Ordinance No. 121723

Council Bill No. 115156

AN ORDINANCE relating to City contracting; establishing procedures for debarment of contractors, and adding a new Chapter to Title 20 of the Seattle Municipal Code in connection therewith.

CF No. _____

Date Introduced: JAN 18 2005	
Date 1st Referred: JAN 18 2005	To: (committee) Finance & Budget
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 1-24-05	Full Council Vote: 8-0
Date Presented to Mayor: 1-24-05	Date Approved: 2-2-05
Date Returned to City Clerk: 2-2-05	Date Published: 8p T.O. ___ F.T. ✓
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: GR / McIver

Councilmember McIVER

Committee Action:

1/19/05 pass RM; RC, NL

1-24-05 Passed 8-0 (Excused: Conlin)

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

LAW DEPARTMENT

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed

Brenda Bauer/sg/aw
New Contractor Debarment Ordinance
January 12, 2005
version #1

ORDINANCE 121723

AN ORDINANCE relating to City contracting; establishing procedures for debarment of contractors, and adding a new Chapter to Title 20 of the Seattle Municipal Code in connection therewith.

WHEREAS, responsibility for evaluation of contractors on public works contracts originally resided with the Board of Public Works (BPW) and the City Charter was eventually amended by Seattle voters to eliminate the BPW; and

WHEREAS, the authority of the BPW to debar contractors and subcontractors for poor performance was not legislatively transferred to another agency; and

WHEREAS, debarment provides a necessary tool for the City to manage contractor performance; and

WHEREAS, the City desires to do business only with contractors who are responsible and fulfill their contractual commitments; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Title 20 of the Seattle Municipal Code is amended by adding a new Chapter as follows:

CHAPTER 20.70 DEBARMENT

20.70.010 Purpose

The Director of the Department of Executive Administration has the authority to debar contractors to prevent them from entering into certain contracts with the City of Seattle as described in this Chapter.

20.70.020 Definitions

Terms used in this Chapter shall have the following definitions unless otherwise defined, or unless the context in which the term is used clearly indicates to the contrary.

A. "Contracting Authority" means the Department of Executive Administration or any City Agency to which the City Council or the Department of Executive Administration has delegated the authority to enter into contracts.

B. "Contract" means a contract for public work as that term is defined in RCW 39.040.010, a purchasing contract as provide for in SMC 3.04.100 *et seq.*, or a consultant contract as provided for in SMC Ch. 3.114.

C. "Contractor" means a person, association, partnership, corporation or other legal entity that has performed services for the City under a Contract.

D. "Date of Service" means the day a Contractor receives actual service, or if served by certified mail, the date noted as the date of receipt by the U.S. Postal service.

E. "Debarment Authority" means a person to whom the Director of Executive Administration has delegated the authority to perform any of the duties set forth in this Chapter.

F. "Debar," "Debarred," or "Debarment" means to forbid a Contractor from entering into any Contract with the City or to act as a subcontractor on a Contract with the City.

G. "Director" means the Director of the Department of Executive Administration.

H. "Notice Protest" means a written response to or contest of the Notice of Debarment.

I. "Notice of Debarment" means the document reflecting the preliminary determination by the Director that a Contractor should be Debarred.

J. "Notice of Investigation" means a document reflecting the initiation of a Debarment investigation.

K. "Order of Debarment" means the document reflecting the decision by the Director to Debar a Contractor.

L. "Performance Evaluation" means an evaluation conducted by the City of performance under a Contract or as part of any City Contractor performance evaluation program for Contracts.

M. "Respondent" means a Contractor against which the City has initiated Debarment proceedings.

20.70.030 Authority to order Debarment and to Grant Exceptions.

A. If the Director determines that sufficient grounds exist as set forth in Section 20.70.040, the Director may issue an Order of Debarment that prevents a Contractor from submitting a contract bid or proposal to the City, or from acting as a subcontractor on any Contract with the City, for a period not to exceed five years from the date of the Order of Debarment or from the date all appeals of that Order of Debarment are exhausted, whichever date is later. Without the prior approval of the Director, a Contracting Authority shall not accept a contract bid or proposal from a Contractor that has been Debarred, and shall not consent to a subcontract between a Contractor and a subcontractor that has been Debarred.

