 97.
- (4) The *bidder or contractor* has engaged in any corrupt practice in bidding, award, administration, or performance of a *contract*.

- (5) The *bidder* or *contractor* operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division.
- (6) The City has issued the *bidder* or *contractor* four or more *final performance evaluations* with a rating of unsatisfactory in any four year period.
- (7) The person has committed an act or omission so serious or compelling in nature that it affects the present responsibility of the *bidder* or *contractor* to be awarded a *contract* or to participate as a *subcontractor*.

(b) Grounds for Debarment of Three Years or More

- (1) The *bidder* or *contractor* willfully breaches a material term of a *contract*.
- (2) Violation of a local, state, or federal law or regulation applicable to a *contract* other than those identified in section 22.0807(a).
- (3) The *bidder* or *contractor* used substandard materials, or has failed to furnish or install materials in accordance with *contract* requirements, even if the discovery of the defect is subsequent to acceptance of the work and expiration of the warranty, if such defect is because of intentionally deficient or grossly negligent performance of the *contract*.
- (4) The *bidder* or *contractor* submits materially false information to the City pertaining to:

- (A) the City's evaluation of the *bidder* or *contractor* as a
Minority Business Enterprise, Woman Business Enterprise,
Disadvantaged Business Enterprise, Small Local Business
Enterprise, Emerging Local Business Enterprise, or
Disabled Veteran Business Enterprise;
 - (B) the City's prequalification or eligibility process; or,
 - (C) the *bidder's* or *contractor's* statement of gross income
submitted under the City's Minor Public Works
Construction Project Program.
- (5) The *bidder* or *contractor* has not implemented its Equal
Employment Opportunity Plan, or taken corrective action after
sufficient notice by the City.
 - (6) The *bidder* or *contractor* has engaged in unlawful discrimination
in employment.
 - (7) The *bidder* or *contractor* has received three or more *final*
performance evaluations with a rating of unsatisfactory in any
three year period.
 - (8) The *bidder* or *contractor* fails to pay prevailing or living wages, or
fails to comply with the City of San Diego's Earned Sick Leave
and Minimum Wage Ordinance.
 - (9) The *bidder* or *contractor* violates a material provision of any
settlement of a *debarment* action.

(c) Grounds for Debarment of Two Years

A bidder or contractor may be debarred for two years if a bidder or contractor has received two or more final performance evaluations with a rating of unsatisfactory in any two-year period.

(d) Grounds for Debarment of One Year

(1) The *bidder or contractor* made two or more claims of computational or other error in a bid to the City within a two-year period.

(2) The *bidder or contractor* failed to timely submit bond, *contract*, insurance documents, or any other documentation required as a condition of award or performance of a *contract*.

Section 5. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by retitling and amending sections 22.0808 and 22.0809 to read as follows:

§22.0808 Debarment Proceedings before a Debarment Hearing Board

(a) The *Debarment Hearing Board* shall hear all recommendations for *debarment* other than:

(1) permanent *debarment*, which are heard in accordance with section 22.0809; and

(2) *debarment* based on unsatisfactory *final performance evaluations*, which are heard in accordance with section 22.0811.

(b) The *Debarment Hearing Board* shall determine by a *preponderance of the evidence* whether a *bidder or contractor* is to be *debarred* and for what length of time in accordance with this Division. The *Debarment Hearing*

Board may increase, decrease, or accept the *department's* recommendation of the length of *debarment*. The *debarment hearing board* may not impose less than the length of *debarment* specified in section 22.0807(b) and (d).

- (c) The *Debarment Hearing Board's* decision on *debarment* must be in writing and is final.
- (d) The failure of a *person* recommended for *debarment* to appear at a *debarment* hearing after notice under section 22.0806 constitutes a waiver of that *person's* right to contest the *debarment* recommendation, and the *department's* recommendation shall become final.

§22.0809 Debarment Proceedings before an Independent Hearing Officer

- (a) The City Manager shall appoint an independent hearing officer.
- (b) An independent hearing officer shall hear all recommendations that include one or more grounds for permanent *debarment*, except for *debarments* based on unsatisfactory *final performance evaluations*, which are heard in accordance with section 22.0811.
- (c) The independent hearing officer shall determine by a *preponderance of the evidence* whether a *person* is to be *debarred* and for what length of time, in accordance with this Division. The independent hearing officer may increase, decrease, or accept the *department's* recommendation of the length of *debarment*. The independent hearing officer may not reduce the length of a permanent *debarment* if the hearing officer determines a

violation identified in section 22.0807(a) occurred, or impose less than the length of debarment specified in section 22.0807(b) and (d).

- (d) The independent hearing officer's decision on *debarment* must be in writing and is final.
- (e) The failure of a *person* recommended for *debarment* to appear at a *debarment* hearing after notice under section 22.0806 constitutes a waiver of that *person's* right to contest the *debarment* recommendation, and the *department's* recommendation shall become final.

Section 6. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by retitling and amending section 22.0810, 22.0811, 22.0812, 22.0813, and 22.0814 to read as follows:

§22.0810 Imputation of Knowledge and Conduct

- (a) The fraudulent, criminal, or other serious misconduct of any officer, director, shareholder, partner, employee, or other individuals associated with a *bidder* or *contractor* may be imputed to the *bidder* or *contractor* when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the *bidder* or *contractor*, or with the *bidder's* or *contractor's* knowledge, approval, or acquiescence. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- (b) The fraudulent, criminal, or other serious misconduct of a *bidder* or *contractor* may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the *bidder* or *contractor*

who participated in, knew of, or had reason to know of the *bidder's* or *contractor's* conduct.

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

§22.0811 Appeal of Final Performance Evaluations

- (a) A *bidder* or *contractor* may appeal a *final performance evaluation* with a rating of unsatisfactory on a public works *contract* or an architectural or engineering consultant *contract* to the City Engineer.
- (b) A *bidder* or *contractor* may appeal a *final performance evaluation* with a rating of unsatisfactory on a goods, services, or non-engineering, non-architectural consultant *contract* to the Purchasing Agent.
- (c) A *bidder* or *contractor* must submit an appeal in writing to the City Engineer or Purchasing Agent within sixty days after notice of the *final performance evaluation* pursuant to section 22.0806. Evaluations may not be appealed after sixty days from the date of such notice.
- (d) The decision of the City Engineer and the Purchasing Agent to uphold an unsatisfactory performance evaluation or a *debarment* determination shall be issued to the *bidder* or *contractor* in writing and are final.

