



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: October 13, 2009

TO: Mayor and Councilmembers

FROM: General Services Division, Finance Department

SUBJECT: Establishment Of Purchasing Debarment Procedures

RECOMMENDATION:

That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Establishing the Grounds and Procedures for the Debarment of Nonresponsible Contractors Who Seek Contracts with the City.

DISCUSSION:

At the May 19, 2009, Ordinance Committee meeting, staff presented a new process for debarring contractors and suppliers from bidding on City purchases and contracts. Debarment is a process where the City declares a contractor or supplier ("contractor") to be nonresponsible and prohibits the contractor or supplier from doing business with the City for a period of time, either temporarily or permanently depending on the circumstances involved. A nonresponsible contractor is a contractor whose past acts of malfeasance or nonfeasance call into question the contractor's ability to timely or correctly perform under a contract. By debarring nonresponsible contractors, the City can avoid complications in the bidding process for prospective City contracts. Since the ability to bid on government contracts can be viewed as a business right of the contractor, the City must afford a contractor procedural due process before declaring the contractor nonresponsible and prohibiting the contractor from bidding on City contracts.

The Ordinance Committee unanimously moved to forward the resolution to Council for adoption after clarifying the process for terminating existing contracts or agreements. At the June 30, 2009, Council meeting, a section was added to the Municipal Code chapter 4.52 directing the City Administrator to develop a debarment procedure for approval by Council.

The following is an overview of the debarment process and highlights of the key elements.

- The debarment process can be initiated by any City division by requesting that a vendor or contractor to be debarred. When a request is made, the City Administrator will appoint a fair and impartial Debarment Hearing Officer (DHO) to conduct a hearing. The hearing will be informal and the common law and statutory rules of evidence and procedures do not apply.
- The DHO will schedule a hearing where the division requesting debarment and the Contractor or the Contractor's representative will be given opportunities to present their evidence. The decision will be based on the preponderance of evidence presented. The DHO may make inquiries during the hearing to make a factual determination. The debarment can be for a period of time such as three years to permanent debarment depending on the contractor's history, nature, and severity of the contractor's actions.
- The contractor will be notified in writing of the DHO's decision. Contractors that have performed or have been awarded contracts of an aggregate value of at least \$500,000 in the five years prior to the debarment proceedings may appeal the decision of the DHO to the City Council. Otherwise, the decision of the DHO is final. The City General Services Manager will create and maintain a list of all debarred contractors. A debarred contractor will be prohibited from bidding on City contracts and excluded from doing business with the City either as a prime contractor or as a subcontractor for the debarment period.

If adopted, the procedure cannot be applied to previous contracts or performance with the City. The procedures can only apply to contracts and contractors performance from the effective date of adoption.

SUBMITTED BY: Robert Samario, Interim Finance Director

APPROVED BY: City Administrator's Office