Legislation Details (With Text)

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Title:	Ordinance amending the Pittsburgh Code, Title One: Administrative, Article VII: Procedures, Chapter 161.22: Debarment from Bidding on and Participating in City Contracts in order to change the requirement of an affidavit to be a certification which will simplify the contracting process and reduce costs to our suppliers by no longer requiring the document to be notarized.		
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Date	Ver.	Action By	Action	Result
3/13/2020	1	Mayor	Signed by the Mayor	
3/10/2020	1	City Council	Passed Finally	Pass
3/4/2020	1	Standing Committees	Affirmatively Recommended	Pass
2/26/2020	1	Standing Committees	Held in Committee	Pass
2/18/2020	1	City Council	Read and referred	

Ordinance amending the Pittsburgh Code, Title One: Administrative, Article VII: Procedures, Chapter 161.22: Debarment from Bidding on and Participating in City Contracts in order to change the requirement of an affidavit to be a certification which will simplify the contracting process and reduce costs to our suppliers by no longer requiring the document to be notarized.

The Council of the City of Pittsburgh hereby enacts as follows:

Section 1.

§ 161.22 - DEBARMENT FROM BIDDING ON AND PARTICIPATING IN CITY CONTRACTS.

(a) *Definitions.* The following words and phrases when used in this section shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) *AFFILIATE.* Persons directly or indirectly, either one (1) controls or can control the other, or a third controls or can control both.

(2) *AGENT.* Any director, officer, servant, employee or other person authorized to act on behalf of the corporation or association and, in the case of an unincorporated association, a member of the association.

(3) *CONVICTION.* An entry of a plea of guilty or a plea of nolo contendere, or a verdict of guilty by a jury or a judge sitting without a jury.

(4) *ENTERPRISE.* Any individual, partnership, corporation, business, company, association or other legal entity and any union or group of individuals associated in fact although not a legal entity, engaged in commerce.

(5) *HIGH MANAGERIAL AGENT.* An officer of a corporation or an unincorporated association, company or business or, in the case of a partnership, a partner or any other agent of a corporation, company, business or association having duties or such responsibility that his or her conduct may fairly be assumed to represent the policy of the corporation or association.

(6) *PERSON.* An individual, corporation, partnership, unincorporated association, or other public or private entity.

(7) *SUBSTANTIAL STOCKHOLDER.* A stockholder who, in the aggregate, directly or indirectly, owns or controls five (5) percent of the outstanding securities of any one (1) class of stock.

(8) *WAGE THEFT VIOLATION.* A person or enterprise having been found guilty, liable, or responsible in any judicial or administrative proceeding for unpaid wages in violation of Pennsylvania Minimum Wage Act, Pennsylvania Wage Payment and Collection Law, Fair Labor Standards Act, or any other federal, state, or municipal law related to the payment of wages or the collection of debt owed due to unpaid wages.

(b) *Certain persons and enterprises prohibited from bidding on and participating in City contracts.* Any person or enterprise who has been convicted of, or been judged civilly to have committed, any offense indicating a lack of business integrity or honesty, shall be debarred from bidding on any contract which requires bidding and from participating in any City contract. The offense shall include, but not be limited to, any of the following:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public or private contract or agreement or subcontract, or in the performance of the contract or subcontracts;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, racketeering, mail fraud, receiving stolen property, obstruction of justice, theft, breach of duty to act disinterestedly, or another offense indicating a lack of business integrity or honesty;

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging or any other violation of federal or state antitrust laws;

(4) Violations of a governing hour of labor, minimum wage standards or prevailing wage standards, discrimination in wages or child labor violations;

(5) Violation of any section of the Civil Rights Act of 1968, the Pennsylvania Human Relations Act, the City of Pittsburgh's Human Relations Ordinance, any affirmative action, civil rights or nondiscrimination law, executive order, rule, plan or regulation, or violation of any affirmative action or nondiscrimination provisions included in any agreement or contract;

(6) Violation of any law, regulation or agreement relating to conflict of interest;

(7) Loss or denial of the right to do business or practice a profession under a circumstance indicating a lack of business integrity or honesty;

(8) Failure to pay a debt, including any taxes, owed to the City, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(9) Subcontracting or otherwise doing business with a debarred person or enterprise, in connection with a contract with the City, where it is known or where it reasonably should have been known, that the person or enterprise is debarred;

(10) Willful or material failure to perform the terms of a contract or agreement in accordance with specifications or within contractual time limits;

