

CITY COUNCIL REPORT

DATE: 1/12/2018  
TO: Mayor and Council members  
FROM: Rick Compau, Purchasing Director  
CC: Josh Copley, Barbara Goodrich, Shane Dille, Leadership Team  
SUBJECTS: Resolution Opposing to the Proposed Construction of the Border Wall  
Along the US/Mexico Border; Procurement/Purchasing

This CCR is in response to the proposed resolution opposing the border wall discussed at the January 2, 2018 Council meeting. The following information is, from a procurement perspective, about the enactment that specifically involves debarment and/or suspension of participants in the design, construction, or maintenance of the border wall.

**DISCUSSION**

**State and City Procurement Laws**

The Arizona Procurement Code dictates that a vendor can be debarred or suspended. R2-7-C901. The Arizona legislature has defined reasons for debarment or suspension, which generally include criminal offenses, such as embezzlement, violations of federal antitrust statutes, or a failure to perform in accordance with the terms of one or more contracts. A.R.S. § 41-2613. Generally, the City's Procurement Code Manual follows the Arizona Procurement Code.

**State Debarment or Suspension**

Under State and City procurement laws, actions, such as suspension of any vendor, not to exceed six (6) months, or a debarment, not to exceed three (3) years, are taken by a public agency against organizations or individuals who have committed fraud or a criminal offense in violation of a state or federal law. For example, convictions for crimes such as embezzlement, theft, fraud and other offenses involving moral turpitude.

Inclusion of debarment or suspension language in the resolution would be in conflict with current City procurement policy, practices, and procedures.

**Federal Financial Assistance (Grants) - Procurement Regulations**

The non-Federal entity must use its own documented procurement procedures, which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards.

### ***Federal Debarment or Suspension***

Executive Orders 12549 and 12689 - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM)

- Debarment means an action taken by excluding a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred”.
- Suspended means an action taken to disqualify a contractor temporality from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended”.
- Cause for debarment, Conviction of or civil judgement for fraud or criminal offense, violation of Federal or State antitrust, Embezzlement, theft, forgery, bribery, falsification or destruction or records, intentionally affixing a label bearing a “Made in America” inscription, any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.
- Effects of listing, Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors.

Federal contracts and grants flow to the City through numerous Federal agencies under the requirements mentioned. Some of those agencies include the Departments of Homeland Security, Department of Transportation, Army Corps of Engineers, and the Department of the Interior.

### **RECOMMENDATION / CONCLUSION**

There are no current regulations precluding debarment for participation in the construction of something. However, a debarment of this nature could stifle competition and have other ancillary and unforeseen consequences.

Procurement staff also recommend taking this amendment along with the other amendments Council will consider for the Procurement Code Manual on February 27, 2018. This will assure Council direction and the policy document that reflects that direction are aligned.