B. The Director may, but is not required to, enter into a voluntary agreement with a Contractor providing that the Contractor will not submit a bid or proposal for any Contract, and will not act as a subcontractor on any Contract, for a period not to exceed five years.

20.70.040 Grounds for Debarment.

Pursuant to Section 20.70.030, the Director may issue an Order of Debarment that prevents a Contractor from entering into any Contract with the City or from acting as a subcontractor on any Contract with the City after determining that any of the following reasons exist:

A. The Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.

B. The Contractor has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.

C. The Contractor has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.

D. The Contractor has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.

E. The Contractor has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

F. The Contractor has colluded with another contractor to restrain competition.

G. The Contractor has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.

H. The Contractor has failed to cooperate in a City debarment investigation.

I. The Contractor has failed to comply with SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, state or federal non-discrimination laws.

20.70.050 Procedures

A. Notice of Investigation.

The Director or any Contracting Authority may initiate an investigation of a Contractor. The Director or Contracting Authority shall notify the Contractor in writing that an investigation has been initiated and the allegations that form the basis for the investigation. The Notice of Investigation shall be either personally served or sent by certified mail. The Contractor shall have 21 days from the Date of

Service of the notice of investigation and allegations on the Contractor to file an answer to the allegations.

B. Investigation Results.

The results of the investigation shall be in writing and shall state, at a minimum, the allegation(s), the conclusion(s) reached regarding the allegation(s), the facts upon which the conclusion(s) are based, and the investigator's recommendation, including a recommended length of Debarment, if any. If the investigator is a Contracting Authority, it shall forward the results of the investigation to the Director. The Director shall personally serve or send by certified mail, the results of the investigation to the Contractor.

C. Findings and Notice of Debarment.

The Director shall consider both the results of the investigation and the Contractor's answer, if any, to the allegation(s). The Director shall make a preliminary determination on whether the Contractor should be Debarred within six (6) months of the Date of Service of the Notice of Investigation and provide the Contractor with findings, or the matter will be dismissed, unless the Director provides notice to the Contractor that there is good cause to extend the period of investigation for an additional specific period of time. If, after reviewing the results of the investigation and the Contractor's answer to the allegations, the Director determines that a Contractor should be Debarred, the Director shall notify the Respondent of the City's intent to issue an Order of Debarment. The Notice of Debarment shall be in writing, and shall be either personally served or sent by certified mail. The Notice of Debarment shall include:

1. A statement that the City intends to issue an Order of Debarment prohibiting the Respondent from submitting a bid or proposal on a Contract with the City and from acting as a Contractor or subcontractor on a Contract with the City;

2. A statement of the reasons for Debarment, including the allegation(s), the conclusion(s) reached regarding the allegation(s), and the facts upon which the conclusion(s) are based;

3. The proposed length of Debarment; and

4. Information on how the Respondent can contest the Notice.

If the Director determines that the Contractor should not be debarred, the Director shall issue a written determination to that effect.

D. Notice Protest

1. A Respondent may contest the Notice of Debarment by filing a written Notice Protest with the Director no later than 14 calendar days after the Date of Service of the Notice of Debarment. Unless waived by the Director, filing a Notice Protest is an administrative remedy that the Respondent must exhaust before seeking judicial review.

2. If the Respondent does not timely contest the Notice of Debarment, the Director shall issue an Order of Debarment, which shall set forth:

a. The contracting activities from which the Respondent is barred from participating;

b. The length of the Debarment;

c. A brief statement of the facts upon which the Debarment is based; and,

d. A response to any written comments submitted by the Respondent.

3. The Notice Protest must state the reasons why the Respondent alleges the Notice of Debarment is erroneous, provide copies of any documents that support the Respondent's

arguments, provide the names and/or sworn written statements of all witnesses that have knowledge of relevant information related to the proposed Debarment, identify any other specific information that supports the Respondent's arguments, and specify a desired remedy.

4. The Contractor may request a hearing to discuss the Notice Protest and, if such request is granted, may discuss only those issues raised in the Notice Protest unless the Director allows otherwise. If a hearing is held, the Department of Executive Administration shall have the burden of establishing by a preponderance of the evidence that the grounds exist for an Order of Debarment.

