



CITY OF AURORA, COLORADO

PURCHASING PROCEDURE LETTER 4-2

Subject: Suspension and Debarment Procedures

Effective Date: February 14, 2017

Purpose: The purpose of PPL 4-2 is to establish written suspension and debarment procedures.

Preliminary matters

Section 2-667 (f) of the City Code authorizes disqualification of vendors or contractors from bidding on City Contracts. That Section reads as follows:

Disqualified vendor or contractor. Vendors or contractors who have performed unsatisfactorily or defaulted on terms of their bids/proposals may be declared excluded bidders/offerors and may be disqualified from receiving any business from the city for a specified time period. No vendor or contractor shall be declared an excluded bidder until an opinion regarding such has been obtained from the city attorney.

Aurora's Section 2-667(f) has a strong analog in Section 24-109-105 of the Colorado Revised Statutes.

In General

Any contractor, vendor or supplier of any goods, materials or services may be debarred and/or suspended from contracting with the City of Aurora if after reasonable inquiry by the Manager of Purchasing and Contracts for the City of Aurora they are found, in the sole and exclusive opinion of the Manager of Purchasing and Contracts: to have performed unsatisfactorily; or to have defaulted on essential or material terms of the contract; or they meet any of the conditions set forth in Section 24-109-105(2) of the Colorado Revised Statutes.

Notice of Pending Debarment or Suspension Determination

Prior to making a Debarment or Suspension determination the Manager of Purchasing and Contracts shall provide written notice to the contractor or vendor of the pending determination. The notice shall be sent by certified mail to the address of the contractor or vendor noted on the contract, or updated in the contract file kept by Purchasing and Contracts or by the City's Project Manager in instances where the latter provision is applicable.

Provisions of Notice

The written notice of a pending determination shall include sufficient information to identify the contract in question. At the discretion of the Manager of Purchasing and Contracts this condition may be met by including with the Notice a copy of the contract in question. The notice shall set forth succinctly the reason for considering suspension or termination referencing provisions from that portion of this procedure captioned "*In General*". Additionally the notice shall briefly cite any supporting documents or testimonial allegations supporting the allegation causing consideration of suspension or termination. The specificity of notice in the supporting documents or allegations shall be such that the contractor may reasonably respond to the allegations. In cases where there are supporting documents those documents shall be included with the notice so long as they do not contain confidential information or protected work product.

Opportunity for the Contractor to be Heard

The Contractor shall have five (5) business days in which to respond. The response shall be in writing and shall be submitted to the Manager of Purchasing and Contracts in such a manner that the response is actually received. The response must contain a comprehensive list of all contracts the Contractor currently holds with the City and must contain also a comprehensive list of any active bids currently before the City for consideration. Beyond this mandatory requirement the Contractor can include whatever material or argumentation they see fit to include. Responses not received or not received in a timely fashion shall not be considered by the Manager of Purchasing and Contracts in making a determination to suspend or debar a contractor. A contractor may ask permission to be heard by means of electronic communications or telecommunications, or may ask to be heard in person. If, in the sole and exclusive opinion of the Manager of Purchasing and Contracts there is a valid reason to hear the contractor other than in writing the Manager may do so.

Determination

The Manager of Purchasing and Contracts shall make a determination as to whether a contractor is debarred or suspended from contracting with the City of Aurora. The determination shall come only after the City Attorney has rendered a written opinion on the propriety of a suspension and or debarment. The determination of the Manager of Purchasing and Contracts shall be in writing and shall be transmitted by certified mail to the contractor in the same manner in which the original notice of the pending determination was transmitted. The determination shall take effect immediately upon posting of the same in the U.S. mail. The written determination need only cite that the Manager of Purchasing and Contracts has considered the propriety of making the determination and that they have found to at least a preponderance of the evidence that the determination is justified. There need be no additional summary of the facts or the law. The determination shall give notice that absent hearing from a Court of competent

jurisdiction within 20 days that the City shall publish the contractor's name on a suspension or debarment list which is available to the public. The determination shall clearly state the time period of the suspension or debarment.

Suspension

Suspension shall mean that the City of Aurora will make no awards on any bids or proposals submitted by the suspended contractor for a one-year period. The suspended contractor shall have no recourse against the City for being denied the opportunity to bid or propose during the period of suspension. The purchasing and contracting process will not be held up, and it will not wait for suspension periods to come to an end.

Suspension shall be used in those instances where performance has been unsatisfactory but has not risen to the level of default or breach of a material term of the contract.

Debarment

Debarment shall mean that the City has made a determination that the contractor fulfills the conditions set forth in Section 2-667 (f) of the City Code and the conditions of this Suspension and Debarment Procedure, and that there are no known pending actions likely to change that status. Debarment shall be the appropriate course only when Contractor has defaulted on, or breached a material term of the Contract. Determining materiality of a contract term shall be within the sole discretion of the Manager of Purchasing and Contracts. Debarment shall be for a stated period of time but in no instance longer than three years absent a new debarment determination. New debarment determinations may be based on the impact of the facts from the initial debarment still prevailing, there need not be new facts alleged.

Suspension and Debarment List

The lists shall set forth the name and address of the contractor debarred or suspended and the date upon which they are to come off the list. No additional information shall be on the list.

Scope of Debarment or Suspension

Contractors debarred or suspended shall not allow themselves to be subcontractors on City contracts. Failure to comply with this provision shall be sufficient cause to extend a debarment or suspension. Contractors using entities on the suspension or debarment list as subcontractors will themselves be subject to debarment or suspension.


Michelle A. Wolfe
Deputy City Manager, Administrative Services