

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. CB16-0985
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an ordinance amending Sections 20-76 and 20-77 of Chapter 20 of the Denver Revised Municipal Code regarding prevailing wage and debarment.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. That Section 20-76 of the Denver Revised Municipal Code shall be amended by deleting the language stricken and adding the language underlined as follows:

Sec. 20-76. - Payment of prevailing wages.

(a) *Required.* Every worker, mechanic or other laborer employed by any contractor or subcontractor in the work of drayage or of construction, alteration, improvement, repair, maintenance or demolition of on any public building or public work city-owned or leased building or on any city-owned land, pursuant to a contract by or in behalf of the city, or for any agency of the city, or financed in whole or in part by the city, or any agency of the city, or engaged in the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or in similar custodial or janitorial work in connection with the operation of any such ~~public~~ city-owned or leased building or the prosecution of any such public work by or in behalf of the city, or for any agency of the city, or financed in whole or in part by the city, or any agency of the city, shall be paid not less than the wages and fringe benefits prevailing for the same class and kind of work in the Denver metropolitan area as determined by the career service board under subsection (c). The Denver metropolitan area shall be determined by the career service board. This section shall not apply to any participant in a youth employment program certified by the city where the participant is employed in non-construction work, including the work of materials furnishing, servicing and maintenance of any city-owned or leased public building or on city-owned land public work and the work of landscaping that is not performed in connection with the construction or renovation of a ~~public~~ city-owned or leased building; nor shall this section apply to situations where there is no contract directly requiring or permitting the work described above, or contracts that are neither a revenue or expenditure contract contemplating such work, such as a licenses or permits to use city-owned land.

1 (b) ~~Contract specifications. The specifications for every~~ Every contract with an aggregate
2 value, including all change orders, amendments or other alterations to the value, in excess of
3 two thousand dollars (\$2,000.00) to which the city or any of its agencies is a party which
4 requires the performance of work involving drayage or involving construction, alteration,
5 improvements, repairs, maintenance or demolition of any ~~public building or public work~~ city-
6 owned or leased building or on any city-owned land, or which requires the performance of the
7 work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or similar
8 custodial or janitorial work in connection with the operation of any such public building or the
9 prosecution of any such public work, shall contain a provision stating that the minimum wages
10 to be paid for every class of laborer, mechanic and worker shall be not less than the scale of
11 wages from time to time determined to be the prevailing wages under subsection (c). Every
12 contract based upon these specifications shall indicate the actual date of bid or proposal
13 issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date
14 is applicable. Contracts shall also contain a stipulation that the contractor or subcontractor
15 shall pay mechanics, laborers and workers employed directly upon the site of the work the full
16 amounts accrued at time of payment, computed at wage rates not less than those stated or
17 referenced in the specifications, and any addenda thereto, on the actual date of bid ~~opening~~
18 issuance, ~~or in effect on the date of grant of permit for performance of such work under~~
19 ~~D.R.M.C. section 49-171 et seq.,~~ or on the date of the written encumbrance purchase order, as
20 applicable, for contracts let by informal procedure under D.R.M.C. section 20-63(b), regardless
21 of any contractual relationship which may be alleged to exist between the contractor or
22 subcontractor and such laborers, mechanics and workers. Increases in prevailing wages
23 subsequent to the date of the contract for a period not to exceed one (1) year shall not be
24 mandatory on either the contractor or subcontractors. Future ~~increases~~ changes in prevailing
25 wages on contracts whose period of performance exceeds one (1) year shall be mandatory for
26 the contractor and subcontractors only on the yearly anniversary date of the contract.
27 ~~However, as to contracts in effect as of March 1, 2011, future increases in supplemental wage~~
28 ~~rates for the heavy construction, highway construction and building construction trades~~
29 ~~approved and published by the career service board shall not become mandatory on the~~
30 ~~contractor or subcontractors until the second anniversary of the date of publication of the~~
31 ~~increased supplemental wage rates by the board.~~ Except as provided below, in no event shall
32 any increases in prevailing wages over the amounts thereof as stated in such specifications
33 result in any increased liability on the part of the city, and the possibility and risk of any such
34 increase is assumed by all contractors entering into any such contract with the city.
35 Notwithstanding the foregoing, the city may determine and may expressly provide in the

1 context of specific ~~service~~ agreements that the city will reimburse the contractor at the
2 increased prevailing wage rate(s). Decreases in prevailing wages subsequent to the date of
3 the contract for a period not to exceed one (1) year shall not be permitted. Decreases in
4 prevailing wages on contracts whose period of performance exceed one (1) year shall not be
5 effective except on the yearly anniversary date of the contract.