5. The Director shall consider the Notice of Debarment, the Respondent's Notice Protest, and, if a hearing is held, the evidence presented at the hearing. The Director shall issue a final written decision and Order regarding whether the Contractor should be Debarred. If the Director issues an Order of Debarment, that Order shall state:

a. The contracting activities from which the Respondent is barred from participating;

b. The length of the Debarment; and

c. Findings and conclusions upon which the Debarment is based.

The Director's decision shall be the final administrative decision of the City.

20.70.060 Delegation of authority to the Debarment Authority

The Director shall have the authority to delegate any or all of his/her duties and/or responsibilities under this Chapter.

Section 2. The Director is authorized and directed to promulgate Rules consistent with this Ordinance for the purpose of carrying out the provisions of Chapter 20.70.

Section 3. The Code Reviser is authorized and directed to make any ministerial changes to Title 20 of the Seattle Municipal Code, consistent with direction from the Department of Executive Administration, to implement codification of this ordinance.

Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 24th day of January, 2005, and signed by me in open session in authentication of its passage this 24th day of January, 2005.

President _____ of the City Council

Approved by me this 2nd day of February, 2005.

Gregory J. Nickels, Mayor

Filed by me this 2nd day of February, 2005.

City Clerk

(Seal)

Brenda Bauer/sg/aw
New Contractor Debarment Ordinance
January 12, 2005
version #1

Form revised March 16, 2004

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Executive Administration	Gregg Johanson/3-9833	Tyler Running Deer/4-8075

Legislation Title:
AN ORDINANCE relating to City contracting; establishing procedures for debarment of contractors, and adding a new Chapter to Title 20 of the Seattle Municipal Code in connection therewith.

- **Summary of the Legislation:**
  The attached proposed Council Bill would provide authority and procedures for the City to debar contractors that fail to meet their contractual obligations. The bill provides a necessary tool for the City to manage contractor performance, and allows us to do business with only those contractors who are responsible and fulfill their contractual commitments.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*
  The responsibility for evaluation of contractors on public works contracts originally resided with the Board of Public Works (BPW), which was abolished by amendment to the City Charter in 1991. The various authorities of the BPW were transferred by ordinance to other City departments, but its authority to debar contractors and subcontractors for poor performance was not legislatively transferred. This legislation establishes authority for the City, through its Department of Executive Administration, to responsibly debar contractors when appropriate and in the public interest. The attached briefing paper provides additional background and context for this legislation.

- *Please check one of the following:*

__X__ **This legislation does not have any financial implications.**

Please list attachments to the fiscal note below:
Attachment A to Fiscal Note: Purchasing & Contracting Best Practices Initiative

Purchasing & Contracting Best Practices Initiative

Enclosed is one of six ordinances making improvements in our contracting practices that will correct code errors, simplify processes, and create better options for our customers. Because a number of the issues are minor, they have not necessarily warranted separate legislation. By compiling a number of minor and moderate improvements to our programs into one initiative, we believe the total positive effect will be very valuable. The six ordinances below are part of our "best practices" initiative.

Buy Recycled Ordinance Amendments

The City's recycled content product procurement program is detailed in SMC Ch. 3.04.200. Although the mission of the program is still very much applicable, many of the specifics of the ordinance are out of date in today's world of sustainability and environmentally responsible purchasing opportunities. The current ordinance is restrictive in its specificity of product types which reflected industry trends in 1992. Reporting requirements are frequently unattainable within the constraints of Summit and staff resources. Designated responsibilities for the DEA Director, such as development of product standards, appear better positioned in departments with the associated line of business knowledge and expertise, for example, the Office of Sustainability and Environment (OSE) and Seattle Public Utilities (SPU).

This is a rapidly changing market with new recycled content products and applications being developed and prior usage avenues disappearing. In conjunction with OSE and SPU, we have proposed amendments to this legislation which would allow increased flexibility for this program to stay abreast with new opportunities and challenges in the recycled content business arena.

Small Public Works/Ordinary Maintenance

This ordinance would allow an inflation adjustment to the dollar value of public works that the Director of Executive Administration may authorize other departments to administer in order to create consistent thresholds for delegated contracting authority. The Department currently has the authority to delegate small procurements to departments to minimize unnecessary administrative processes, and most thresholds for delegation authority are tied to inflation. Our Direct Voucher (DV) threshold for goods and services just went from $5,000 to $6,000 based on the change in the CPI. However, the Small Public Works/Ordinary Maintenance threshold remains at $5,000 since it lacks a CPI adjuster. We believe having consistent thresholds for delegation across different types of buying practices reduces misunderstanding and promotes consistent administrative processes by departments. Therefore, we would raise the SPW/OM delegated authority to $6,000 this year and tie it to the same inflator as the DV threshold.