- (e) The City Manager may, upon recommendation of the City Engineer or Purchasing Agent, *debar* a *bidder* or *contractor* who has received an unsatisfactory *final performance evaluation*. This determination shall be in writing and is final.

§22.0812 Judicial Review

California Code of Civil Procedure section 1094.6 governs judicial review of a final *debarment* decision.

§22.0813 Creation of List of Debarred and Suspended Persons

- (a) The City Manager shall create, maintain, and make publicly available a list of the names, addresses, and applicable *debarment* or *suspension* commencement and expiration dates of all *debarred* or *suspended bidders* and *contractors*.
- (b) The City Manager shall establish procedures to provide for the effective use of the list to ensure that the City does not do business with *bidders* or *contractors* who have been *debarred* or *suspended*.

§22.0814 Effect of Debarment or Suspension

- (a) *Bidders* and *contractors* who have been *debarred* or *suspended* are excluded from submitting bids, submitting responses to requests for proposal or qualifications, receiving *contract* awards, executing *contracts*, participating as a *subcontractor*, employee, agent or representative of another *person* contracting with the City.

- (b) The City shall not accept, evaluate for award, or include any proposals, quotations, bids, or offers from any *debarred* or *suspended bidders* and *contractors*.
- (c) The City shall not award or approve the award of a *contract* or execute a *contract* under which a *debarred* or *suspended bidder* or *contractor* is intended to participate as a *subcontractor* or material supplier.
- (d) A *prime contractor* shall not employ, subcontract with, or purchase materials or services from a *debarred* or *suspended bidder* or *contractor*.
- (e) The City Manager shall report *debarments* under this Division to the appropriate local, state, and federal agencies and authorities.

Section 7. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by adding new sections 22.0815, 22.0816, 22.0817, and 22.0818 to read as follows:

§22.0815 Effect of Debarment or Suspension on an Affiliate

- (a) *Affiliates* are debarred or suspended to the same extent as the *debarred* or *suspended bidder* or *contractor*.
- (b) A *bidder* or *contractor* may appeal the City's determination that the *bidder* or *contractor* is an *affiliate* in writing to the City Manager within sixty days after notice of the *affiliate's debarment* pursuant to section 22.0806.
- (c) An *affiliate* may not appeal the *debarment* of any other *bidder* or *contractor* underlying the *affiliate's debarment*.
- (d) The decision of the City Manager shall be issued to the *bidder* or *contractor* who is an *affiliate* in writing and is final.

§22.0816 Effect of *Debarment* by Another Governmental Agency

The City Manager may *debar* a *bidder* or *contractor* who has been debarred by another governmental agency until the term of the debarment by the other governmental agency expires. The City Manager's decision under this section is final, and not subject to a hearing before the *Debarment Hearing Board* or an independent hearing officer.

§22.0817 Liability for Increased Costs

Any *bidder* or *contractor* who enters into a *contract*, either directly as a *prime contractor* or indirectly as a *subcontractor*, during a period of *suspension* or *debarment* imposed upon that *bidder* or *contractor*, shall be liable to the City for increased costs incurred as a result of replacing the *debarred* or *suspended bidder* or *contractor*.

§22.0818 Effect of Debarment or Suspension on Existing Contracts

- (a) The *City* may continue or terminate *contracts* or subcontracts it has with a *debarred* or *suspended bidder* or *contractor* that are in existence at the time the *bidder* or *contractor* is *debarred* or *suspended*.
- (b) The *City* shall not renew or otherwise extend the duration of current *contracts*, or consent to subcontracts, with *debarred* or *suspended bidders* or *contractors*, unless the *City Manager* certifies in writing compelling reasons for such renewal or extension.
- (c) The *City* may contract with another *person* to perform public works, goods, services, or consultant services that a *debarred contractor* had been hired to perform.

Section 8. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by retitling and amending section 22.0820 to read as follows:

§22.0819 Agreement Not to Bid or Submit Proposals in Lieu of Debarment or Suspension

- (a) The City may offer a *bidder* or *contractor* the opportunity to execute a written agreement not to bid or submit proposals or perform any work on *contracts* in lieu of the City's pursuing *debarment or suspension*.
- (b) This agreement not to bid or submit proposals for *contracts* in lieu of the City's pursuing *debarment or suspension* does not constitute a *debarment*.

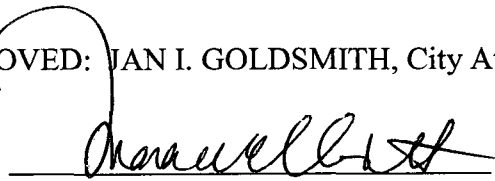
Section 9. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by deleting sections 22.0821, 22.0822, 22.0823, 22.0824, 22.0825, and 22.0826.

Section 10. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 11. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Mara W. Elliott
Chief Deputy City Attorney

MWE:mb:cfq:js:ccm
May 15, 2015
July 11, 2016 COR. COPY
July 14, 2016 COR. COPY 2
July 19, 2016 COR. COPY 3
July 20, 2016 REV.
Sept 9, 2016 COR. COPY 4
Or.Dept: P&C

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 02 2016.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

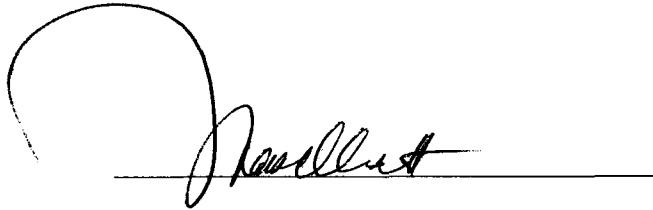
See attached memo and signature page.

Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: September 9, 2016
TO: City Clerk
FROM: Mara W. Elliott, Chief Deputy City Attorney
SUBJECT: O-2017-5 Cor. Copy 4 Debarment

Section §22.0819 (a) of the O-2017-5 clean corrected copy 4 has been changed to read as: The City may offer a *bidder* or *contractor* the opportunity to execute a written agreement not to bid or submit proposals or perform any work on *contracts* in lieu of the City's pursuing *debarment* or *suspension*.



A handwritten signature in black ink, appearing to read 'Mara W. Elliott', is written over a horizontal line. The signature is stylized and cursive.

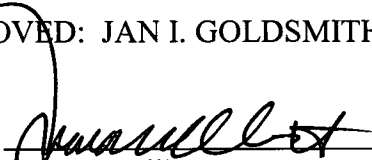
MWE:jls
Enclosure

Section 9. That Chapter 2, Article 2, Division 8 of the San Diego Municipal Code is amended by deleting sections 22.0821, 22.0822, 22.0823, 22.0824, 22.0825, and 22.0826.

Section 10. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

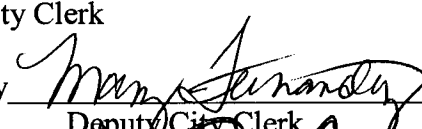
Section 11. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney


By 
Mara W. Elliott
Chief Deputy City Attorney

MWE:mb:cfq:js:ccm
May 15, 2015
July 11, 2016 COR. COPY
July 14, 2016 COR. COPY 2
July 19, 2016 COR. COPY 3
July 20, 2016 REV.
Or.Dept: P&C
Doc. No.: 1325823

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 08 2016.

ELIZABETH S. MALAND
City Clerk
By 
Deputy City Clerk

Approved: 8/8/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____

(Note: The date of final passage is August 10, 2016, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 8 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING AND AMENDING SECTION 22.0801; BY AMENDING SECTIONS 22.0802 AND 22.0803; BY RETITLING AND AMENDING SECTIONS 22.0804, 22.0805, AND 22.0806; BY AMENDING SECTION 22.0807; BY RETITLING AND AMENDING SECTIONS 22.0808 AND 22.0809; BY RETITLING AND AMENDING SECTIONS 22.0810, 22.0811, 22.0812, 22.0813, AND 22.0814; BY ADDING NEW SECTIONS 22.0815, 22.0816, 22.0817, 22.0818, AND 22.0819; BY RETITLING AND AMENDING SECTION 22.0820; AND BY DELETING SECTIONS 22.0821, 22.0822, 22.0823, 22.0824, 22.0825, AND 22.0826, ALL RELATING TO DEBARMENT.

§22.0801 Statement of Purpose and Intent

- (a) ~~The City intends to accept bids or responses to requests for proposals or qualifications from, award contracts to, execute contracts with, consent to subcontracts, or do business in any way only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with this Division, are appropriate means to effectuate this policy. Debarment and suspension are designed to protect the City by ensuring full and open competition by having contractual relationships only with responsible persons. In order to promote integrity in the City's contracting processes and to protect the public interest, the City shall only do business with responsible bidders and contractors.~~

- (b) ~~The serious nature of *debarment* and *suspension* requires that these sanctions be imposed only in the public interest for the *City's* protection, not for purposes of punishment, and only for the grounds lists and in accordance with procedures set forth in this Division. This Division sets forth the grounds for *debarment* and *suspension*.~~

§22.0802 Definitions

All defined terms in this Division appear in italics. For purposes of this ~~d~~Division:

“*Adequate evidence*” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“*Affiliate*” means ~~a person who~~:

- (a) is the assignee, successor, subsidiary of, or parent company, of another *person*; or,
- (b) is a *controlling stockholder of a person*; or,
- (c) a person who has the same or similar *management* of the *debarred* corporate or other legal entity; or,
- (d) a person who directly or indirectly controls, or has the power to control, another *person*, or is directly or indirectly controlled by another *person*.

Indicia of control include ~~but are not limited to~~, interlocking *management* or ownership, identity of interests among *relatives*, shared facilities and equipment, and common use of employees; or,

- (e) a business entity organized following the *debarment, suspension*, or proposed *debarment* of a *person* which has the same or similar *management, ownership or principal employees as the bidder or*

contractor that was *debarred, suspended* or proposed for *debarment*, or the *debarred person* or the business entity created after the *debarment, suspension*, or proposed *debarment* operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division.

“Bidder” means a ~~person~~ who ~~has submitted~~ submits a bid, proposal, or other document to the City seeking award of a *contract*. The term *bidder* does not include a *subcontractor*.

“Contract” means any written agreement between the City and ~~another~~ a person for public works, goods, services, franchise, or consultant services. It also includes a *public works contract*. It also includes a City issued purchase order.

Contractor means a person who has contracted with the City to provide public works, goods, services, franchise, or consultant services for or on behalf of the City. The term *contractor* includes a *subcontractor, vendor, franchisee, consultant, or any of their respective officers, directors, shareholders, partners, managers, employees, or other individuals associated with the contractor, subcontractor, consultant, or vendor.*

“Controlling stockholder” [No change in text.]

“Debar” or *“Debarment”* means ~~the disqualification of a person from:~~

- (a) ~~bidding on a *contract*; or,~~
- (b) ~~submitting responses to City’s requests for proposals or qualifications; or,~~
- (c) ~~being awarded a *contract*; or,~~
- (d) ~~executing a *contract*; or,~~

- ~~(e) participating in a *contract* as a *subcontractor*, material supplier, or employee of a *prime contractor* or another *subcontractor* for a period of time specified by the *Debarment Hearing Board* following a hearing.~~
- ~~(f) directly or indirectly (e.g. through an *affiliate*) submitting offers for, or executing *contracts*, or subcontracts with the City; or~~
- ~~(g) conducting business with, or reasonably may be expected to conduct business with, the City as an employee, agent, or representative of another *person*.~~

an action taken by the City which results in a *bidder* or *contractor* being prohibited from any of the following: bidding or proposing on a *contract*; being awarded a *contract*; or performing work on a *contract* for a defined period of time. A *bidder* or *contractor* subject to such prohibition is *debarred*.

“*Debarment Hearing Board*” means a board established by the City Manager to hold hearings, to take evidence, and to make *debarment* determinations about *debarment* for the City.

