

ORDINANCE 2014-38

AN ORDINANCE AMENDING THE FRANKLIN MUNICIPAL CODE TO ADD CHAPTER 10, TO BE ENTITLED “DEBARMENT AND SUSPENSION,” TO TITLE 5, ENTITLED “MUNICIPAL FINANCE AND TAXATION”

WHEREAS, the City of Franklin often conducts a competitive process for the procurement of goods and services with an anticipated cost of \$25,000 or more; and

WHEREAS, the process of evaluating submittals in response to a solicitation for bids, a request for proposals or a request for qualifications is time consuming and not productive in the case of not currently responsible vendors and contractors; and

WHEREAS, the Board of Mayor and Aldermen wish to create and utilize a system of debarment and suspension for the City of Franklin in order to protect the public interest by conducting business only with currently responsible vendors and contractors; and

WHEREAS, the Board of Mayor and Aldermen believe it is in the best interest of the City of Franklin to amend the Franklin Municipal Code by adding a new Chapter 10 to Title 5 to implement a debarment and suspension system.

NOW THEREFORE:

SECTION I: BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that the following Chapter 10 be added to Title 5 of the Franklin Municipal Code:

**TITLE 5
CHAPTER 10
DEBARMENT AND SUSPENSION**

Sec. 5-1001 Purpose.

- (1) This chapter adopts a system to debar, suspend or exclude from consideration those vendors and contractors who have been non-responsive or in breach of an agreement with or obligation to the City. It also provides for reciprocal exclusion of persons who have been excluded under State law, federal law or the laws of other states.
- (2) The purpose of the debarment and suspension system adopted herein is to protect the public interest by conducting business only with currently and recently responsible vendors and contractors.

Sec. 5-1002 Interpretation.

These rules shall be construed to secure a just, speedy, and fair determination. Reference should be made first to the plain language of this chapter, then to State and federal rules governing debarment and suspension.

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Sec. 5-1003 Definitions.

Whenever they appear in this Chapter, the words defined below shall have the meanings set forth below, unless:

- (a) the context in which they are used clearly requires a different meaning; or
 - (b) a different definition is prescribed for a particular provision.
- (1) *Assistant City Administrator* means an assistant city administrator or successor position of the City.
 - (2) *Chief Financial Officer* means the chief financial officer or successor position of the City.
 - (3) *City* means the City of Franklin, Tennessee.
 - (4) *City Administrator* means the city administrator or successor position of the City.
 - (5) *City Attorney* means the city attorney or successor position of the City.
 - (6) *Contract* means all types of City agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.
 - (7) *Contractor* means any person having a contract with the City.
 - (8) *Debarment or Suspension Administrative Review Panel* means the City Administrator or, if in the best interest of the City, a neutral third party retained by the City.
 - (9) *Debarring or Suspending Official* means the Chief Financial Officer or, if conflicted, an Assistant City Administrator.
 - (10) *Excluded or Exclusion* means:
 - (a) That a Person is prohibited from transacting business with any United States of America federal, state, local or other governmental agency whether the Person has been debarred, suspended or Voluntarily Excluded; or
 - (b) The act of excluding a Person.
 - (11) *May* denotes the permissive.
 - (12) *Person* means any business, individual, union, committee, club, other organization, or group of individuals.
 - (13) *Procedure* means the City of Franklin Procedure Pertaining to Debarment and Suspension, adopted by resolution, as may be amended.
 - (14) *Shall* denotes the imperative.

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- (15) *State* means the State of Tennessee.
- (16) *Voluntarily Excluded* means the status of a Person who has agreed to a Voluntary Exclusion.
- (17) *Voluntarily Exclusion* means a Person's agreement to be Excluded under the terms of a settlement between the Person and one or more agencies.

Sec. 5-1004 Exclusion.

- (1) The City's formal procurement solicitations shall require each potential submitter of a bid, proposal or other competitive submittal to declare whether such potential submitter or its proposed subcontractors, or any principals of the potential submitter or its proposed subcontractors:
 - (a) Have, within the three (3) years immediately preceding the published notice pertaining to the procurement solicitation, been debarred, suspended or otherwise Excluded from transacting business with any United States of America federal, state, local, other governmental agency or publicly owned utility; or
 - (b) Have, within the three (3) years immediately preceding the published notice pertaining to the procurement solicitation, been convicted of or been found liable in a civil judgment for the commission of any of the causes of debarment identified in this Chapter.
- (2) To determine whether a Person is Excluded, the City may check its own database and/or that of any other local government including the District of Columbia and/or any publicly owned utility of the United States of America, the State and/or any other state of the United States of America, and/or the U.S. General Services Administration, any of which such databases contain the names and other information about Persons who are debarred, suspended or otherwise Excluded by the respective agency.

Sec. 5-1005 Authority to Debar or Suspend.

- (1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Debarring or Suspending Official, after consultation with the City Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years.
- (2) The Debarring or Suspending Official, after consultation with the City Attorney, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period not exceeding six (6) months.
- (3) The authority to debar or suspend shall be exercised in accordance with Procedure.

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Sec. 5-1006 Causes for Debarment or Suspension.