Consultant Contracting Program Amendments

The Copernicus project recommended that the Department of Executive Administration modify or eliminate legislation that unnecessarily encumbers the City's contracting process

The proposed changes to the consultant program are compelling, in particular, because the current ordinance leaves roster thresholds unclear, and does not allow the City to take advantage of favorable terms for contracts entered into by the State or other entities, or where economies of scale would allow for more leverage in buying consultants.

Additionally, removing administrative rule provisions from the municipal code that are inconsistent with our latest technology and practices will reduce department time in complying with "process without value." This allows the department to create administrative rules and processes that are consistent with current needs and that can more easily be updated. Finally, a provision allowing for confidentiality, for matters where attorney client privilege is at risk from a public advertisement process, is an important issue for some of our customers.

Basic Consultant Contracting Program
The City's process for acquisition of consultant services is described by SMC Ch. 3.114. The provisions that are recommended for change are described below in more detail.

Attorneys: Legal advisors/attorneys are included under the definition of "consultant." Because even the nature of the advice being sought from consultant attorneys can be sensitive or privileged and confidential, we would like to eliminate the requirement that requests for consultant legal advisors be publicly and competitively advertised where such public request for proposals could compromise the City's interests or affect attorney-client privilege. For example, advertisement of the nature of the work sought might be detrimental where the City was anticipating a lawsuit and wished to receive legal advice without publicly noting the possibility of litigation. In cases, like for example "Bond Counsel," where the nature of the legal advice is not confidential, the City would continue to advertise for services.

Filing & Performance Reviews: The Seattle Municipal code requires the filing of a xeroxed copy of executed consultant contracts with DEA, and a copy of consultant performance reviews. DEA does not perform any substantive review of these copies, and receives them irregularly. Original agreement copies are filed with the City Clerk, so there is little value in having copies filed with DEA. Similarly, departments are still required to keep the consultant evaluations with the project files, and filing copies with DEA is of minimal value. Although the copy filing requirements are not terribly burdensome, the requirements are not ones that seem necessary to retain.

Cooperative Buying Agreements: Currently, our consultant contracting ordinance does not contemplate our use of other governmental rosters or cooperative buying arrangements. In 1996, we amended our purchasing ordinance to allow for cooperative buying of goods, supplies and non-consultant services. Similar arrangements are available for consulting services. The City might want to take advantage of these agreements by piggybacking onto these existing contracts. Also, some national non-profit organizations enhance state and local buying power by making joint consultant services agreements available to local entities.

For example, for more than thirty years Public Technology, Inc. (PTI) has been available as a national, non-profit organization "dedicated to bringing the benefits of technology to all cities and counties in the United States." The organization was originally sponsored by local entities, and membership gives access to "blanket" contracts for services.

Modifications, similar to those made in 1996 to our goods and services buying ordinance, would allow us to take advantage of the buying power of other entities for consultant services as appropriate.

Consultant Roster Program; Correcting a Codifying Error
An error was made in the codification process for an amendment made to the Consultant Roster program ordinance in 1999. The Consultant Roster program has a maximum dollar value for contracts issued under the program of $200,000 as adjusted by the Consumer Price Index/CPI. It also allows for amendments to individual agreements in an amount not to exceed 25% of the maximum dollar limit. However, the codifying error resulted in the law reading as though amendments can only be a maximum 25% over the original contract value, rather than the total program limit, which was not intended by the department or Council.

This unintended error would be corrected, avoiding problems departments experience in attempting to amend initially small agreements up to the maximum program value. Currently, the practical effect is that some departments are entering into second or third agreements with the same consultant about the same project, which is a significant administrative burden. It would be more sensible to simply correct the error.

Post Initiative 200 Modifications to Programs
The new "Equality in Contracting" ordinance includes much stronger and detailed minority outreach requirements for contracts, and allows the City to tailor contract language to particular opportunities on projects and to different types of activities. It requires the development of detailed outreach plans and implementation of strong affirmative efforts to assist women and minority employees and women and minority owned businesses in our contracting, and prohibits the City from doing business with contractors that discriminate.