“*Department*” means a City department ~~organized under authority of the~~ City Manager acting through the department director or designee.

“*Final Construction Contractor Performance Evaluation*” means a City issued evaluation off a *person’s* overall performance on a *public works contract*. This evaluation is generally issued subsequent to completion of performance on the *public works contract*. It does not include *performance evaluations*, *final performance evaluations*, or *partial construction contractor performance evaluations*.

~~“Final Performance Evaluation” means a City-issued final evaluation of a person’s contractor’s overall performance on a contract which is generally issued subsequent to completion of performance on the contract. It includes final construction contractor performance evaluations. It does not include performance evaluations or partial construction contractor performance evaluations.~~

~~“Management” means the officers, partners, owners, foremen, or other individuals responsible for the a corporate or other legal entity’s financial and operational policies and practices, of a person.~~

~~“Partial Construction Contractor Performance Evaluation” means a City issued evaluation of a person’s performance on a specific public works contract. It includes only evaluations issued during performance of a public works contract. It does not include final construction contractor performance evaluations.~~

~~“Performance Evaluation” means a City issued evaluation of a person describing the person’s performance on a specific contract. It includes evaluations issued during performance of a contract and partial construction contractor performance evaluations. It does not include final performance evaluations or final construction contractor performance evaluations.~~

~~“Person” [No change in text.]~~

~~“Preponderance of the evidence” [No change in text.]~~

~~“Prime contractor,” means a person who enters a contract directly with the City.~~

~~“Public works contract” means a contract for the construction, reconstruction or repair of public buildings, streets, utilities, and other public works.~~

~~“Relative” [No change in text.]~~

~~“Subcontractor”~~ means:

(a) through (b) [No change in text.]

~~Subcontractor~~ includes a trade contractor or specialty contractor.

~~“Suspend”~~ or ~~“Suspension”~~ means the *debarment* of a bidder or contractor person for a temporary period of time pending the completion of an investigation and any proceedings before a *Debarment Hearing Board* or independent hearing officer and any appeals therefrom.

~~“Willfully failed to cooperate”~~ means:

~~(a) intentionally failed to attend a hearing and/or give testimony, or
(b) intentionally failed to provide documents, books, papers, or other information upon request of the City Manager, the Debarment Hearing Board, or the City Council.~~

§22.0803 Scope of Division

- (a) This Division establishes procedures for determining whether a *person bidder or contractor* is to be *debarred*, ~~or~~ *suspended*, or *both*.
- (b) [No change in text.]
- (c) [No change in text.]
- (d) The City Manager shall adopt procedures and regulations to implement this Division, including procedures for the conduct of debarment hearings, suspension meetings, and appeals of final performance evaluations.

§22.0804 ~~*Debarment Hearing Board to be Established*~~ *Debarment Hearing Board*

- (a) Upon receipt of a recommendation for *debarment* from a City department for *debarment* other than *debarments* set forth in sections 22.0808(a)(1) and 22.0808(a)(2), the City Manager shall appoint a fair and impartial board called a *Debarment Hearing Board* to hear and determine whether a *bidder or contractor person* should be *debarred*.
- (b) The City Manager shall appoint three individuals to serve on each *Debarment Hearing Board*. These individuals shall be unbiased and may be City employees, but shall not be employees who have participated in the decision to recommend the *debarment*, or employees who work in the department recommending *debarment*, nor are subject to the authority, direction, or discretion of employees or have participated in the decision to recommend *debarment*. ~~The *Debarment Hearing Board* shall follow procedures set forth in this Division and shall make decisions based on evidence taken at a hearing. The *Debarment Hearing Board's* scope of authority and duties are set forth in this Division.~~

§22.0805 ~~*Suspension Once City Manager Decides to Recommend Debarment*~~ *Suspension While Debarment Proceedings are Pending*

- (a) Once a determination has been made by the City Manager that *adequate evidence* exists supporting *debarment*, the City Manager may *suspend* the *person* pending a *debarment* decision where the City Manager finds that doing so is in the public interest. The City Manager may *suspend* a *bidder*

or contractor pending a debarment decision if the City Manager determines that adequate evidence of one of the grounds for debarment listed in section 22.0807 exists.

- (b) ~~The City Manager shall notify the person of the suspension in accordance with Section 22.0806, pending the Debarment Hearing Board or City Council's ruling on the matter. The City Manager shall, upon 72 hours' notice, provide a suspended bidder or contractor with an opportunity to appeal the suspension at an informal meeting.~~
- (c) ~~Once the City Manager has suspended a person, the suspension shall continue until the Debarment Hearing Board makes a final decision on the proposed debarment or until there has been a final ruling by the City Council following an appeal of a permanent debarment decision, if any appeal is filed. The City Manager shall notify the bidder or contractor of the suspension in accordance with section 22.0806.~~
- (d) The suspension is effective until the Debarment Hearing Board makes a final decision on the proposed debarment, until there has been a final ruling by an independent hearing officer in accordance with section 22.0809, or until a bidder or contractor is debarred under section 22.0811(e).

§22.0806 **Notices Required Under This Division**

- (a) ~~Whenever a notice is required to be delivered under this Division, the notice shall be delivered by any of the following methods. Service is effective as described herein unless different provisions are specifically stated to apply~~ Notice shall be by any of the following methods:
- (1) Personal delivery, with ~~service shall be deemed~~ effective on the date of delivery; or,
 - (2) Certified mail, postage prepaid, return receipt requested.
Simultaneously, the same notice may be sent by regular mail. If a notice that is sent by certified mail is returned unsigned, then ~~delivery~~ service shall be deemed effective ~~pursuant to~~ five calendar days after mailing by regular mail, provided the notice that was sent by regular mail is not returned. ~~Service shall be deemed effective on the date of mailing;~~ or,
 - (3) Regular mail, if not returned, with service effective five calendar days after mailing; or,
 - ~~(3)~~(4) [No change in text.]
- (b) Proof of delivery of notice ~~may~~ shall be made by the certificate of any officer or employee of the City or by declaration under penalty of perjury of any ~~person~~ person over the age of eighteen years. The proof of delivery shall show that delivery was done in conformity with this Division, ~~or other provisions of law applicable to the subject matter concerned.~~
- (c) [No change in text.]

