

LEGISLATIVE DIGEST

[Administrative Code - Debarment and Suspension of City Contractors]

Ordinance amending Administrative Code, Chapter 28 to add a Contractor's prohibited provision of gifts or money to a public official as an express ground for debarment and revising debarment procedures; to amend the definition of "Contractor" by expressly including grant applicants and grantees in the defined term; and to add provisions authorizing suspension of a Contractor from participating in the procurement process for entering into City contracts or applying for grants if the Contractor is the subject of a criminal or civil charge brought by a government agency against the Contractor alleging that the Contractor committed a violation of any civil or criminal law or regulation against any government entity relevant to the Contractor's ability or capacity honestly to perform under or comply with the terms and conditions of a City contract, including but not limited to the grounds for debarment set forth in Chapter 28.

Existing Law

Chapter 28 of the Administrative Code authorizes specified City officials to prosecute a debarment against a contractor. A debarment prohibits a contractor from contracting with the City for a specified period up to five years. The charging official initiates the process by issuing allegations against a contractor for willful misconduct. Existing law lists examples of such misconduct for which a contractor can be debarred including:

1. submission of a false claim against the City;
2. a pattern of breaching the terms of government contracts;
3. conviction of a crime that is relevant to the contractor's capacity to perform contracts honestly; or
4. collusion to obtain a City contract.

The contractor may request a hearing. The Controller or the Director of Administrative Services appoints a hearing officer. Each side may call witnesses and present evidence.

Amendments to Current Law

Following is a summary of the amendments to Chapter 28 set forth in this Ordinance:

1. Adds to the list of express grounds for debarment of a contractor's offer or provision of a gift or money to a public official whom the law prohibits from accepting the gift or money;

2. Amends the definition of “Contractor” to include grant applicants and grant recipients;
3. Adds an authorization to suspend from public contracts or grants a Contractor (including grant applicants and grantees) that has been indicted or charged in a civil, criminal, or administrative matter with conduct that, if convicted, would be a basis for debarment;
4. Substitutes the City Administrator in place of the Director of Administrative Services as a person, along with the Controller, who may appoint a hearing officer; and
5. Adds a provision permitting a hearing officer to determine that it is necessary to hold a hearing on an electronic meeting platform.

Federal law authorizes Contractor suspension while an indictment or charge against the Contractor is pending; this Ordinance adds authority for the City to suspend a Contractor while an indictment or charge against the Contractor is pending. This allows the City to prevent a Contractor from seeking new contracts during the pendency of the indictment or charge. If the Contractor is convicted or otherwise pleads or settles the matter in a manner that would constitute grounds for debarment, the City would credit the time spent in “suspension” toward the debarment period.

The amendment includes adequate procedures to provide a Contractor with “due process” under the California and United States Constitutions.

n:\legana\as2020\2000604\01468832.docx