This bill combines the critical provisions of two older ordinances, portions of which are now of questionable validity after Initiative 200. The bill will preserve and update provisions allowing the City to assist contractors and community agencies to accomplish diversity program efforts and give greater power to the Director of Executive Administration to evaluate compliance, terminate agreements for non-compliance, and to disbar offenders. The older ordinances that would be combined and updated are described below.

Chapter 20.44 City Contracts -- Prevention of Discrimination
No substantive amendments have been made to this affirmative action ordinance since 1972, except to add new protected classes. The law requires that departments insert very specific contract language into contracts.

The language is thirty years old, contains some provisions that are vague and probably unenforceable, and is a frequent point of contention in contracting. It also requires contractors to take certain actions with regard to purchasing contracts in advance of contracting, which logically and practically are difficult to accomplish.

Also, the law has not been reviewed since Initiative 200 to redact those requirements that may not be consistent with the current State law. We have judiciously used the exception within the law allowing the DEA department head to use alternative provisions. However, because of the older phrasing of the language in this ordinance, it frequently becomes a contentious issue in contract negotiations. It is legally flawed in that it requires contractors to engage in affirmative action in employment where we have not completed a disparity study required by the U.S. Supreme Court in Croson in 1989, and now is in violation of I-200. Attorneys for contractors regularly note this to us. The pre-qualification process outlined for compliance for purchasing goods and services is not practical given the volume of procurements we perform. It is more practical to evaluate only the apparent low or successful bidder's compliance, having made clear our non-discrimination and minority outreach requirements when the bid was advertised.

Our proposed ordinance re-writes this law to take into consideration our more contemporary ordinances, like the "Non-discrimination in Contracting Ordinance," to address post I-200 conflicts. More importantly, it makes a strong statement about diversity and outreach requirements without specifying particular language that must be incorporated into the contracts. This would give the City the necessary flexibility to manage contract language related to outreach and affirmative efforts in keeping with changing contracting practices and current cases and legislative decisions.

Chapter 20.46A Women's and Minority Business Enterprise Utilization
No substantive amendments have been made to this affirmative action ordinance since 1994. Also, the law has not been reviewed since Initiative 200 to redact those requirements that may not be consistent with current State law. Since the dominant portion of the law addresses specific affirmative action preference requirements that are no longer permissible, the surviving portions of the law related to outreach and affirmative efforts are scattered and not cohesive, and therefore would be difficult to enforce. We have combined the surviving provisions of this law with the prior ordinance to specifically lay out the aggressive outreach and affirmative efforts we believe the City should take in contracting.

We believe the best strategy is to combine the two "affirmative action" ordinances related to contracting into one new code section addressing these important concerns. We have reviewed the ordinance with the Mayor's committee reviewing Post-Initiative 200 options and with staff involved in the Race & Social Justice Initiative. Both groups are support of this approach and believe it is complimentary to their efforts.

Contractor Debarment Process

Over time, the Board of Public Works' (BPW) duties evolved and the agency was eventually abrogated, with the various functions distributed to different departments. The authority to debar contractors and subcontractors for poor performance did not legislatively transfer to DEA (DAS at the time), the agency charged with managing purchasing and construction contracting, and the process for consultant contracting. This ordinance would recreate the authority to debar contractors that fail to meet their City agreement obligations. The bill would provide a necessary tool for the City to manage contractor performance, and allows us to do business with only those contractors who are responsible and fulfill their contractual commitments. The debarment authority would be available for our various buying programs, including vendors, service contractors, construction, and consultant contractors.

Although the process is obviously used only rarely, it provides, a negotiating position in working with difficult contractors, and in the worst case, a way for the City to formally deny the acceptance of bids from certain contractors for a specific period of time. Contractors applying to work on public and private projects are often asked to disclose whether or not any agency has debarred them, and therefore, the threat of debarment is a serious matter.

As recently as the last couple of years, we have proposed to contractors a "voluntary agreement not to bid" in lieu of formal "debarment" to avoid working with substandard performers. To address our legal and process concerns, we would like to propose legislation that would set out a formal City debarment process. This is one piece in what we are hoping will be a more aggressive evaluation process for contract performance to avoid the "lowest & worst bid" outcome.