6 (c) *Determination of prevailing wages.*

7 (1) The city council hereby declares that it is in the best interests of the city to have a
8 uniform determination of the prevailing wages to be paid to the various classes of laborers,
9 mechanics and workers which will be required in the performance of work covered by this
10 section.

11 (2) The city council hereby finds and concludes that the federal government, in
12 implementing the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5), possesses and
13 exercises a superior capability with superior resources to ascertain the basic rate of pay,
14 overtime, and other benefits which accurately represent the current prevailing rate of
15 wages for work covered by that federal law. The career service board shall determine that
16 the prevailing wages applicable to the various classes of laborers, mechanic, and workers
17 covered by this section and the Davis-Bacon Act correspond to the prevailing wage
18 determinations made pursuant to that federal law as the same may be amended from time
19 to time. The board shall undertake to keep and maintain copies of prevailing wage
20 determinations made pursuant to the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5) and
21 any amendments to that federal law. The board shall also keep and maintain such other
22 information as shall come to its attention concerning wages paid in the Denver
23 metropolitan area. ~~If the board has reason to believe that a prevailing wage determination~~
24 ~~made pursuant to that federal law is substantially different from wages paid in the Denver~~
25 ~~metropolitan area based upon other information, it shall so inform the city council for their~~
26 ~~consideration and action by ordinance.~~ The provisions of this section shall supersede any
27 differing provisions of that federal law, except when that federal law is applicable
28 independent of this section.

29 (3) It shall be the duty of the career service board to determine, after hearing, the
30 prevailing wages for the various classes of laborers, mechanics, and workers which will be
31 required in the performance of work covered by this section but not be covered by the
32 Davis-Bacon Act, which determinations shall be made at least annually, and as frequently
33 as may be considered necessary by the career service board in order that the
34 determination which is currently in effect shall accurately represent the current prevailing
35 rates of wages. Prior to making such determination, the career service board shall give

1 reasonable public notice of the time and place of the hearing concerning such proposed
2 determination and shall afford to all interested parties the right to appear before it and to
3 present evidence. "Prevailing wages" shall mean, for each class of work covered by this
4 section, but not covered by the Davis-Bacon Act, the rate of pay and the overtime and
5 other benefits granted to such full-time workers in the Denver metropolitan area. The rates
6 shall be determined using the same method as used for those classes which are covered
7 by the Davis-Bacon Act. Should this method cause a reduction in compensation of any
8 class of workers, the career service board will review the appropriateness of using this
9 methodology and may recommend to city council a different method for establishing
10 prevailing wage rates.

11 If there is insufficient data available in the Denver metropolitan area to determine the rate of
12 pay and the overtime and other benefits or should comparable classes of work not be
13 performed within the Denver metropolitan area for each class of work covered by this section
14 and not covered by the Davis-Bacon Act, the career service board shall refer to the Service
15 Contract Labor Act of 1965, as amended (41 U.S.C. § 351 et seq.) to determine the rate of
16 pay and the overtime and other benefits.

17 (4) The office of human resources shall issue clarifications or interpretations of the
18 prevailing wage, and shall provide the auditor any issued clarification or interpretation. If the
19 auditor does not advise the executive director of human resources in writing that it disagrees
20 with any issued clarification or interpretation within 30 days, the clarification/interpretation
21 shall be final. If the auditor advises the executive director of human resources in writing that
22 it disagrees with the clarification or interpretation, then the auditor and the executive director
23 of human resources shall meet to resolve the conflict and, with approval of the career
24 service board, the office of human resources shall issue a final agreed upon clarification or
25 interpretation, or may withdraw the clarification or interpretation, as appropriate.

26 (d) *Mandatory contract provisions; enforcement.*

27 (1) Every contract covered by this section shall contain a provision requiring the
28 contractor and every subcontractor under such contract to pay every worker, mechanic
29 and laborer employed under such contract not less than the scale of wages as provided
30 for under subsections (b) and (c).

31 (2) Such contract shall further require the contractor and subcontractors to pay all
32 construction workers, mechanics and other laborers at least once a week the full amounts
33 of wages accrued at the time of payment, computed at wage rates not less than those
34 stated in the specifications; except that the contractor and subcontractors shall make such

1 payments to janitorial or custodial workers, and oil and gas employees and contractors, at
2 least biweekly.

3 (3) Every such contract shall further provide that the contractor shall post in a prominent
4 and easily accessible place at the site of the work the scale of wages to be paid by the
5 contractor and all subcontractors working under the contractor, and that complaints by
6 third parties, including employees of contractors and subcontractors, of violations may be
7 submitted to the auditor, pursuant to subsection (f).