§22.0807 **Grounds for Debarment**

- (a) ~~A final conviction, including a plea of nolo contendere, or final unappealable civil judgment of any one or more of the grounds listed in Section 22.0807(a),(1) (5) constitutes grounds for permanent *debarment* of the *person* who is subject to, or is the *affiliate* of the *person* who is subject to, the criminal conviction, plea, or civil judgment:~~
- ~~(1) — under any state or federal statute or municipal ordinance for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating a lack of business integrity or business honesty which affects the *person's* or its *affiliate's* responsibility;~~
~~or,~~
 - ~~(2) — for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; or,~~
 - ~~(3) — for violations of California Government Code sections 84300(e) 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 occur with respect to a City election; or,~~

- ~~(4) for a conviction under federal or state antitrust statutes involving public contracts or the submission of offers or bid proposals,~~

Grounds for Permanent Debarment

- (1) A judgment, settlement, stipulation, plea agreement, final conviction, including a plea of nolo contendere, or final unappealable civil judgment, of any of the grounds listed below, constitutes grounds for permanent debarment of the bidder or contractor who is subject to, or the affiliate of, the bidder or contractor who is subject to the judgment, settlement, stipulation, plea agreement, final conviction, or final unappealable civil judgment:
- (A) under any local, state, or federal law or regulation for embezzlement, theft, bid rigging, perjury, forgery, bribery, falsification or destruction of records, conspiracy, collusion, or receiving stolen property; or,
- (B) any offense, action, or inaction indicating a lack of business integrity or business honesty; or,
- (C) for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

- (2) A Fair Political Practices Commission enforcement order against a bidder or contractor, either following a hearing or by stipulation, imposing a penalty for a violation of California Government Code sections 84300(c) or 84301, or a City of San Diego Ethics Commission enforcement order against a bidder or contractor, either following a hearing or by stipulation, imposing a penalty for a violation of San Diego Municipal Code sections 27.2941, 27.2943, or 27.2944.
- (3) The bidder or contractor violated San Diego Charter section 97.
- (4) The bidder or contractor has engaged in any corrupt practice in bidding, award, administration, or performance of a contract.
- (5) The bidder or contractor operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division.
- (6) The City has issued the bidder or contractor four or more final performance evaluations with a rating of unsatisfactory in any four year period.
- (7) The person has committed an act or omission so serious or compelling in nature that it affects the present responsibility of the bidder or contractor to be awarded a contract or to participate as a subcontractor.

- (b) ~~A Fair Political Practices Commission enforcement order against a *person*, 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, constitutes grounds for permanent *debarment* of the *person* who is subject to, or is the *affiliate* of the *person* who is subject to, the enforcement order.~~

Grounds for Debarment of Three Years or More

- (1) The *bidder* or *contractor* willfully breaches a material term of a *contract*.
- (2) Violation of a local, state, or federal law or regulation applicable to a *contract* other than those identified in section 22.0807(a).
- (3) The *bidder* or *contractor* used substandard materials, or has failed to furnish or install materials in accordance with *contract* requirements, even if the discovery of the defect is subsequent to acceptance of the work and expiration of the warranty, if such defect is because of intentionally deficient or grossly negligent performance of the *contract*.
- (4) The *bidder* or *contractor* submits materially false information to the City pertaining to:

- (A) the City's evaluation of the *bidder or contractor* as a
Minority Business Enterprise, Woman Business Enterprise,
Disadvantaged Business Enterprise, Small Local Business
Enterprise, Emerging Local Business Enterprise, or
Disabled Veteran Business Enterprise;
- (B) the City's prequalification or eligibility process; or,
- (C) the *bidder's or contractor's* statement of gross income
submitted under the City's Minor Public Works
Construction Project Program.
- (5) The *bidder or contractor* has not implemented its Equal
Employment Opportunity Plan, or taken corrective action after
sufficient notice by the City.
- (6) The *bidder or contractor* has engaged in unlawful discrimination
in employment.
- (7) The *bidder or contractor* has received three or more *final*
performance evaluations with a rating of unsatisfactory in any
three year period.
- (8) The *bidder or contractor* fails to pay prevailing or living wages, or
fails to comply with the City of San Diego's Earned Sick Leave
and Minimum Wage Ordinance.
- (9) The *bidder or contractor* violates a material provision of any
settlement of a *debarment* action.

- (c) ~~Any one of the following acts or omissions by a *person* also constitute grounds for permanent *debarment*:~~
- ~~(1) the *person* committed any offense, took action, or failed to take an action, which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the *person* on future *contracts* with the *City*; or,~~
 - ~~(2) the *person* committed a violation of San Diego Charter section 97; or,~~
 - ~~(3) the *person* has committed any corrupt practice in bidding for or in any way seeking award of a *contract*, or has committed any corrupt practice in any way relating to a *City contract*; or,~~
 - ~~(4) the *person* was established to, or operates in a manner designed to, evade the application of this Division or to defeat the purpose of this Division;~~

Grounds for Debarment of Two Years

A *bidder* or *contractor* may be *debarred* for two years if a *bidder* or *contractor* has received two or more *final performance evaluations* with a rating of *unsatisfactory* in any two-year period.

