

Ordinance amending the Code of Ordinances by adding Chapter 41 titled “Public Works”; adding provisions related to contractor debarment; adding provisions related to the effective administration of the procurement of public works contracts; providing for severance; and providing for an effective date.

WHEREAS, *relating to public works in general*, this ordinance adds a new chapter titled “Public Works” to Chapter 41 (reserved) of the Code of Ordinances and reserves a number of articles and sections in Chapter 41 for adding provisions related to public works in the future.

WHEREAS, *relating to the authority to reject any and all bids*, (a) Article X Sec. 2(c) of the City’s Charter provides that “[t]he City shall always have the right to reject any and all bids or proposals;” and (b) Section 252.043(f) of the Local Government Code provides that the “governing body may reject any and all bids;”

WHEREAS, *relating to the City’s right to reject any and all bids, and to ensure proper and effective administration of the procurement process for public works contracts*, this ordinance provides for the City Council’s delegation of authority to reject any and all bids or proposals in certain circumstances;”

WHEREAS, *relating to the requirement to award certain contracts to the lowest responsible bidder*, the Texas Local Government Code states, in pertinent parts, (a) that “if the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the *lowest responsible bidder*,” Tex. Loc. Gov’t Code § 252.043(a); (b) that “[e]xcept as provided by Subsection (d-1), the contract must be awarded to the *lowest responsible bidder* if the competitive sealed bidding requirement applies to the contract for construction of: (1) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or (2) buildings or structures that are incidental to projects that are primarily civil engineering construction projects,” Tex. Loc. Gov’t Code § 252.043(d); and (c) that “[i]f the competitive sealed bidding requirement applies to the contract for construction of a facility, as that term is defined by Section 2269.001, Government Code, the contract must be awarded to the *lowest responsible bidder* or awarded under the method described by Chapter 2269, Government Code,” Tex. Loc. Gov’t Code § 252.043(e);

WHEREAS, the City Council recognizes that the City must invest large amounts of money in public works and critical infrastructure projects;

WHEREAS, it is the policy of the City Council that the City solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only;

WHEREAS, *relating to award to the lowest responsible bidder*, this ordinance codifies certain processes related to determinations of bid responsiveness and bidder responsibility that are performed in the normal course of business;

WHEREAS, relating to award to the lowest responsible bidder and debarment of a contractor for a fixed period of time, Chapter 41, Article IV, titled "Contractor Debarment" provides policies, procedures, and processes for contractor debarment;

WHEREAS, debarment is a discretionary action that, taken in accordance with this ordinance, is an appropriate means to effectuate this policy, with no further action by City Council required or necessary;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. The Corpus Christi Code of Ordinances is amended to add a new Chapter titled "Public Works" as follows:

"CHAPTER 41 PUBLIC WORKS

* * * * *

Article I. In General.

Secs. 41-1—41-20. Reserved.

Article II. Procurement of Public Works Contracts.

Sec. 41-21. Definitions.

Assistant City Manager means the Assistant City Manager for Public Works and Utilities.

Bid means an offer to contract in response to a solicitation or invitation for bids, and includes a proposal or any other response to a solicitation, procurement or request for proposals.

City means the City of Corpus Christi, and, depending on its context, may refer to the City Manager or the City Manager's designee.

City Council means the City Council of the City of Corpus Christi.

Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

Contractor means any person (individual or corporate) or other legal entity that:

(1) directly or indirectly (e.g., through an affiliate) submits bids or offers for or is awarded, or reasonably may be expected to submit bids or offers for or be awarded, a City contract, including a subcontract under a City contract; or

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

Department means the Department of Engineering Services or other city department responsible for administering the City's public works programs, projects and contracts.

Director means the Director of Engineering Services, the City Engineer or the director or head of a city department responsible for administering the City's public works programs, projects and contracts.

Executive Director means the Executive Director for Public Works.

Offer means an offer to contract and includes a bid, a proposal or any other response to a solicitation, procurement, bid invitation or request for proposals.