Hearing Examiner Protests

In 1995, the City abrogated the Contracting Appeals Board. One of its functions was to hear appeals related to bidding decisions. Instead, the Hearing Examiner was assigned to review, on appeal, bidding decisions and provide an "advisory only" ruling to the Director of DEA.

Since 1995, there have been only a handful of appeals to the Hearing Examiner. In the most recent Purchasing Services appeal, it appeared that the appealing bidder (the current contractor) had, in other states, routinely used all appeal processes in order to delay the award of any contracts to other vendors. By doing so, the contractor had added months to their existing, but terminating agreements, while appeals were exhausted and resolved. On all of the four appeals thus far, the decision of the Hearing Examiner supported the decisions of DEA.

Although managing a handful of appeals in eight years has not been on its face burdensome, our experience with departments on bidding decisions reveals an additional layer of significant concern. Particularly for construction, we are finding that departments

are unwilling, when faced with the mere possibility that a bidder might appeal, to forgo the time and resources that would be necessary to go through a formal Hearing Examiner appeals process. Instead, they end up requesting that we reject all bids and start the bidding process over. This is a layer of unnecessary administrative process which is costly and delays contracting.

Contracting staff are adept at handling bidding disputes, are the subject matter experts, and can resolve most concerns informally. For those contractors and vendors who are still dissatisfied, they can take advantage of a formal appeal to the DEA Director or they may file a complaint in Superior Court. There is also a risk of an advisory opinion by one City agency against the decision of another, and how that might affect the City's legal position in court. This is not an area of law or policy where such review is necessary or appropriate.

We met with and reviewed the practice/ordinance change with the former acting Hearing Examiner, Margaret Klockars, who has since returned to her position as the Director of the Land Use Section of the Law Department. She spoke with the prior Hearing Examiner, Meredith Getches, and both agreed with our analysis of the issue. Additionally, we met with the new permanent Hearing Examiner, Sue Tanner, and one of the Office's long term deputies, Anne Watanabe, who also agreed with our approach; that for bid decisions, the Hearing Examiner did not add value to the decision process, and possibly added legal risk to the City.

Re-codification
Title 20 of the Seattle Municipal Code was set-aside for "Public Works, Improvements and Purchasing." The purpose of publishing the Municipal Code is to allow citizens access to important laws. Over the years, various portions of the City's procurement laws have been located in places scattered throughout the code and have been difficult to locate. Both our internal city customers, as they are trying to determine the appropriate process to buy needed goods and services, and citizens, who are wanting to understand how the City procures, could better locate that information if it was consolidated in the Title reserved for buying legislation. Therefore, all of these "Best Practices" bills that contain code provisions that are not already located in Title 20 include a provision to move the provisions to this central location.

Conclusion
In summary, out of date laws and practices do not serve the City well; by condensing provisions, eliminating minutiae, and updating the code consistent with contemporary practices, the City provides departments and the citizenry with more potent and readily available tools. Attached are the bills described above. If you have any questions, please feel free to call Ken Nakatsu or Brenda Bauer.

cc: Budget & Finance Council Committee
Regina LaBelle, Mayor's Office

STATE OF WASHINGTON – KING COUNTY

--ss.