- (d) ~~Any two or more of the following acts or omissions by a *person* constitute grounds for debarment of that *person* for no less three years and up to and including permanently:~~
- ~~(1) the *person* unjustifiably refused to properly perform or complete *contract work* or warranty performance; or,~~

- (2) ~~the person unjustifiably failed to honor or observe contractual obligations or legal requirements pertaining to the contract; or,~~
- (3) ~~the person used substandard materials, or has failed to furnish or install materials in accordance with contract requirements, even if the discovery of the defect is subsequent to acceptance of the project and expiration of the warranty thereof, if such defect amounts to intentionally deficient or grossly negligent performance of the contract under which the defect occurred; or,~~
- (4) ~~the person committed a violation of the Drug-Free workplace Act of 1988 (41 USC sections 710-707); or,~~
- (5) ~~the person willfully failed to cooperate in the investigation or hearing of the proposed debarment; or,~~
- (6) ~~the person performs, or fails to perform, a contract in such a way that environmental damage results or a violation of environmental laws or permits is committed; or,~~
- (7) ~~the person has not implemented its Equal Employment Opportunity Plan required by Municipal Code section 22.2705, or practices unlawful discrimination in employment, and the person has not taken corrective action after sufficient notice by the City;~~
- (8) ~~the person has falsified a statement of gross income submitted under the City's Minor Public Works Construction Project program; or,~~

- (9) ~~the person has committed an act or omission of so serious or compelling a nature that:~~
- (a) ~~it affects the present responsibility of the person to be awarded a contract or to participate as a subcontractor in a contract; or,~~
 - (b) ~~it affects the integrity of the procurement process.~~
- (10) ~~Any one of the following acts or omissions by a person listed in Section 22.0807(e)~~

Grounds for Debarment of One Year

- (1) The bidder or contractor made two or more claims of computational or other error in a bid to the City within a two-year period.
 - (2) The bidder or contractor failed to timely submit bond, contract, insurance documents, or any other documentation required as a condition of award or performance of a contract.
- (e) ~~The following acts or omissions by a person constitute grounds for debarment of that person for no less than one year.~~
- (1) ~~the City issued the person two or more performance evaluations from the City with a rating of unsatisfactory within a two-year period; or,~~
 - (2) ~~the City has issued the person a final performance evaluation with a rating of unsatisfactory.~~

- (3) ~~the person has failed to timely submit bond, contract documents, insurance documents or any other item required by the City, acceptable to the City which conform to bid, request for proposal and/or contract requirements.~~
- (4) ~~the person who is notified that they are the apparent low bidder on a contract has failed to timely submit on two or more occasions complete Equal Opportunity Outreach documentation that is required by Municipal Code section 22.2705 or by policies adopted pursuant to that Division and that is acceptable to the City.~~
- (5) ~~the person submitted two or more claims of computational or other error in a bid to the City within a two-year period.~~

§22.0808 Debarment Proceedings before the a Debarment Hearing Board ~~or~~ City Council

~~The proceedings shall be as informal as is compatible with the requirements of justice. The *Debarment Hearing Board* and/or City Council need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiries in the matter through all means and in a manner best calculated to make a just factual determination.~~

- (a) *The Debarment Hearing Board shall hear all recommendations for debarment other than:*
- (1) *permanent debarment, which are heard by an independent hearing officer in accordance with section 22.0809; and*
 - (2) *debarment based on unsatisfactory final performance evaluations, which are heard in accordance with section 22.0811.*

- (b) The Debarment Hearing Board shall determine by a preponderance of the evidence whether a bidder or contractor is to be debarred and for what length of time in accordance with this Division. The Debarment Hearing Board may increase, decrease, or accept the department's recommendation of the length of debarment. The debarment hearing board may not impose less than the length of debarment specified in section 22.0807(b) and (d).
- (c) The Debarment Hearing Board's decision on debarment must be in writing and is final.
- (d) The failure of a person recommended for debarment to appear at a debarment hearing after notice under section 22.0806 constitutes a waiver of that person's right to contest the debarment recommendation, and the department's recommendation shall become final.

§22.0809 **Debarment Hearing Board's Authority to Debar; Debarment Hearing Board's Decision Final Debarment Proceedings before an Independent Hearing Officer**

- (a) ~~After notice and hearing held in accordance with the procedures set forth in this Division and as further developed in accordance with policies adopted by the City Council, the Debarment Hearing Board shall determine whether a person is to be debarred and for what length of time. To debar a person, the Debarment Hearing Board must find by a preponderance of the evidence that one or more grounds for debarment stated in Section 22.0807 exist.~~ The City Manager shall appoint an independent hearing officer.

- (b) ~~Except as provided in Section 22.0809(c), a *Debarment Hearing Board's* decision shall be final.~~ An independent hearing officer shall hear all recommendations that include one or more grounds for permanent debarment, except for debarments based on unsatisfactory final performance evaluations, which are heard in accordance with section 22.0811.
- (c) ~~An independent hearing officer's decision by a *Debarment Hearing Board* to permanently *debar* a person may be appealed to the City Council in accordance with section 22.0810. The filing of a request for appeal of the *debarment* decision shall not stay the *Debarment Hearing Board's* decision pending a final decision of the City Council.~~ The independent hearing officer shall determine by a *preponderance of the evidence* whether a person is to be *debarred* and for what length of time, in accordance with this Division. The independent hearing officer may increase, decrease, or accept the *department's* recommendation of the length of *debarment*. The independent hearing officer may not reduce the length of a permanent *debarment* if the hearing officer determines a violation identified in section 22.0807(a) occurred, or impose less than the length of debarment specified in section 22.0807(b) and (d).
- (d) ~~The *Debarment Hearing Board* shall deliver notice of the decision to the person subject to the *debarment* hearing and to the City Manager.~~ The independent hearing officer's decision on *debarment* must be in writing and is final.

- (e) The failure of a *person* recommended for *debarment* to appear at a *debarment* hearing after notice under section 22.0806 constitutes a waiver of that *person's* right to contest the *debarment* recommendation, and the *department's* recommendation shall become final.

§22.0810 Appeals to City Council from Certain Decisions of Debarment Hearing Board Imputation of Knowledge and Conduct

- (a) ~~If a *Debarment Hearing Board* has made a determination to *debar* a *person* permanently, that *person* may appeal that decision to the City Council in accordance with procedures set forth in this Division and procedures adopted by the City Council. The fraudulent, criminal, or other serious misconduct of any officer, director, shareholder, partner, employee, or other individuals associated with a *bidder* or *contractor* may be imputed to the *bidder* or *contractor* when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the *bidder* or *contractor*, or with the *bidder's* or *contractor's* knowledge, approval, or acquiescence. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.~~
- (b) ~~A *person* who has been *debarred* may request an appeal to the City Council no later than five working days from the date of the notice of the *Debarment Hearing Board's* *debarment* decision. The *debarred person's* request for appeal shall set forth in detail the reasons why the *person* disagrees with decision. The *person* shall file the notice of appeal with the City Clerk, who shall calendar the appeal hearing in front of the City~~

~~Council after consultation with the City Manager and Mayor.~~ The fraudulent, criminal, or other serious misconduct of a *bidder* or *contractor* may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the *bidder* or *contractor* who participated in, knew of, or had reason to know of the *bidder's* or *contractor's* conduct.