Public works contract means any city contract for the construction of public works, facilities or other improvements to real property. The term includes contracts procured under Chapter 252 of the Texas Local Government Code and, where applicable, Chapter 2269 of the Texas Government Code. The term does not include contracts for professional services that are exempt from bidding under the Texas Professional Services Procurement Act, Chapter 2254 of the Texas Government Code.

Responsible bidder means a bidder that is able to perform the quality and quantity of work required and that is trustworthy.

Responsive bid means a bid the form and content of which meets the requirements of the bidding documents.

Sec. 41-22. Reserved.

Sec. 41-23. Rejection of bids.

(a) City Council delegates to the Director authority on its behalf to reject any or all bids pursuant to section 252.043 of the Texas Local Government Code under the following circumstances:

- (1) All bids received exceed the estimated costs, and the Director determines that the bids appear to be excessive.
- (2) The Director determines that the project is no longer required.
- (3) The Director determines that the City's design or specifications for the project or bid should be revised and new bids should be taken.
- (4) The irrevocable period on the low bid has expired without the bid being awarded, and the bidder has failed or refused to extend the time.
- (5) The bids received are few in number, and the Director determines that a rebid may result in more competition.
- (6) The bids received indicate that the bid solicitation documents may have been unclear or misunderstood by the bidders and that a rebid is in the best interest of the City.
- (7) The Director finds evidence of possible collusion among the bidders.

(8) The Director finds other extenuating circumstances and, for purposes of facilitating full and fair open competition, the Director determines that the project should be rebid.

- (b) The delegation created in this subsection is nonexclusive, and nothing herein may be construed to preclude the City Council from rejecting any or all bids received for any project or public works contract.

Sec. 41-24. Responsiveness.

- (a) Upon receipt of bids, the Department reviews each bid to determine whether the bid is a responsive bid.
- (b) The Director has the right to waive irregularities.
- (c) Nonresponsive bids are not considered for award.

Sec. 41-25. Responsibility.

- (a) Of the responsive bids, the Department performs a review of the responsibilities of the apparent lowest bidder to determine whether the lowest bidder is a responsible bidder.
- (b) In determining a bidder's responsibilities, factors considered include, without limitation, the bidder's experience, capacity, supervision, ability to maintain project budget and schedule, past performance and safety record.
- (c) If review of the lowest bidder's responsibilities indicates that the lowest bidder is not a responsible bidder, the Department performs a review of the responsibilities of the second lowest bidder. If a review of the second lowest bidder's responsibilities indicates that the second lowest bidder is not a responsible bidder, the Department performs a review of the responsibilities of the third lowest bidder. This process continues until all responsive bids are considered, unless a decision is made to reject all bids.
- (d) The Director proposes award to the lowest responsible bidder that submitted a responsive bid.
- (e) If the Director is considering proposing award to a bidder that is not the lowest bidder, before scheduling at an upcoming meeting of the City Council an agenda item proposing award, each lower bidder is given notice:
 - (1) that the proposal for award of the contract to a bidder that is not the lowest bidder is being considered and the reasons why;
 - (2) that there will be an opportunity, within ten business days' receipt of the notice, to submit to the Department written evidence of the bidder's responsibility; and

(3) that after a review of any written evidence received within the ten business days' time, if the decision is to propose award to a bidder that is not the lowest bidder, each lower bidder is given notice:

- (i) of the proposed award;
- (ii) of the date, time and location of the open meeting in which the proposed award will first be presented to City Council; and
- (iii) of the opportunity to appear before City Council and present evidence of the bidder's responsibility.

Nothing in this article may be construed as depriving the Director of the right to reject any bid made by a bidder at any time prior to the actual awarding of a contract, where there have been developments subsequent to the qualification and classification of any such bidder which, in the opinion of City Council, would affect the responsibility of such bidder.

Secs. 41-26—41-39. Reserved.

Article III. Reserved.

Secs. 41-40—41-99. Reserved.

