
Chap. 550

in place thereof the following paragraph:-

(k) For the purposes of this section, the terms "regional" and "regional basis" shall be deemed to include facilities servicing a county, a municipality which has a population in excess of three hundred thousand or two or more municipalities.

SECTION 2. Chapter 584 of the acts of 1987 is hereby amended by striking out section 24, as most recently amended by section 402 of chapter 177 of the acts of 1990, and inserting in place thereof the following section:-

Section 24. The department of environmental protection is hereby authorized and directed to expend a sum, not to exceed seven million dollars, for the purpose of establishing a yard, leaf or other organic composting projects and of awarding grants to municipalities for such projects as authorized by subsection (a) of section seven of chapter twenty-one H of the General Laws.

Approved January 9, 1992.

Chapter 550. AN ACT RELATIVE TO THE CONTRACT DEBARMENT PROCEDURES OF THE COMMONWEALTH.

Be it enacted, etc., as follows:

SECTION 1. Chapter 29 of the General Laws is hereby amended by inserting after section 29E the following section:-

Section 29F. (a) As used in this section the following words shall, unless the context requires otherwise, have the following meanings:-

"Affiliates", entities which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

"Commissioner", the commissioner of the division of capital planning and operations or his designee within such division.

"Contractor", any person that has furnished or seeks to furnish supplies or services under a contract with a public agency or with a person under a contract with a public agency.

"Debarment", an exclusion from public contracting or subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense.

"Public agency", a department, agency, board, commission, authority, activity or instrumentality of the commonwealth, or of any political subdivision of the commonwealth, or of two or more subdivisions thereof.

"Person", any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

"Public contract", a contract for the furnishing of supplies or services to any

public agency.

"Secretary", the head of an executive office established under chapter six A or his designee within such executive office, or the secretary of administration appointed pursuant to section four of chapter seven or his designee within the executive office.

"Suspension", the temporary disqualification of a contractor who is suspected upon adequate evidence of engaging or having engaged in conduct which constitutes grounds for debarment.

(b) The secretary of administration shall establish and maintain a consolidated list of contractors to whom public contracts shall not be awarded and from whom offers, bids, or proposals shall not be solicited.

The list shall show at a minimum the following information: (1) the names of those persons debarred or suspended in alphabetical order with appropriate cross reference where more than one name is involved in a single debarment or suspension; (2) the basis of authority for each debarment or suspension, including the secretary or other official who imposed the debarment or suspension; (3) the extent of restrictions imposed; (4) the termination date of each debarment or suspension; and (5) in the case of a suspension, the hearing date, if and when set, for debarment proceedings.

The secretary of administration shall cause the list to be kept current by the issuance of notices of additions and deletions. The list shall be published on a periodic basis, together with notices of additions and deletions therefrom, in the goods and services bulletin and the central register published by the state secretary and in such other publications as the secretary of administration shall designate. The secretary of administration shall also forward said list to the inspector general, the attorney general, and the state auditor. A secretary or the commissioner, as the case may be, upon imposing a debarment or suspension or removing a suspension shall forthwith notify the secretary of administration of all information required for inclusion on such list.

(c) Debarment may be imposed for the following causes:

(1) conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses: (i) a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; (ii) a criminal offense involving 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 seriously and directly affects the contractor's present responsibility as a public contractor; (iii) a violation of state or federal antitrust laws arising out of the submission of bids or proposals; (iv) a violation of state or federal laws regulating campaign contributions; (v) a violation of chapter two hundred and sixty-eight A; (vi) a violation of any state or federal

law regulating hours of labor, prevailing wages, minimum wages, overtime pay, equal pay, child labor, or worker's compensation; (vii) a violation of any state or federal law prohibiting discrimination in employment; or (viii) repeated or aggravated violation of any state or federal law regulating labor relations or occupational health or safety; or

(2) substantial evidence, as determined by a secretary or the commissioner, of any of the following acts: (i) willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract; (ii) willful failure to comply with record-keeping and accounting requirements prescribed by law or regulation; (iii) a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more public contracts, provided that such failure to perform or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar and provided further that such failure to perform or unsatisfactory performance was not caused by factors beyond the contractor's control; (iv) a record of health and safety violations of a sufficient frequency and severity so as to evidence a pattern of noncompliance with existing state and federal laws, or any rules and regulations applicable thereto; (v) any other cause affecting the responsibility of a contractor which the secretary or the commissioner determines to be of such serious and compelling nature as to warrant debarment. Notwithstanding any other provision of this section, any contractor debarred or suspended by any agency of the United States shall by reason of such debarment or suspension be simultaneously debarred or suspended under this section, with respect to non-federally aided contracts; the secretary or the commissioner may determine in writing that special circumstances exist which justify contracting with the affected contractor. The secretary or the commissioner shall give written notice to the secretary of administration of any such determination.

(d) No contractor may be suspended unless a secretary or the commissioner has first informed the contractor by written notice of the proposed suspension mailed by registered or certified mail to the contractor's last known address, except when the secretary or the commissioner determines that immediate suspension is necessary to prevent serious harm to the commonwealth, in which case the suspension shall take effect immediately upon signing by the secretary or the commissioner of an order of suspension, and notice shall be mailed to the contractor at the earliest opportunity. The notice shall inform the contractor of the reasons for the proposed suspension and shall state that the contractor may within fourteen days respond in writing and may in such response request a hearing. The secretary or the commissioner may extend the period for response at the request of the contractor. The secretary or the commissioner shall determine whether to impose the suspension or, in the case of an emergency suspension imposed prior to notice to the contractor, whether to continue the suspension after reviewing the

contractor's response, if any, and making such investigation as the secretary or the commissioner determines is necessary and appropriate. An indictment, or any information or other filing by a public agency charging a criminal offense, for any of the offenses listed in paragraph (1) of subsection (c) shall constitute adequate evidence to support a suspension.

