



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2021-738, **Version:** 2

An ordinance amending Title 4 of the Metropolitan Code regarding source selection, contract formation, and the authority to debar or suspend.

WHEREAS, Section 4.12.040 of the Metropolitan Code provides that when, under regulations promulgated by the Procurement Standards Board, the Purchasing Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Metropolitan Government, a contract may be entered into by competitive sealed proposal solicited through a request for proposals (RFP); and

WHEREAS, Section 4.12.040.E provides the RFP shall state the relative importance of price and other evaluation factors; and

WHEREAS, it is in the best interest of the Metropolitan Government that the Procurement Standards Board adopt regulations to require consideration of a contractor's prior audit findings and documented failures to provide records when evaluating RFPs; and

WHEREAS, debarment and suspension are discretionary actions that, when taken in accordance with identified processes and procedures, are an appropriate means to effectuate policy; and

WHEREAS, the serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the government's protection; and

WHEREAS, it is the purchasing agent, department of law, and the procuring department head's responsibility to evaluate the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors to determine whether debarment is in the government's interest.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. Section 4.12.040 of the Metropolitan Code is hereby amended by adding the following provisions at the end of subsection E.:

"The standards board shall adopt and promulgate regulations requiring that an offeror's prior Metropolitan Government audit findings and contract noncompliance, including but not limited to a failure or inability of the offeror to furnish documentation justifying billing to the Metropolitan Government under a previously-awarded contract, be included as part of the scoring under the evaluation factors."

Section 2. Section 4.36.020 of the Metropolitan Code is hereby amended by deleting subsections A & B in its entirety and substituting with the following new subsections A & B:

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consultation with the Using Agency and the Director of Law, shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Purchasing Agent, after consultation with the Using Agency and the Director of Law, shall have authority to suspend a person from consideration for award of contracts for up to twelve months. The authority to debar or suspend shall be exercised in accordance with

regulations promulgated by the standards board.

If required by Tenn. Code Annotated, Title 50, Chapter 3, Part 1, the Purchasing Agent shall only restrict a prime contractor or remote contractor from bidding, proposing, or accepting a contract or furnishing labor or material for an improvement to real property based upon a final finding or order that the prime contractor or remote contractor committed a willful violation of federal or state law.

B. Causes for Debarment or Suspension. The causes for debarment or suspension include, but are not limited to, the following:

1. Conviction of commission of a criminal offense as incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a metropolitan government contractor;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, such as willful failure to perform in accordance with the terms of one or more contracts, a documented past history of failure to perform, unsatisfactory performance of one or more contracts, or a failure to cooperate in correcting performance issues or documenting billing during a contract;
5. Violation of the ethical standards set forth in Chapter 4.48, ethics in public contracting; or
6. Any other cause the purchasing agent, after consultation with the Using Agency and the Director of Law, determines to be so serious and compelling as to affect responsibility as a metropolitan government contractor, including but not limited to suspension or debarment by another governmental entity.

Section 3. This Ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance, as substituted, amends the Metro procurement code to require past audit findings to be included as part of the scoring for requests for proposals (RFPs), and to update the provisions pertaining to suspension and debarment. The procurement code allows for the use of RFPs instead of sealed bids (which are based solely on price) when the Purchasing Agent determines it is in Metro's best interest to do so. The code provides that each RFP is to state the specific evaluation factors, but offers no guidance as to what those factors should include.

This ordinance amends Section 4.12.020 of the Code to provide that the Procurement Standards Board is to adopt regulations to require an offeror's prior Metro audit findings and previous contract noncompliance to be included in the scoring for the RFP. This would include an offeror's failure to furnish required documentation justifying billing under a previously-awarded contract.

This ordinance, as substituted, also modifies the suspension and debarment provisions in the Procurement

Code. The Code currently grants the authority to the Purchasing Agent to suspend a contractor up to three months or debar them for a period not to exceed three years for conviction of certain criminal offenses, or for the violation of contract provisions or ethical standards. This ordinance would extend the maximum suspension period from three months to twelve months, and would add a provision stating that a “violation of contract provisions” includes a willful failure to perform in accordance with the terms of the contract, a documented past history of a failure to perform, or a failure to cooperate to correct performance issues or document billing.

The substitute ordinance also adds language addressing a recent state law (Pub. Ch. 234) preempting Metro from attempting to prevent or restrict a contractor from bidding on a project unless the contractor has been found to have committed a willful violation of federal or state law. The substitute incorporates this new state law language into the Procurement Code.