Article IV. Contractor Debarment

Sec. 41-100. Definitions.

As used in this article:

Affiliates means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred.

Bid means an offer to contract in response to a solicitation or invitation for bids and includes a proposal or any other response to a solicitation, procurement or request for proposals.

City means the City of Corpus Christi and, depending on its context, may refer to the City Manager or the City Manager's designee.

City Council means the City Council of the City of Corpus Christi.

Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

Contractor means any person (individual or corporate) or other legal entity that:

- (1) directly or indirectly (e.g., through an affiliate), submits bids or offers for or is awarded, or reasonably may be expected to submit bids or offers for or be awarded, a City contract, including a subcontract under a City contract; or
- (2) conducts business, or reasonably may be expected to conduct business, with the City as an agent or representative of another contractor.

Department means the Department of Engineering Services or other city department responsible for administering the City's public works programs, projects, and contracts.

Director means the Director of Engineering Services, the City Engineer, or the director or head of a city department responsible for administering the City's public works programs, projects and contracts.

Offer means an offer to contract, and includes a bid, a proposal, or any other response to a solicitation, procurement, bid invitation or request for proposals.

Responsible bidder means a bidder that is able to perform the quality and quantity of work required and that is trustworthy.

Sec. 41–101. Scope and effect of article.

- (a) This article neither creates nor grants a contractor the right to be debarred under the procedures of this article in order to be deemed a nonresponsible bidder ineligible for award of a contract.
- (b) This article does not limit the ability or affect the right of the City Manager or designee or Director to make decisions regarding a contractor's responsibilities and to determine whether a contractor is responsible or capable of performing work under a public works contract.

Sec. 41–102. Reserved.

Sec. 41–103. Applicability.

- (a) This article does not apply to a contract for professional services, as that term is defined by Section 2254.002, Government Code, as amended.
- (b) Any debarment initiated under this article is recognized by and effective for any city procurement.

Sec. 41–104. Policy.

- (a) The City will solicit offers from, award contracts to and consent to subcontracts with responsible contractors only.
- (b) Debarment is a discretionary action that, taken in accordance with this article, is an appropriate means to effectuate this policy.

(c) The serious nature of debarment requires that it be imposed only in the public interest for the City's protection and not for purposes of punishment.

(d) The City imposes debarment to protect the City's interest and only in accordance with the procedures set forth in this article.

(e) The City Manager or designee is authorized to establish appropriate methods and procedures to coordinate debarment actions and to implement this article in general, in accordance with city policy and state law, with no further action by City Council required or necessary.

Sec. 41–105. Debarment.

(a) The Director may, in the public interest, debar a contractor for any of the causes in Section 41-106.

(b) The existence of a cause for debarment does not necessarily require debarment. The seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision.

(c) Debarment constitutes debarment of all divisions or other organizational elements of the contractor. The Director may extend the debarment decision to include any affiliates of the contractor if they are:

(1) specifically named; and

(2) given written notice of the proposed debarment and an opportunity to respond.

(d) A contractor's debarment will be effective throughout the City and apply to any city contracts, including contracts procured or administered by other city departments.

Sec. 41–106. Causes for debarment.

(a) The Director may debar a contractor for a conviction, plea of guilty or nolo contendere to, civil judgment for, or public admission to:

(1) fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(2) a crime or offense related to business of the contractor, or affecting the responsibility of the contractor; or

(3) any offense indicating a lack of business integrity or business honesty that seriously and directly affects present responsibility.

(b) The Director may debar a contractor, based upon a preponderance of the evidence, for any of the following:

(1) Any serious, significant or material breach of a contract, including and without limitation, wrongfully and without good cause:

- (i) failing to complete a contract or abandoning work;
- (ii) failing to promptly correct defective or substandard work discovered within the contract period or before the end of the warranty period;
- (iii) failing to perform work in accordance with the terms of the contract;
- (iv) a history of failing to perform in a good and workmanlike manner, or of unsatisfactory performance;
- (v) failing to comply with state, federal or local laws or regulations applicable to the work or to public works in general;
- (vi) failing to comply with state, federal or local laws or regulations or applicable city policies and procedures concerning payment of a contractor in the performance of a contract;
- (vii) failing to pay its employees as required by law or otherwise engaging in theft of services; or
- (viii) failing to complete the work on any public works contract within the time allowed.