181777 No.
CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121723 ORD IN FULL

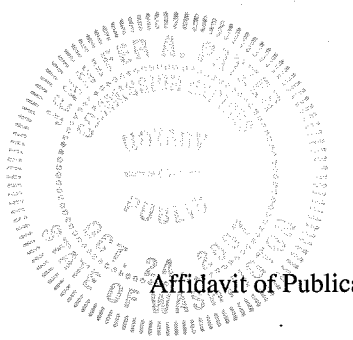
was published on

2/7/2005

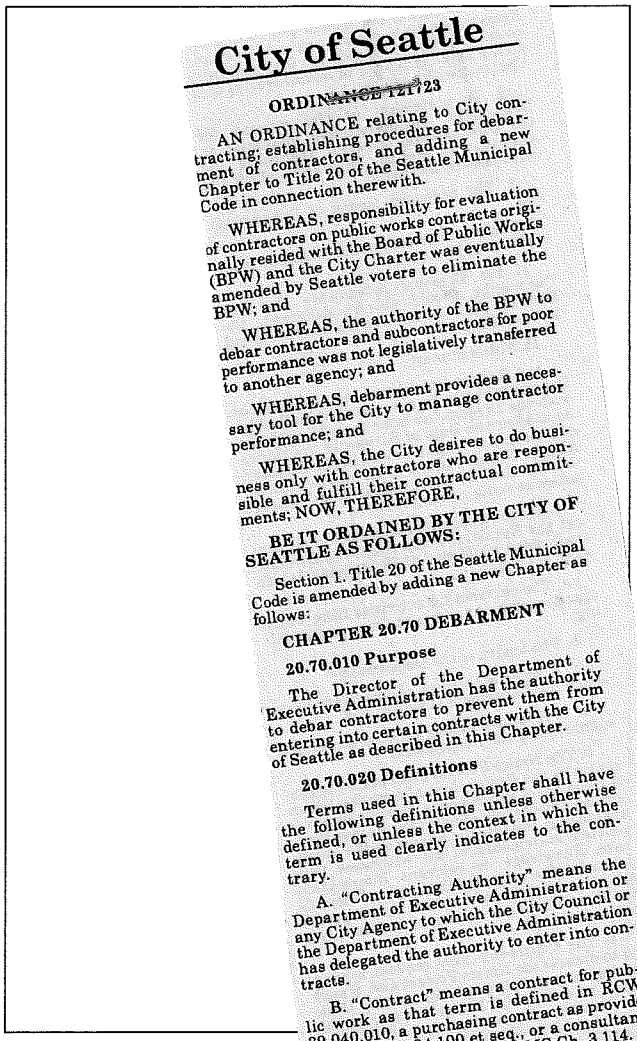
Subscribed and sworn to before me on

2/7/2005

Notary public for the State of Washington,
residing in Seattle



State of Washington, King County



City of Seattle

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J. "Notice of Investigation" means a document reflecting the initiation of a Debarment investigation.

K. "Order of Debarment" means the document reflecting the decision by the Director to Debar a Contractor.

L. "Performance Evaluation" means an evaluation conducted by the City of performance under a Contract or as part of any City Contractor performance evaluation program for Contracts.

M. "Respondent" means a Contractor against which the City has initiated Debarment proceedings.

20.70.030 Authority to order Debarment and to Grant Exceptions.

A. If the Director determines that sufficient grounds exist as set forth in Section 20.70.040, the Director may issue an Order of Debarment that prevents a Contractor from submitting a contract bid or proposal to the City, or from acting as a subcontractor on any Contract with the City, for a period not to exceed five years from the date of the Order of Debarment or from the date all appeals of that Order of Debarment are exhausted, whichever date is later. Without the prior approval of the Director, a Contracting Authority shall not accept a contract bid or proposal from a Contractor that has been Debarred, and shall not consent to a subcontract between a Contractor and a subcontractor that has been Debarred.

B. The Director may, but is not required to, enter into a voluntary agreement with a Contractor providing that the Contractor will not submit a bid or proposal for any Contract, and will not act as a subcontractor on any Contract, for a period not to exceed five years.

20.70.040 Grounds for Debarment.

Pursuant to Section 20.70.030, the Director may issue an Order of Debarment that prevents a Contractor from entering into any Contract with the City or from acting as a subcontractor on any Contract with the City after determining that any of the following reasons exist:

A. The Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.

B. The Contractor has failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.

C. The Contractor has abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.

D. The Contractor has failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.

E. The Contractor has submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.

F. The Contractor has colluded with another contractor to restrain competition.

G. The Contractor has committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.

H. The Contractor has failed to cooperate in a City debarment investigation.

I. The Contractor has failed to comply with SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, state or federal non-discrimination laws.

20.70.050 Procedures

A. Notice of Investigation.

The Director or any Contracting Authority may initiate an investigation of a Contractor. The Director or Contracting Authority shall notify the Contractor in writing that an investigation has been initiated and the allegations that form the basis for the investigation. The Notice of Investigation shall be either personally served or sent by certified mail. The Contractor shall have 21 days from the Date of Service of the notice of investigation and allegations on the Contractor to file an answer to the allegations.