- (c) ~~The filing of a request for an appeal shall not stay the *Debarment* decision.~~

The fraudulent, criminal, or other serious misconduct of one *bidder* or *contractor* participating in a joint venture or similar arrangement may be imputed to other participating *bidders* or *contractors* if the conduct occurred for, on approval of, or acquiescence of these *bidders* or *contractors*. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§22.0811 ~~Submission of Argument on Appeal~~ Appeal of Final Performance

Evaluations

- (a) ~~At the City Council hearing on the appeal, no new evidence may be presented by the City or any *person*. However, if the *person* who filed the appeal under Section 22.0810 wishes to submit argument supporting the appeal, that *person* shall submit argument in writing with the City Clerk no later than 4:00 p.m. ten calendar days prior to the date on which the hearing is scheduled to be held. Filing shall also be made on all *persons* subject to the *debarment* and on the *Debarment Hearing Board*. A *bidder* or *contractor* may appeal a *final performance evaluation* with a rating of~~

unsatisfactory on a public works contract or an architectural or engineering consultant contract to the City Engineer.

- (b) Where argument is submitted in accordance with Section 22.0811, the City may submit rebuttal arguments, which shall be filed with the City Clerk no later than 4:00 p.m. five calendar days prior to the date on which the hearing is scheduled to be heard. Filing shall also be made on all persons subject to the debarment. A bidder or contractor may appeal a final performance evaluation with a rating of unsatisfactory on a goods, services, or non-engineering, non-architectural consultant contract to the Purchasing Agent.
- (c) A bidder or contractor must submit an appeal in writing to the City Engineer or Purchasing Agent within sixty days after notice of the final performance evaluation pursuant to section 22.0806. Evaluations may not be appealed after sixty days from the date of such notice.
- (d) The decision of the City Engineer and the Purchasing Agent to uphold an unsatisfactory performance evaluation or a debarment determination shall be issued to the bidder or contractor in writing and are final.
- (e) The City Manager may, upon recommendation of the City Engineer or Purchasing Agent, debar a bidder or contractor who has received an unsatisfactory final performance evaluation. This determination shall be in writing and is final.

§22.0812 **Standard of Proof Judicial Review**

The standard of proof for the *Debarment Hearing* shall be a *preponderance of the evidence*. California Code of Civil Procedure section 1094.6 governs judicial review of a final *debarment* decision.

§22.0813 **~~Imputation of Knowledge and Conduct~~ Creation of List of Debarred and Suspended Persons**

- (a) ~~The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individuals associated with a *person* may be imputed to the *person* when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the *person*, or with the *person's* knowledge, approval, or acquiescence. The *person's* acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.~~ The City Manager shall create, maintain, and make publicly available a list of the names, addresses, and applicable *debarment* or *suspension* commencement and expiration dates of all *debarred* or *suspended bidders* and *contractors*.
- (b) ~~The fraudulent, criminal, or other seriously improper conduct of a *person* may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the *person* who participated in, knew of, or had reason to know of the *person's* conduct.~~ The City Manager shall establish procedures to provide for the effective use of the list to ensure that the City does not do business with *bidders* and *contractors* who have been *debarred* or *suspended*.

- (e) ~~The fraudulent, criminal, or other seriously improper conduct of one person participating in a joint venture or similar arrangement may be imputed to other participating persons if the conduct occurred for, on approval of, or acquiescence of these persons.~~

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

§22.0814 ~~Judicial Review Effect of Debarment or Suspension~~

~~Once a *Debarment Hearing Board* or the City Council has issued a final decision as provided in this Division, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6.~~

- (a) *Bidders and contractors who have been debarred or suspended are excluded from submitting bids, submitting responses to requests for proposal or qualifications, receiving contract awards, executing contracts, participating as a subcontractor, employee, agent or representative of another person contracting with the City.*
- (b) *The City shall not accept, evaluate for award, or include any proposals, quotations, bids, or offers from any debarred or suspended bidders and contractors.*
- (c) *The City shall not award or approve the award of a contract or execute a contract under which a debarred or suspended bidder or contractor is intended to participate as a subcontractor or material supplier.*

- (d) A prime contractor shall not employ, subcontract with, or purchase materials or services from a debarred or suspended bidder or contractor.
- (e) The City Manager shall report debarments under this Division to the appropriate local, state, and federal agencies and authorities.

§22.0815 Effect of Debarment or Suspension on an Affiliate

- (a) Affiliates are debarred or suspended to the same extent as the debarred or suspended bidder or contractor.
- (b) A bidder or contractor may appeal the City's determination that the bidder or contractor is an affiliate in writing to the City Manager within sixty days after notice of the affiliate's debarment pursuant to section 22.0806.
- (c) An affiliate may not appeal the debarment of any other bidder or contractor underlying the affiliate's debarment.
- (d) The decision of the City Manager shall be issued to the bidder or contractor who is an affiliate in writing and is final.

§22.0816 Effect of Debarment by Another Governmental Agency

The City Manager may debar a bidder or contractor who has been debarred by another governmental agency until the term of the debarment by the other governmental agency expires. The City Manager's decision under this section is final, and not subject to a hearing before the Debarment Hearing Board or an independent hearing officer.

§22.0817 **Liability for Increased Costs**

Any bidder or contractor who enters into a contract, either directly as a prime contractor or indirectly as a subcontractor, during a period of suspension or debarment imposed upon that bidder or contractor, shall be liable to the City for increased costs incurred as a result of replacing the debarred or suspended bidder or contractor.

§22.0818 **Effect of Debarment or Suspension on Existing Contracts**

- (a) The City may continue or terminate contracts or subcontracts it has with a debarred or suspended bidder or contractor that are in existence at the time the bidder or contractor is debarred or suspended.
- (b) The City shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with debarred or suspended bidders or contractors, unless the City Manager certifies in writing compelling reasons for such renewal or extension.
- (c) The City may contract with another person to perform public works, goods, services, or consultant services that a debarred contractor had been hired to perform.