(2) Knowing failure to timely disclose to the City evidence of overpayment on a city contract in connection with the award, performance or closeout of the contract.

(3) Any other cause so serious or compelling that it affects the present responsibility of the contractor.

(c) The Director may debar a contractor for any of the following:

(1) Filing a lawsuit or asserting any claim or allegation against the City within the 10-year period preceding the referral for debarment, if the City Attorney reasonably determines that one or more causes of action, claims, or allegations, or one or more material elements or parts of any cause of action, claim or allegation was wholly unsubstantiated and unsupported by the evidence, or filed, asserted, or alleged in bad faith or for an improper purpose.

(2) Submitting repetitive claims against the City within the 10-year period preceding referral for debarment, if the City Attorney reasonably determines that one or more claims, or one or more material elements or parts thereof was wholly unsubstantiated and unsupported by the evidence, made in bad faith, completely without merit, had no

basis in the facts known to both parties, or was submitted by the contractor without proper proofs and justifications, for an improper purpose, or in order to harass the City or delay a city project. Nothing in this paragraph may be construed to prohibit a contractor from submitting a claim in good faith and with accurate, detailed, and complete proof, justifications, and supporting data.

(3) Serious or repetitive safety issues, which may be evidenced by violations of the Occupational Safety and Health Act (OSHA) and Standards, worker's compensation claims, personal injury lawsuits, or the safety record of any entity;

(4) Indebtedness to the City.

(5) Placement on a state or federal debarment list or other similar list or undergoing a process of review that had the effect of excluding the contractor from contracting with the governmental entity for any length of time, provided the procedures for placement on the debarment list or exclusion process afforded the contractor any form of due process.

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

Sec. 41–107. Procedures.

(a) *Investigation and referral.* The Department will establish procedures for the prompt reporting, investigation and referral for debarment of matters appropriate for consideration of debarment.

(b) *Decision-making process.*

(1) The Department may establish procedures governing the debarment decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness.

(2) Procedures will afford the contractor (and any specifically named affiliates) an opportunity to submit, in writing, information and argument in opposition to the proposed debarment, to include submittal of any documentary evidence.

(3) In actions not based upon a conviction or civil judgment, if the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, the City may request additional information of the contractor and will also afford the contractor an opportunity to meet with the City, with or without counsel, argue the merits of their case, present any witnesses, and question any witnesses the City presents.

(c) *Notice of proposal to debar.* A notice of proposed debarment will be issued advising the contractor and any specifically named affiliates that debarment is being considered, the reasons or causes, stated in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based; and that, within 20 days after receipt of the notice, the

contractor may submit, in writing, in person or through a representative, information and argument in opposition to the proposed debarment, including any specific information that raises a genuine dispute over the material facts.

(d) *Independent review.* Unless based upon a conviction or civil judgment, the Director will refer matters involving disputed material facts to an independent third party or consultant for findings of fact. The Director may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(e) *Standard of proof.* Unless based upon a conviction or civil judgment, the cause for debarment will be established by a preponderance of the evidence.

(f) *Notice of debarment decision.* If the decision is to impose debarment, the contractor and any affiliates involved will be given prompt notice.

Sec. 41–108. Period of debarment.

Debarment will be for a period commensurate with the seriousness of the reason(s) or cause(s) for debarment not to exceed 5 years. The Director may reduce the period or extent of debarment, upon the contractor's written request, supported by documentation, for reasons such as:

- (1) newly discovered material evidence;
- (2) reversal of the conviction or civil judgment upon which the debarment was based;
- (3) bona fide change in ownership or management;
- (4) elimination of other causes for which the debarment was imposed; or
- (5) other reasons the Director deems appropriate.