B. Investigation Results.

The results of the investigation shall be in writing and shall state, at a minimum, the allegation(s), the conclusion(s) reached regarding the allegation(s), the facts upon which the conclusion(s) are based, and the investigator's recommendation, including a

The results of the investigation shall be in writing and shall state, at a minimum, the allegation(s), the conclusion(s) reached regarding the allegation(s), the facts upon which the conclusion(s) are based, and the investigator's recommendation, including a recommended length of Debarment, if any. If the investigator is a Contracting Authority, it shall forward the results of the investigation to the Director. The Director shall personally serve or send by certified mail, the results of the investigation to the Contractor.

C. Findings and Notice of Debarment.

The Director shall consider both the results of the investigation and the Contractor's answer, if any, to the allegation(s). The Director shall make a preliminary determination on whether the Contractor should be Debarred within six (6) months of the Date of Service of the Notice of Investigation and provide the Contractor with findings, or the matter will be dismissed, unless the Director provides notice to the Contractor that there is good cause to extend the period of investigation for an additional specific period of time. If, after reviewing the results of the investigation and the Contractor's answer to the allegations, the Director determines that a Contractor should be Debarred, the Director shall notify the Respondent of the City's intent to issue an Order of Debarment. The Notice of Debarment shall be in writing, and shall be either personally served or sent by certified mail. The Notice of Debarment shall include:

1. A statement that the City intends to issue an Order of Debarment prohibiting the Respondent from submitting a bid or proposal on a Contract with the City and from acting as a Contractor or subcontractor on a Contract with the City;

2. A statement of the reasons for Debarment, including the allegation(s), the conclusion(s) reached regarding the allegation(s), and the facts upon which the conclusion(s) are based;

3. The proposed length of Debarment; and

4. Information on how the Respondent can contest the Notice.

If the Director determines that the Contractor should not be debarred, the Director shall issue a written determination to that effect.

D. Notice Protest

1. A Respondent may contest the Notice of Debarment by filing a written Notice Protest with the Director no later than 14 calendar days after the Date of Service of the Notice of Debarment. Unless waived by the Director, filing a Notice Protest is an administrative remedy that the Respondent must exhaust before seeking judicial review.

2. If the Respondent does not timely contest the Notice of Debarment, the Director shall issue an Order of Debarment, which shall set forth:

a. The contracting activities from which the Respondent is barred from participating;

b. The length of the Debarment;

c. A brief statement of the facts upon which the Debarment is based; and,

d. A response to any written comments submitted by the Respondent.

3. The Notice Protest must state the reasons why the Respondent alleges the Notice of Debarment is erroneous, provide copies of any documents that support the Respondent's arguments, provide the names and/or sworn written statements of all witnesses that have knowledge of relevant information related to the proposed Debarment, identify any other specific information that supports the Respondent's arguments, and specify a desired remedy.

4. The Contractor may request a hearing to discuss the Notice Protest and, if such request is granted, may discuss only those issues raised in the Notice Protest unless the Director allows otherwise. If a hearing is held, the Department of Executive Administration shall have the burden of establishing by a preponderance of the evidence that the grounds exist for an Order of Debarment.

5. The Director shall consider the Notice of Debarment, the Respondent's Notice Protest, and, if a hearing is held, the evidence presented at the hearing. The Director shall issue a final written decision and Order regarding whether the Contractor should be Debarred. If the Director issues an Order of Debarment, that Order shall state:

a. The contracting activities from which the Respondent is barred from participating;

b. The length of the Debarment; and

c. Findings and conclusions upon which the Debarment is based.

The Director's decision shall be the final administrative decision of the City.

20.70.060 Delegation of authority to the Debarment Authority

The Director shall have the authority to

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20.70.060 Delegation of authority to the Debarment Authority

The Director shall have the authority to delegate any or all of his/her duties and/or responsibilities under this Chapter.

Section 2. The Director is authorized and directed to promulgate Rules consistent with this Ordinance for the purpose of carrying out the provisions of Chapter 20.70.

Section 3. The Code Reviser is authorized and directed to make any ministerial changes to Title 20 of the Seattle Municipal Code, consistent with direction from the Department of Executive Administration, to implement codification of this ordinance.

Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 24th day of January, 2005, and signed by me in open session in authentication of its passage this 24th day of January, 2005.

Jan Drago

President of the City Council

Approved by me this 2nd day of February, 2005.

Gregory J. Nickels, Mayor

Filed by me this 2nd day of February, 2005.

(Seal) Judith Pippin

City Clerk

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, February 7, 2005.

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