(11) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts, provided that the failure or unsatisfactory performance was within a reasonable period of time preceding the determination to debar and was caused by acts within the control of the person or enterprise debarred;

(12) Violation of election laws;

(13) Providing false or misleading information as part of a prequalification statement, including but not limited to financial statements, equal opportunity employment forms, affidavits of compliance with prevailing wage statutes and product descriptive literature;

(14) Debarment or equivalent exclusionary action by any public agency, government or government instrumentality;

(15) Decertification as a minority or women enterprise;

(16) Illegal littering or dumping as defined by Title Six, Conduct, Article I, Regulated Rights and Actions, § 601.11;

(17) Wage theft violation as defined in Section 161.22(a) herein.

(18) Other cause affecting responsibility as a City contractor or vendor as may be determined by the City.

(c) *Responsible bidders.* No person or enterprise which falls within the provisions of subsection (b) hereof shall be considered a responsible bidder on any City contract.

(d) *Debarment.*

(1) *Evidence.* The existence of a cause for debarment under this section will be established by conviction or a judgment obtained in a court of competent jurisdiction or by determination by the appropriate body.

(2) *Conditions.* The existence of any of the causes set forth in § 161.22(b) (relating to cause for debarment) does not necessarily require that a person or enterprise be debarred. In each instance, the decision will be made in the discretion of the Director of the **[~~Department of General Services~~]** **Office of Management & Budget** and the Mayor, unless otherwise required by law, and will be rendered in the best interests of the City.

(3) *Term.* All debarments under this section shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the cause therefore. As a general rule, debarment will not exceed three (3) years. Debarment may be for a longer period of time where the offense is willful and egregious providing that notice thereof is furnished.

(4) *Parties affected.* Debarment may include all known affiliates provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and the circumstances. The commission of an offense listed in subsection (b) hereof by an individual, agent, officer or substantial stockholder, shall be imputed to the enterprise with which he or she or they are connected, when such impropriety involved was performed in the course of official duty, operation of an enterprise, or with the knowledge or approval of the enterprise.

(5) *Waiver.* A waiver to debarment may be granted by the City if one (1) or all of the following

circumstances determine the public interest would best be served by the waiver:

A. If debarment would be inconsistent with public interest;

B. If debarment would result in unreasonable cost to the City;

C. If the material or service is not otherwise reasonably available or of satisfactory quality.

Such waiver shall be granted by the City department director out of whose line item funds are allocated, but only with approval of the Mayor. Mitigating factors may be considered in determining whether a waiver is warranted.

(e) *Procedure.*

(1) *Notice.* The Director of the **[~~Department of Finance~~] Office of Management & Budget** shall furnish the person or enterprise and its known affiliates with written notice of debarment setting forth the specific reasons for the proposed debarment.

(2) Any person or enterprise receiving a letter of debarment from the Director of the **[~~Department of Finance~~] Office of Management & Budget** may request a hearing within ten (10) days of the date of mailing of the notice. The appeal shall set out reasons why the person or enterprise should not be debarred.

(3) The appeal shall be filed with the Director of the Department of Finance. The Director shall notify the affected person or enterprise of the place and time of the hearing within five (5) days of the receipt of the appeal. The hearing shall be held within fifteen (15) days of the receipt of the appeal unless otherwise agreed to by the person or enterprise and the Director.

(4) The cause for debarment shall be established by a preponderance of the evidence. If the debarment is based upon a conviction, a civil judgment, a debarment by another government or public agency or a determination by an appropriate body with competent jurisdiction, the standard shall be deemed to have been met.

(f) *Bidders to file **~~[affidavit]~~ certification**.* All bidders on and parties to City contracts shall file with their bid or prior to commencing performance ***~~[an affidavit]~~ a certification*** stating that they are not prohibited from entering their bid or participating in a City, **Commonwealth or Federal** contract by reason of disqualification under subsection (b) hereof. The ***~~[affidavit]~~ certification*** shall be signed **[~~under penalty of perjury~~] by the company's owner, president or other authorized signing agent**.

(g) *Certain contracts terminated.* In the event a contract is entered into in violation of subsection (b) hereof, the contract shall be terminated, if practicable, and no action in quantum merit shall be permitted for recovery against the City.

(h) *Regulations.* The City may promulgate regulations necessary to implement this section.

(i) *Interpretation.* This section shall be liberally construed and strictly enforced.

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