8 (4) The contract shall further provide that if the contractor or any subcontractor shall fail to
9 pay such wages as are required by the contract, the manager of finance shall not approve
10 a warrant or demand for payment to the contractor until the contractor furnishes the
11 auditor evidence satisfactory to the auditor that such wages so required by the contract
12 have been paid. Nothing herein shall preclude the manager of finance from approving a
13 partial warrant or demand for payment to the contractor to the extent the auditor has been
14 furnished evidence satisfactory to the auditor that one or more subcontractors has paid
15 such wages required by the contract, even if the contractor has not furnished evidence
16 that all of the subcontractors have paid wages as required by the contract. Any contractor
17 or subcontractor may utilize the following procedure in order to satisfy the requirements of
18 this section:

19 a. The contractor or subcontractor may submit to the auditor, for each worker,
20 mechanic or other laborer to whom such wages are due, a check, as required by the
21 auditor. Such check shall be payable to that worker, mechanic or other laborer, or to
22 the City and County of Denver so it is negotiable by either of those parties. Each such
23 check shall be in an amount representing the difference between the accrued wages
24 required to be paid to that worker, mechanic or other laborer by the contract and the
25 wages actually paid by the contractor or subcontractor.

26 b. If any check submitted pursuant to paragraph (4)a. of this subsection cannot be
27 delivered to the worker, mechanic or other laborer within a reasonable period of time
28 as determined by the auditor, then it shall be negotiated by the city and the proceeds
29 deposited in the auditor's unclaimed prevailing wages special trust fund. Nothing in
30 this subsection shall be construed to lessen the responsibility of the contractor or
31 subcontractor to attempt to locate and pay any worker, mechanic or other laborer to
32 whom wages are due.

33 c. Any valid, verified claim for prevailing wages that is actually received by the city
34 through negotiation of any check submitted pursuant to paragraph (4)a. of this
35 subsection must be made prior to two (2) years after the date of the last

1 underpayment by the contractor or any subcontractor to the worker, mechanic or
2 other laborer to whom such wages were due. After such date, the city shall no longer
3 be liable for payment. The city, as trustee, shall pay such claimant only the amount of
4 the check that is actually negotiated, regardless of any dispute as to any additional
5 amount of wages owing to the worker, mechanic or other laborer. No interest shall be
6 paid by the city on any funds received or disbursed pursuant to this subsection.

7 d. On the last working day of each month, the amount of any claim for which the city
8 is no longer liable shall be credited to the general fund, except as otherwise required
9 by law.

10 e. The auditor shall maintain a list of all unclaimed, city-negotiated prevailing wage
11 checks for which the city is liable. Such list shall be updated monthly and shall be
12 available for inspection at the office of the auditor.

13 (5) Every such contract shall further provide that the contractor shall furnish to the auditor
14 each pay period during which work is in progress under the contract a true and correct
15 electronically-certified copy of the payroll records of all workers, laborers and mechanics
16 employed under the contract, either by the contractor or subcontractors. Such payroll
17 records shall include information showing the number of hours worked by each worker,
18 laborer or mechanic employed under the contract, the hourly pay of such worker, laborer
19 or mechanic, any deductions made from pay, and the net amount of pay received by each
20 worker, laborer or mechanic for the period covered by the payroll.

21 ~~(6) It shall further be provided in such contract that the copy of the payroll record shall be~~
22 ~~accompanied by a sworn statement of the contractor that the copy is a true and correct~~
23 ~~copy of the payroll records of all mechanics, laborers or other workers working under the~~
24 ~~contract, either for the contractor or subcontractors, that payments were made to the~~
25 ~~workers, laborers and mechanics as set forth in the payroll records, that no deductions~~
26 ~~were made other than those set forth in such records, and that all workers, mechanics and~~
27 ~~other laborers employed on work under the contract, either by the contractor or by any~~
28 ~~subcontractor, have been paid the prevailing wages as set forth in the contract~~
29 ~~specifications.~~

30 (6) Every such contract shall also require that the contractor will provide to the city a list of
31 all subcontractors who will be providing any services under the contract.

32 (7) Every such contract shall further provide that if any laborer, worker or mechanic
33 employed by the contractor or any subcontractor under the contract has been or is being
34 paid a rate of wages less than the rate of wages required by the contract to be paid as
35 aforesaid, the city may, by written notice to the contractor, suspend or terminate the

1 contractor's right to proceed with the work, or such part of the work as to which there has
2 been a failure to pay the required wages, and in the event of termination, may prosecute
3 the work to completion by contract or otherwise, and the contractor and any sureties shall
4 be liable to the city for any excess costs occasioned the city thereby.