If the contractor requests a hearing, and the suspension is not based on an indictment, the secretary or the commissioner shall conduct a hearing according to the rules for the conduct of adjudicatory hearings established by the secretary of administration pursuant to chapter thirty A. Such hearing shall be initiated within thirty days of the imposition of the suspension, unless the contractor requests that the hearing be delayed. Officers and employees of the office of the inspector general and records of said office shall not be subject to subpoena for such hearing, if in the opinion of the inspector general production of records or testimony would prejudice any pending investigation by said office.

A suspension shall not exceed twelve months unless a pending administrative or judicial proceeding in which the contractor is a party may result in a conviction or final adjudication of an offense listed in paragraph (1) of subsection (c).

(e) No contractor may be debarred under this section unless a secretary or the commissioner proposing the debarment has first informed the contractor by written notice of the proposed debarment mailed by registered or certified mail to the contractor's last known address. The notice shall inform the contractor of the reasons for the debarment and shall state that the contractor will be accorded an opportunity for a hearing if the contractor so requests within fourteen days of receipt of the notice. A hearing requested under this paragraph shall be conducted by the secretary or the commissioner within sixty days of receipt of the request, unless the secretary or the commissioner grants additional time therefor at the request of the contractor. The hearing shall be conducted according to the rules for the conduct of adjudicatory hearings established by the commissioner of administration pursuant to chapter thirty A. A debarment shall not be imposed until (i) fourteen days after receipt by the contractor of notice of the proposed debarment if no hearing is requested, or (ii) the issuance of a written decision by the secretary or the commissioner which makes specific findings that there is sufficient evidence to support the debarment and that debarment for the period specified in the decision is required to protect the integrity of the public contracting process. A contractor shall be notified forthwith of the decision by registered or certified mail, and of the contractor's right to judicial review in the event that the decision is adverse to the contractor. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(f) A debarment or suspension may include all known affiliates of a contractor. The decision to include a known affiliate within the scope of a debarment or suspension shall be made on a case-by-case basis, after giving due regard to all

relevant facts and circumstances. The offense or act of an individual justifying suspension, or the evidence justifying a suspension, may be imputed to the entity with which the individual is connected when such offense or act occurred in connection with the individual's performance of duties for or on behalf of the entity or with the knowledge, approval, or acquiescence of the entity or one or more of its principals. The entity's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence. The offense or act of an entity justifying debarment, or the evidence justifying a suspension, may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the entity who participated in, knew of, or had reason to know of the entity's act. An entity or individual may not be suspended or debarred except in accordance with the procedures set forth in this section, provided that a public agency may reject a bid or proposal from any contractor when the public agency reasonably determines that such contractor is not responsible or eligible.

(g) In determining whether to debar a contractor, or the period of a debarment, all mitigating facts and circumstances shall be taken into consideration. Except as precluded by statute, a debarment may be removed or the period thereof may be reduced by the secretary or the commissioner who imposed the debarment or suspension upon the submission of an application supported by documentary evidence setting forth appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a judgment or conviction, bona fide change of ownership or management, or the elimination of the cause for which the debarment was imposed.

(h) During the period for which a person has been debarred or suspended, that person shall not submit or cause to be submitted offers, bids, or proposals to any public agency, nor shall any public agency solicit or consider offers, bids, or proposals from, nor execute, renew, or extend any contract with, a debarred or suspended contractor, and a contractor shall not contract for supplies or services from a debarred or suspended subcontractor on any public contract.

(i) The secretary of administration shall by regulation drawn up in consultation with each secretary and the commissioner provide for, upon the request of any secretary or the commissioner the timely commencement by, the removal to, or consolidation at the executive office of administration and finance of debarment or suspension proceedings. Such regulations also shall provide that the contractor against whom debarment or suspension proceedings have been initiated may apply to the secretary of administration for consolidation of such proceedings at the executive office of administration. Such proceedings shall be conducted by the secretary of administration or his designee in accordance with the provision of this section.

SECTION 2. Chapter 149 of the General Laws is hereby amended by striking out section 44C, as appearing in the 1990 Official Edition, and inserting in place

thereof the following section:-

Section 44C. The commissioner may suspend or debar contractors in accordance with the provisions of section twenty-nine F of chapter twenty-three.

SECTION 3. Subsection (2) of section 44E of said chapter 149, as so appearing, is hereby amended by inserting after the word "entity.", in line 80, the following sentence:- The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

SECTION 4. Subsection (4) of said section 44F of said chapter 149, as so appearing, is hereby amended by inserting after the word "entity.", in line 153, the following sentence:- The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

SECTION 5. The provisions of this act shall apply only to contracts solicited or entered into after the effective date of this act. Any renewal, extension, modification, or exercise of any option under any contract after the effective date of this act shall be subject to the provisions of this act. Any debarment imposed prior to the effective date of this act shall continue in effect.

Approved January 9, 1992.

Chapter 551. AN ACT RELATIVE TO THE LICENSING OF CERTAIN ALCOHOLIC BEVERAGES ESTABLISHMENTS IN THE CITY OF CAMBRIDGE.

Be it enacted, etc., as follows:

The board of license commissioners of the city of Cambridge is hereby authorized to impose a condition on a license issued under the provisions of chapter one hundred and thirty-eight of the General Laws limiting the occupancy of a licensed premise to a number less than that certified by any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations if said board finds that a higher number would not serve the public need or would not protect the common good.

In making such findings the board may consider the area where said premises are located and that a higher occupancy would unreasonably increase disruption, criminal activity, noise, pedestrian traffic, vehicular traffic or parking problems in