The causes for debarment or suspension include the following:

- (1) conviction for commission of a criminal offense as an 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 City contractor;
- (3) conviction under State or federal antitrust statutes arising out of the submission of bids or proposals,
- (4) violation of contract provisions, as set forth below, of a character which is regarded by the Debarring or Suspending Official to be so serious as to justify debarment action:
 - (a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided 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;
- (5) falsification or material representation on any solicitation documents;
- (6) any other cause the Debarring or Suspending Official determines to be so serious and compelling as either to affect responsibility as a City contractor, including debarment by another governmental entity or publicly owned utility for any cause listed in Procedure, or to threaten the public interest or the best interest of the City; and
- (7) for failure to act and conduct business with honesty and integrity, for failure to avoid even the appearance of impropriety in the conduct of business, or for violation of or engaging in activity with a City employee or other official which activity violates either Chapter 8 (Ethics) of Title 1 (General Administration) of the Franklin Municipal Code or the City's Human Resources Manual statement on business dealings with, of or by the City.

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Sec. 5-1007 Decision to Debar or Suspend.

In deciding whether to debar or suspend, the Debarring or Suspending Official shall have wide discretion to protect the public interest. The Debarring or Suspending Official is not obligated to debar a Person even if a cause for debarment or suspension exists. The Debarring or Suspending Official may consider the seriousness of the acts or omissions and any mitigating or aggravating factors. If the Debarring or Suspending Official decides to exercise authority to debar or suspend, then the Debarring or Suspending Official shall issue, in accordance with Procedure, a written decision to debar or suspend. The decision shall:

- (a) state the reasons for the action taken; and
- (b) inform the debarred or suspended person involved of its rights to administrative review.

Sec. 5-1008 Notice of Decision to Debar or Suspend.

A copy of the decision under Section 5-1007 (Decision to Debar or Suspend) of this Chapter shall be provided as soon as practicable to the debarred or suspended person and any other party intervening.

Sec. 5-1009 Finality of Decision to Debar or Suspend.

- (a) A decision under Section 5-1007 (Decision to Debar or Suspend) of this Chapter shall be final and conclusive, unless fraudulent, or the debarred or suspended person requests administrative review in accordance with Section 5-1010 (Administrative Review of Decision to Debar or Suspend) of this Chapter.
- (b) A Person may not challenge any final action taken under these rules based upon the City's failure to follow any technical requirement of these rules unless and to the extent that the City's failure amounts to a failure of fundamental fairness such that the Person is deprived of due process of law as may be required by constitutional law.

Sec. 5-1010 Administrative Review of Decision to Debar or Suspend.

- (a) A debarred or suspended person or other person aggrieved by a decision to debar or suspend may request administrative review of the debarment or suspension by means of this mandatory Procedure which must be utilized and exhausted prior to seeking judicial review or remedy.
- (b) The aggrieved person seeking administrative review of a debarment or suspension shall file a request for administrative review. The request for administrative review shall be prepared and filed in accordance with Procedure.
- (c) After notice of a request for administrative review has been filed pursuant to Subsection (b) of this Section, a contractor may not discontinue such review

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without prejudice, except as authorized by the Debarment or Suspension Administrative Review Panel.

- (d) The Debarment or Suspension Administrative Review Panel shall, in accordance with Procedure, consider and decide whether, or the extent to which, the debarment or suspension is in accordance with the Constitution, statutes, ordinances, Procedure, and the best interests of the City, and is fair. The proceeding shall be *de novo*. Any prior determinations by administrative officials shall not be final or conclusive.
- (e) A determination of an issue of fact by the Debarment or Suspension Administrative Review Panel under Subsection (d) of this Section shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous.

Sec. 5-1011 Jurisdiction and Venue.

The Courts of Williamson County, Tennessee shall have jurisdiction over an action between the City and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the Constitution, statutes, ordinances, and Procedure, provided the mandatory administrative Procedure has been utilized and exhausted in accordance with Section 5-1010 (Administrative Review of Decision to Debar or Suspend) of this Chapter. The Courts of Williamson County, Tennessee shall have such jurisdiction, whether the actions are at law or in equity, and whether the actions are for declaratory, injunctive, or other equitable relief.

Sec. 5-1012. Severability Clause.

The provisions of this chapter are hereby declared to be severable. If any of its sections, provisions, exceptions, or parts should be held unconstitutional or void, then the remainder of the chapter shall continue to be in full force and effect, it being the legislative intent now hereby declared that this chapter would have been adopted even if such unconstitutional or void matter had not been included herein.

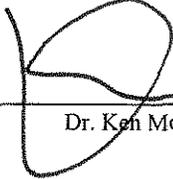
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SECTION II: BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect after second and final reading, the health, safety and welfare of the citizens of Franklin requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: 
Eric S. Stuckey, City Administrator

BY: 
Dr. Ken Moore, Mayor

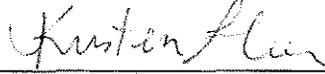
PASSED ON FIRST READING:

January 27, 2015

PASSED ON SECOND READING:

February 10, 2015

Approved as to form:

BY: 
Kristen L. Corn, Staff Attorney