5 (e) *Penalties.* Any contractor or subcontractor subject to the requirements of this section shall
6 as a penalty pay to the City and County of Denver an amount as set forth below for each ~~week,~~
7 ~~or portion thereof,~~ payroll period for each worker paid less than the applicable prevailing wage
8 rates.

9 (1) The amount of the penalty shall be determined by the auditor based on consideration
10 of both of the following:

- 11 a. Whether the failure of the contractor or subcontractor to pay the correct wage rate
12 was a good faith mistake and, if so, the error was corrected within thirty (30) days of
13 the date brought to the attention of the contractor or subcontractor.
- 14 b. Whether the contractor or subcontractor has a prior record of failing to meet its
15 prevailing wage obligations.

16 (2) The penalty shall be fifty dollars (\$50.00) ~~twenty dollars (\$20.00)~~ for each week, or
17 portion thereof, for each worker paid less than the prevailing wage rate, unless the failure
18 of the contractor or subcontractor to pay the correct rate of prevailing wages was a good
19 faith mistake and, if so, the error was corrected within thirty (30) days of the date brought
20 to the attention of the contractor or subcontractor.

21 (3) The penalty shall be two thousand five hundred dollars (\$2,500.00) for a violation, plus
22 seventy-five dollars (\$75.00) ~~thirty-five dollars (\$35.00)~~ for each week, or portion thereof,
23 for each worker paid less than the prevailing wage rate, if the contractor or subcontractor
24 has been assessed a penalty, but not more than two (2) other penalties, within the
25 previous three (3) years for failing to meet its prevailing wage obligations on a separate
26 contract, unless those penalties were subsequently withdrawn or overturned.

27 (4) The penalty shall be five thousand dollars (\$5,000.00) for a violation, plus one
28 hundred dollars (\$100.00) ~~fifty dollars (\$50.00)~~ for each week, or portion thereof, for each
29 worker paid less than the prevailing wage rate, if the contractor or subcontractor has been
30 assessed three (3) or more other penalties within the previous three (3) years for failing to
31 meet its prevailing wage obligations on separate contracts, unless those penalties were
32 subsequently withdrawn or overturned.

33 (5) The penalty shall be five hundred dollars (\$500.00) for each week, or portion thereof,
34 for each week during which a contractor or subcontractor fails to furnish the auditor any

1 certified payrolls where any worker, laborer or mechanic employed by the non-reporting
2 contractor or subcontractor has performed any work under a contract subject section (b),
3 unless the failure of the contractor or subcontractor to furnish the auditor any certified
4 payrolls was a good faith mistake and, if so, the error was corrected within thirty (30) days
5 of the date brought to the attention of the contractor or subcontractor. This penalty shall
6 not be imposed in conjunction with penalties imposed under sections (e)(2)-(4).

7 (6) The penalty shall be fifty dollars (\$50.00) for each week or portion thereof, for each
8 incident of false reporting on a certified payroll, not corrected within fifteen (15) days of the
9 date the false report was brought to the attention of the contractor or subcontractor. A
10 certified payroll shall be determined to be a false report when information related to hours
11 worked or wages paid reported on a certified payroll is not identical to supportive
12 documentation, including paychecks issued to employees, timecards maintained by
13 contractors and subcontractors, invoices for work performed issued to contractors or the
14 city, and tax documents. This penalty shall be imposed in addition to penalties imposed
15 under sections (e)(2)-(5).

16 (f) *Third Party Complaints.* Subject the provision in this section and any rules and regulations
17 that may be issued by the auditor, a third party, including an employee of a contractor or
18 subcontractor, may submit a complaint of a violation of this section to the auditor. The burden
19 of demonstrating to the auditor's satisfaction that a violation has occurred or the rebuttable of
20 such presumption rests with the third party making the complaint, and shall be demonstrated
21 by a preponderance of the evidence. Any such complaint shall be made in writing to the
22 auditor and shall include all information relied upon by such party. The auditor shall notify in
23 writing any person alleged to have violated the section of such complaint. The auditor will
24 investigate credible complaints and provide a response of its findings of any such complaint to
25 both the complainant and the person who is identified as violating the section. Any
26 determination by the auditor pursuant to this section is reviewable by the complained-of party,
27 pursuant to subsection (g).