Sec. 41–109. Scope of debarment.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual 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 will 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 or on behalf of the joint venture or similar arrangement, or with the

knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval, or acquiescence.

Sec. 41–110. Effect of determination of debarment.

- (a) A determination that a contractor is debarred in accordance with this article constitutes a determination under Section 252.043 of the Texas Local Government Code that the contractor is not responsible and operates as the City's rejection of any bid submitted by the contractor during the debarment period.

- (b) Debarred contractors are excluded from
 - a. receiving city contracts;
 - b. conducting business with the City as agents or representatives of other contractors;
 - c. acting as individual sureties;
 - d. acting as subcontractors or suppliers;
 - e. the City's consent to any activity in connection with any city contract or project including
 - i. the performing of services or furnishing of materials for any contractor;
 - ii. the participating in any bid as a subcontractor, supplier, or service provider; or
 - iii. the providing of any bids, offers, quotations, or proposals to be included as part of any offer, quotation, proposal or bid.

Sec. 41–111. Excluded Parties List.

- (a) The Department will operate an Excluded Parties List (EPL).

- (b) The EPL will include the:
 - (1) names and addresses of all contractors debarred; and
 - (2) termination date for each listing.

- (c) The City will not solicit offers from, award contracts to or consent to subcontracts with parties named on the list.

Sec. 41–112. Continuation of current contracts.

Notwithstanding the debarment, the City may continue contracts or subcontracts in existence at the time the contractor was debarred if the contractor is not in default of such contract; however, the City may not (1) issue delivery or task orders exceeding the guaranteed minimum, if any, under any indefinite quantity (IQ) contract, which includes any indefinite delivery/indefinite quantity (IDIQ) contract and any job order contract (JOC); or (2) add new work, exercise options, or otherwise extend the duration of current contracts or task or delivery orders.

Sec. 41–113. Bids proposing subcontract with debarred contractors.

The City debars contractors to protect the City’s interests. The City will not consent to the use of any subcontractor or a bid that proposes or anticipates a subcontract with any contractor that is debarred.

Sec. 41–114. Reserved.

Sec. 41–115. Appeal.

Provided a contractor has exhausted all processes and procedures in this article, a contractor may appeal the decision of the Director to the Executive Director of Public Works, then to the City Manager or designee. Any decision to debar a contractor that is upheld by both the Executive Director of Public Works and the City Manager or designee may be subject to review by the City Council at the request of either the City Manager or City Council.

Sec. 41–116. Remedies cumulative.

The provisions of this article are cumulative of any other rights or remedies available to the City in connection with the award of any public works contracts to bypass bidders who are not responsible, regardless of whether they have been so declared hereunder. This right extends, but is not limited to, declining to award public works contracts to bidders that are affiliates of or have the same or substantially the same officers, owners, or managers, as debarred contractors.

Secs. 41–117—41–130. Reserved.

Article V. Reserved.”

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SECTION 2. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

SECTION 3. This ordinance takes effect immediately upon passage.

That the foregoing ordinance was read for the first time and passed to its second reading on this the ____ day of _____, 2015, by the following vote:

Nelda Martinez	_____	Brian Rosas	_____
Rudy Garza	_____	Lucy Rubio	_____
Chad Magill	_____	Mark Scott	_____
Colleen McIntyre	_____	Carolyn Vaughn	_____
Lillian Riojas	_____		

That the foregoing ordinance was read for the second time and passed finally on this the ____ day of _____, 2015, by the following vote:

Nelda Martinez	_____	Brian Rosas	_____
Rudy Garza	_____	Lucy Rubio	_____
Chad Magill	_____	Mark Scott	_____
Colleen McIntyre	_____	Carolyn Vaughn	_____
Lillian Riojas	_____		

PASSED AND APPROVED this the ____ day of _____, 2015.

ATTEST:

CITY OF CORPUS CHRISTI

Rebecca Huerta
City Secretary

Nelda Martinez
Mayor