§22.081920 **~~Creation of List of Debarred and Suspended Persons Agreement Not to Bid or Submit Proposals in Lieu of Debarment or Suspension~~**

- (a) ~~The City Manager shall create and maintain a list of persons who have been debarred or suspended in accordance with policies and procedures of this Division.~~
 - (1) ~~This list shall include the names and addresses of all persons who have been debarred or suspended.~~

(2) For each *debarred or suspended person*, the list shall state the date of commencement and expiration of the *debarment or suspension*.

The City may offer a *bidder or contractor* the opportunity to execute a written agreement not to bid or submit proposals or perform any work on *contracts* in lieu of the City's pursuing *debarment or suspension*.

(b) The City Manager shall establish procedures to provide for the effective use of the list to ensure that the City does not do business with *persons* who have been *debarred or suspended*. This agreement not to bid or submit proposals for *contracts* in lieu of the City's pursuing *debarment or suspension* does not constitute a *debarment*.

§22.0821 Effect of Debarment or Suspension

(a) ~~*Persons* who have been *debarred or suspended* are excluded from conducting business with the City on behalf of themselves or as agents or representatives of other *persons* for the duration of the *debarment or suspension*.~~

(b) ~~*Persons* who have been *debarred or suspended* are excluded from submitting bids, directly or indirectly (e.g., through an *affiliate*), submitting responses to requests for proposal or qualifications, receiving *contract* awards, executing *contracts*, participating as a *subcontractor*, employee, agent or representative of another *person* contracting with the City, or receiving *contracts* for the period of *debarment or suspension*.~~

- (c) ~~Persons who have been debarred or suspended are excluded from acting in a capacity where the person reasonably may be expected to submit offers for or be awarded, a contract, or a subcontract under a contract; or~~
- (d) ~~Persons who have been debarred or suspended are excluded from conducting business, or from acting in a capacity where the person reasonably may be expected to conduct business, with the City as an agent or representative of another person.~~
- (e) ~~The management of a corporate or other legal entity that has been debarred or suspended shall not conduct business or act in a capacity where they reasonably may be expected to conduct business with the City under a different corporate name.~~
- (f) ~~The City shall not accept, receive, open a bid, evaluate for award, or include any proposals, quotations, bids, or offers from any debarred or suspended person for the duration of the debarment or suspension.~~
- (g) ~~The City shall not award or approve the award of a contract or execute a contract under which a debarred or suspended person is intended to participate as a subcontractor or material supplier.~~
- (h) ~~A prime contractor who is awarded a contract shall not employ, subcontract with, nor purchase materials or services from a debarred or suspended person;~~
- (i) ~~When a debarred person sells or otherwise transfers to a relative or to any other person over who actions the debarred person exercises substantial influence or control, then that relative or other person is automatically~~

~~suspended or debarred or proposed for debarment to the same extent as the seller or transferor is debarred, suspended, or proposed for debarment.~~

§22.0822 ~~Effect of Debarment or Suspension on an Affiliate~~

- (a) ~~If the City determines that a person is an affiliate of a person that is debarred, suspended or proposed for debarment, the affiliate is debarred or suspended to the same extent as the person that is debarred, suspended or proposed for debarment.~~
- (b) ~~The affiliate debarred under Section 22.0822(a) may request an appeal of the decision to the Debarment Hearing Board by submitting a written request to the City Clerk. An appeal under Section 22.0822(b) shall be governed by the same rules and regulations in accordance with this Division as are applicable to a Debarment Hearing Board's procedure to debar a person.~~
- (c) ~~The filing of a request for review under Section 22.0822(b) shall not stay the decision to debar the affiliate.~~

§22.0823 ~~Effect of Debarment or Suspension by Another Governmental Agency~~

~~If a person has been debarred by another governmental agency, that person may be automatically debarred by the City Manager permanently, or for three years, or until the other governmental agency's term of debarment expires, in the sole discretion of the City Manager.~~

§22.0824 ~~Liability for Increased Costs~~

~~Any person who enters a contract with the City, either directly as a prime contractor or indirectly as a subcontractor, during a period of suspension or~~

~~debarment imposed upon that person by the City under its rules and regulations shall be liable to the City for increased costs incurred as a result of replacing the debarred or suspended person.~~

§22.0825 Effect of ~~Debarment or Suspension~~ on Existing Contracts

- (a) ~~Except as otherwise provided in this section and notwithstanding the debarment, suspension, or proposed debarment, of a person, the City may continue contracts or subcontracts it has with that person that are in existence at the time the person was debarred, suspended, or proposed for debarment.~~
- (b) ~~If the basis of a person's debarment or suspension is so serious that the City Manager believes that termination of contracts or subcontracts the City has with that person that are in existence at the time the person is debarred or suspended is in the best interests of the City, the City Manager may take actions necessary to terminate those contracts or subcontracts only after consultation with the City Attorney to ensure the propriety and legality of the proposed action.~~
- (c) ~~The City may continue to place orders against existing contracts, including delivery contracts, held by a debarred or suspended person, unless the contract has been terminated.~~
- (d) ~~The City shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with debarred or suspended persons, unless the City Manager states in writing the compelling reasons for renewal or extension.~~

§22.0826 ~~Agreement Not to Bid in Lieu of One Year Debarment~~

~~The City may, but is not required to, offer a *person* the opportunity to execute a written agreement not to bid for one year, in lieu of City's pursuing a one year debarment under this Division. By executing this agreement, the *person* shall consent to waive a *debarment* hearing as described in Section 22.0804, and this agreement will not constitute a debarment.~~

MWE:js:ccm
May 17, 2016
July 11, 2016 COR. COPY
July 14, 2016 COR. COPY 2
July 19, 2016 COR. COPY 3
July 20, 2016 REV.
Or. Dept: P&C
Doc. No. 1325825

Passed by the Council of The City of San Diego on AUG 02 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 10 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 19 2016

, and on AUG 10 2016

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

<p>Office of the City Clerk, San Diego, California</p> <p>Ordinance Number O- <u>20715</u></p>
--