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*Where Values Make The Difference*

**MEMORANDUM**

**Management Services Memo No. 13-023**

**DATE:** DECEMBER 13, 2012

**TO:** MAYOR AND COUNCIL

**THRU:** RICH DLUGAS, CITY MANAGER *RD*

**FROM:** DAWN LANG, MANAGEMENT SERVICES DIRECTOR *DL*

**SUBJECT:** INTRODUCTION OF ORDINANCE NO. 4416 AMENDING CHAPTER 3 OF THE CODE OF THE CITY OF CHANDLER ADDING A NEW SECTION 3-17 RELATING TO DEBARMENT AND SUSPENSION OF CITY CONTRACTS

**RECOMMENDATION:** Staff recommends introduction of Ordinance No. 4416 amending Chapter 3 of the Code of the City of Chandler adding a new section 3-17 relating to debarment and suspension of City contracts.

**BACKGROUND/DISCUSSION:** Staff is recommending new City Code provisions to provide for rules and procedures that allow the City Manager or designee to debar or suspend any person from contracting with the City. In past experience, City staff have discovered information about contractors or had experience with contractors which call into question a contractor's fitness to be awarded contracts with the City. City staff have sometimes found difficulty in dealing with these situations because there is currently no formal mechanism for addressing misconduct by contractors or potential contractors with the City. The addition of debarment and suspension rules and procedures will guide the City in responding to misconduct by contractors.

For this guidance, the proposed additions identify what the causes for debarment or suspension may include (i.e. serious violations of contract provisions including knowingly failing without good cause to perform), who would be impacted, length of time, specific effects debarment of suspension impact, and the notification, appeal, and reinstatement process. The proposed additions also provide contractors and potential contractors with notice that the City is prepared to respond to misconduct and thus promote integrity and fairness in both the procurement and contract management functions of the City.

**FINANCIAL IMPLICATIONS:** No immediate financial implications identified. Staff hope that the adoption of the ordinance will have a positive financial impact through promotion of integrity and fairness in the procurement and contracting process.

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PROPOSED MOTION: Move to introduce Ordinance No. 4416 amending Chapter 3 of the Code of the City of Chandler adding a new section 3-17 relating to debarment and suspension of City contracts.

cc: Pat McDermott, Assistant City Manager  
Sandra McGee, Assistant City Attorney  
Eric Anderson, Assistant City Attorney  
RJ Zeder, Transportation and Development Director  
Margaret Coulter, Regulatory Affairs Manager  
Mike Mandt, Acting Purchasing Supervisor

Attachment: Ordinance No. 4416

ORDINANCE NO. 4416

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING CHAPTER 3 OF THE CODE OF THE CITY OF CHANDLER ADDING A NEW SECTION 3-17 RELATING TO DEBARMENT AND SUSPENSION OF CITY CONTRACTS

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona that the Code of the City of Chandler, Arizona be amended as follows:

Section 1. Chapter 3 of the Chandler City Code is amended to add a new Section 3-17 relating to suspension and debarment as set forth below:

Sec. 3-17. Suspension; debarment related to award of City Contracts

- A. The City Manager or designee may debar or suspend any Person from Contracting with the City.
- B. The City Manager may establish rules and procedures to carry out the purposes of this Section. Suspension of any person shall not exceed one (1) year. A debarment shall not exceed three (3) years.
- C. The causes for debarment or suspension may include, but are not limited to, the following:
  - (1) Conviction of any person or any subsidiary or affiliate of any person 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) Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state 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 other offense indicating a lack of business integrity or business honesty which affects responsibility as a city contractor.
  - (3) Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
  - (4) Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:
    - a. Knowingly failing without good cause to perform in accordance with the specifications or within the time limit provided in the contract.
    - b. Failure to perform or unsatisfactory performance in accordance with the terms of a contract, except that failure to perform or unsatisfactory performance caused by acts

beyond the control of the contractor shall not be considered to be a basis for debarment.

- c. Submitting any bid, response or other document to the City which is deceptive, misleading, or otherwise intended to gain an unfair advantage in City contracting.
  - d. Any other cause deemed to affect responsibility as a city contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in the established rules.
- D. Before imposing a suspension or debarment, the City Manager shall give the person or entity written notice of the intention to suspend or debar along with the grounds for suspension or debarment by certified mail. If the person or entity intends to contest the suspension or debarment, they must file with the City Manager within ten (10) business days' of the notice, a written request for an appeal of the City's action and provide such information or documentation as may be necessary to support the appeal. For purposes of this Section, "business day" means a day in which the City Clerk of the City of Chandler is open for business. This notice of appeal may also request an Administrative Hearing to present their arguments.
- E. If requested, an Administrative Hearing shall be scheduled by the City Manager or designee. This shall be a public hearing, and the person or entity shall be afforded, an opportunity to be heard and present evidence. Within ten (10) days after the conclusion of such hearing, the City Manager shall issue a determination to uphold or revoke the suspension or debarment. The decision of the City Manager shall become final.
- F. Suspension or debarment of a person may include any subsidiary or affiliate of such person or entity. The suspension or debarment of affiliates is based on whether or not the affiliate had control over or acted in concert with the unit of business being debarred.
- G. The City Manager may at any time after a final decision on a suspension or debarment rescind the suspension or debarment upon a determination that the cause upon the suspension or debarment is based no longer exists.
- H. The specific effects of being suspended or debarred are as follows:
- 1) Existing contracts with Persons subject to a suspension or debarment are subject to review and may be terminated.
  - 2) No new contracts, orders, option exercises, or contract extensions shall be authorized with the debarred or suspended Person.
  - 3) City officials and staff shall not solicit offers from, award contracts to, or consent to subcontracts with debarred or suspended Persons.
  - 4) City officials and staff shall not have discussions with or place debarred or suspended Persons regarding any solicitation or contract with the City of Chandler even if the solicitation or contract will be effective after debarment is completed. Discussions and other contact may only resume after debarment is complete.

- 5) Persons subject to debarment or suspension shall not act as agent for, representative of, or surety on any City of Chandler contract.
- 6) Person(s) subject to debarment shall not act as Principal under any transaction with the City of Chandler. For purposes of this Section Principal is defined as: officer, director, owner, partner, principal investigator or other person with management or supervisory responsibility, or a consultant or other person, whether or not employed by the entity which is in a position to handle funds of the City of Chandler, or occupies a technical or professional position capable of substantially influencing the development or outcome of performance status.
  - I. Reinstatement. Persons who are only suspended from City Contracting shall be automatically reinstated at the conclusion of the suspension period. Persons who have been debarred from City Contracting must apply to the City Manager for reinstatement for the opportunity to engage in City Contracting following the conclusion of the debarment period. The application for reinstatement must demonstrate to the satisfaction of the City Manager that the Contractor is rehabilitated and has implemented a plan of corrective action which will remove the conditions or behaviors which led to debarment of the Contractor. The City Manager shall act upon an application for reinstatement within sixty (60) days.
  - J. The City Manager may allow a debarred Person to participate in City contracts on a limited basis if determined that participation is in the best interests of the City.

Section 2. The provisions of this Ordinance are retroactive: the provisions apply to all contracts in existence at the time of final adoption of this Ordinance.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSES AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. \_\_\_\_ was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2012, and that a quorum was present thereat.

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY



Published: