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Title: AN ORDINANCE making changes to King County's procurement process; and amending Ordinance 12138, Section 18, as amended, and K.C.C. 4.16.145.

Sponsors: Bob Ferguson, Larry Gossett, Larry Phillips, Joe McDermott, Jane Hague, Julia Patterson, Kathy Lambert

Indexes:

Code sections:

Attachments: 1. Ordinance 17310.pdf, 2. Attachment 2 Amendment 1.doc, 3. Revised Staff Report 2011-0493 Wage Violation.doc, 4. Staff Report 2011-0493 Wage Violation_.doc, 5. Staff Report 2011-0493 Wage Payment Violation 3-27-12 mtg.doc, 6. Attachment 2 Striking Amendment 1 3-27-12 mtg.doc, 7. Attachment 3 Title Amendment 1 3-27-12 mtg.doc, 8. Attachment 4 Seattle Sup Bidder Respon Criteria 3-27-12 mtg.pdf, 9. Revised Staff Report #3 2011-0493 Procurement Debarment 3-27-12 mtg.doc, 10. Staff Report 4-10-12 meeting 2011-0493 Procurement Debarment.doc, 11. Attachment 1 Proposed Substitute Ordinance.doc, 12. Attachment 2 Striking Amendment 1-2.doc, 13. Attachment 3 Title Amendment 1.doc, 14. Attachment 4 Seattle Sup Bidder Respon Criteria.pdf, 15. Revised Staff Report #4 2011-0493 Procurement Debarment.doc

Date	Ver.	Action By	Action	Result
4/23/2012	3	Metropolitan King County Council	Hearing Held	
4/23/2012	3	Metropolitan King County Council	Passed	Pass
4/10/2012	2	Government Accountability, Oversight and Financial Performance Committee	Recommended Do Pass Substitute	Pass
3/27/2012	2	Government Accountability, Oversight and Financial Performance Committee	Deferred	
2/27/2012	2	Metropolitan King County Council	Re-referred	
2/14/2012	1	Government Accountability, Oversight and Financial Performance Committee	Recommended Do Pass Substitute	Pass
1/30/2012	1	Metropolitan King County Council	Reintroduced	
11/21/2011	1	Metropolitan King County Council	Introduced and Referred	

Clerk 04/16/2012

AN ORDINANCE making changes to King County's procurement process; and amending Ordinance 12138, Section 18, as amended, and K.C.C. 4.16.145.

STATEMENT OF FACTS:

1. King County's vision, as stated in the county's strategic plan, is to be "a diverse and dynamic community with a healthy economy and environment where all people and businesses have the opportunity to thrive." Among the guiding principles contained in the strategic plan are accountability, fairness and justice.

2. Employer violation of wage payment requirements runs contrary to King County's vision and guiding principles. Such violations, also known as "wage theft," can take a number of forms, including withholding an employee's last paycheck when the employee leaves a job, not paying for all hours worked, stealing tips, failing to pay overtime as required and paying less than the minimum wage.

3. Wage theft is a nationwide problem. According to a 2008 survey funded by the Ford Foundation, of the four thousand three hundred eighty-seven workers interviewed in low-wage industries in the three largest United States cities, which are Chicago, Los Angeles and New York, sixty-eight percent had experienced at least one pay-related violation of the law in the previous work week. The average worker lost fifty-one dollars out of average weekly earnings of three hundred thirty-nine dollars, for a loss of fifteen percent of earnings.

4. In Washington state, according to the Washington state Department of Labor and Industries, an average of eleven Wage Payment Act violation claims are filed each day, totaling over four thousand claims in 2010.

5. Wage theft commonly occurs in low-wage industries, but is not limited to any particular sector of the economy, and no group of workers is immune.

6. Wage theft detrimentally impacts workers and hurts businesses that follow the law. Businesses are placed at a disadvantage when competitors keep costs artificially low by unlawfully withholding payments from their employees. Taxpayers shoulder a disproportionate

share of the national tax burden when employers fail to pay payroll taxes. Unpaid workers are deprived of money to buy goods and services that benefit their families and the local economy.

7. The elimination of wage theft will foster fair business practices and promote the dignity and economic security of employees.

8. Currently, in Washington state, wage theft complaints are handled by the Washington state Department of Labor and Industries. Wage theft is punishable by civil fines and the recovery of lost wages by the employee. According to RCW 49.48.082 through 49.48.087, the Department of Labor and Industries issues a citation for a willful violation when an employer has violated a wage payment requirement and the violation was knowing and intentional and neither accidental nor the result of a bona fide dispute.

9. King County contracts with outside vendors, awarding an average of five hundred professional, construction, and goods and services contracts each year. Since 2006, the county has awarded more than three thousand contracts to over four thousand outside vendors for a combined total of over \$3.5 billion.

10. King County should not reward employers who are "willful violators" of state wage laws by awarding them a county contract, but should promote fair and ethical business practices that conform to the law and encourage a growing and diverse King County economy and vibrant, thriving and sustainable communities.

11. Wage theft and certain criminal offenses such as convictions under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records and receiving stolen property and other offenses are grounds for suspension or debarment from doing business with King County.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 12138, Section 18, and K.C.C. 4.16.145 are hereby amended to read as

follows:

The executive shall comply with the following procedures in contract debarment and suspension actions.

A. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the executive shall have authority to debar a person, firm or other legal entity for cause from consideration for award of contracts with the county. The debarment shall be for a period of not more than two years.

B. The executive shall have the authority to suspend a person, firm or other legal entity from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period of not more than six months.

C. The authority to debar or suspend shall be exercised ~~((in accordance with))~~ by procedures established by the executive in accordance with this chapter.

D. The ~~((causes for debarment or suspension include the following))~~ executive shall suspend or debar a person, firm or other legal entity for:

1. Conviction within the five years preceding commencement of the debarment or suspension 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))~~ the contract or subcontract ;

2. Conviction within the five years preceding commencement of the debarment or suspension 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))~~ that currently, seriously~~((;))~~ and directly affects responsibility as a contractor to the county;

3. Conviction within the five years preceding commencement of the debarment or suspension under state or federal antitrust statutes arising out of the submission of bids or proposals; or

4. ~~((Violation of contract provisions, such as the following, of a character which is regarded by the~~

~~executive 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. substantial failure to comply with commitments to and contractual requirements for participation by minority and women's business enterprises and equal employment opportunity, or~~
- ~~c. 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;)) Violation of state wage payment laws, including:~~

- a. willful violation of a wage payment requirement, as defined in RCW 49.48.082, where the citation and notice of assessment for the violation was issued within the five years preceding commencement of the debarment or suspension; or
- b. civil judgments entered by a court against the person, firm or other legal entity for violations of wage payment requirements under state law within the five years preceding commencement of the debarment or suspension.

E. The executive should suspend or debar a person, firm or other legal entity for:

~~((5-))~~ 1. Violation of ethical standards set forth in contracts with the county; ((~~or~~))

2. Violation of contract provisions, such as the following, of a character that is regarded by the

executive 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;
- b. substantial failure to comply with commitments to and contractual requirements for participation by minority and women's business enterprises and equal employment opportunity; or
- c. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms

of one or more contracts, though 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; or

~~((6-))~~ 3. Any other cause that the executive determines to be so serious and compelling as to affect responsibility as a contractor to the county, including debarment by another governmental entity for any cause similar to those set forth ~~((herein))~~ in this subsection E.

~~((E-))~~ F. The executive shall issue a written decision stating the reasons for the debarment or suspension. Such a decision shall be promptly mailed or otherwise furnished to the debarred or suspended person and any other party intervening.

~~((F-))~~ G. The executive's decision of debarment or suspension, unless based on fraudulent information, shall constitute the final and conclusive decision on behalf of the county. After a final decision has been made, the executive shall submit a report to the council giving the name of the person, firm or other legal entity suspended or debarred and the reason~~((s))~~ or reasons for such a suspension or debarment.

H. Notwithstanding subsection D. or E. of this section, the executive has the authority to not suspend or debar a person, firm or legal entity if the executive determines significant harm would accrue to the county by suspension or debarment of the person, firm or other legal entity or that mitigating circumstances do not warrant debarment or suspension, and notifies the council within thirty days of the executive's determination.

SECTION 2. A. The executive shall develop supplemental bidder responsibility criteria, as authorized in RCW 39.04.350, for the purposes of promoting fair competition between bidders and ensuring the award of contracts conforms to the goals of the King County Strategic Plan.

B. The executive shall submit a report on the development of supplemental bidder responsibility criteria by July 1, 2012, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers and to the committee coordinator for the

government accountability, oversight and financial performance committee or its successor.