28 (g) *Review.* Any determination of the auditor related to the imposition of prevailing wage,
29 including determinations of applicable employment classifications and wages, determinations
30 of underpayment or misreporting, and the imposition of penalties shall be reviewable as
31 follows:

32 ~~The determination of the auditor as to the imposition and amount of the penalty shall be~~
33 ~~reviewable as follows:~~

34 (1) a. Any person who disputes any determination made by or on behalf of the city
35 pursuant to the authority of the auditor, which determination adversely affects such

1 person, may petition the auditor for a hearing concerning such determination no later
2 than thirty (30) days after having been notified of any such determination. Compliance
3 with the provisions of this subsection shall be a jurisdictional prerequisite to any action
4 brought under the provisions of this section, and failure of compliance shall forever bar
5 any such action.

6 (2) ~~b.~~ The auditor shall designate as a hearing officer a person retained by the city for that
7 purpose.

8 (3) ~~c.~~ The petition for a hearing shall be in writing, and the facts and figures submitted
9 shall be submitted under oath or affirmation either in writing or orally at a hearing
10 scheduled by the hearing officer. The hearing, if any, shall take place in the city, and
11 notice thereof and the proceedings shall otherwise be in accordance with rules and
12 regulations issued by the auditor. The petitioner shall bear the burden of proof, and the
13 standard of proof shall conform with that in civil, nonjury cases in state district court.

14 (4) ~~d.~~ Thereupon, the hearing officer shall make a final determination. Such final
15 determination shall be considered a final order and may be reviewed under Rule
16 106(a)(4) of the state rules of civil procedure by the petitioner or by the city. A request
17 for reconsideration of the determination may be made if filed with the hearing officer
18 within fifteen (15) days of the date of determination, in which case the hearing officer
19 shall review the record of the proceedings, and the determination shall be considered
20 a final order upon the date the hearing officer rules on the request for reconsideration.
21 The nonprevailing party shall be responsible for and shall pay the costs of the hearing,
22 including the costs of the hearing officer and the hearing reporter.

23 (5) ~~e.~~ The district court of the second judicial district of the State of Colorado shall have
24 original jurisdiction in proceedings to review all questions of law and fact determined
25 by the hearing officer by order or writ under Rule 106(a)(4) of the state rules of civil
26 procedure.

27 (6) ~~f.~~ Failure to pay outstanding penalties that are not pending appeal and are owed to the
28 city pursuant to this section shall be grounds for suspension or revocation of any
29 license issued by the city until fully paid.

30 **Section 2.** That Section 20-77 of the Denver Revised Municipal Code shall be amended
31 by deleting the language stricken and adding the language underlined as follows:

32 **Sec. 20-77. - Debarment from city contracting due to certain violations of law.**

- 1 (a) *In general.* A contractor shall be subject to debarment and disqualification from the award
2 of any contract upon a determination that grounds for debarment exist as provided in this
3 section.
- 4 (b) *Definitions.* As used in this section:
- 5 (1) *Contract* shall mean a contract or a purchase order authorization ~~between the city and~~
6 ~~a contractor~~ for construction, alteration, improvement, repair, maintenance or
7 demolition of any ~~public building or public work~~ city-owned or leased building or
8 performed on city-owned land by or on behalf of the city, or for any agency of the city,
9 or financed in whole or in part by the city or any agency of the city, and includes
10 subcontracts.
- 11 (2) *Contractor* shall mean a contractor, subcontractor or supplier of any tier under a
12 contract.
- 13 (3) *Debarment board or board* shall mean a board consisting of the manager of public
14 works, the manager of aviation, the manager of general services, the director of the
15 division of small business opportunities, and the auditor. In the event any member of
16 the board has a conflict hearing a particular matter, the conflicted member will
17 delegate his or her duties as a member of the debarment board to another individual
18 within his or her department or division.
- 19 (c) *Grounds for debarment.* As used in this section, "grounds for debarment" shall mean the
20 occurrence within the three (3) years immediately preceding a report as provided in
21 subsection (d) of:
- 22 (1) A willful failure or refusal of a contractor to pay prevailing wages in violation of section
23 20-76. In any proceeding arising under this section, a "willful failure or refusal" may be
24 proven by evidence that the contractor has intentionally or repeatedly paid less than
25 the required prevailing wage(s), either under the same contract or under two (2) or
26 more contracts, including subcontracts.
- 27 (2) Intentional or repeated violations of the obligations imposed upon the contractor by
28 contract provisions that substantially conform to the requirements of subsection 20-
29 76(d).
- 30 (3) Any suspension or termination of a contract by the city or any agency thereof due to a
31 violation of section 20-76.
- 32 (4) Any violation of any applicable city or state law establishing journeyman to apprentice
33 ratios for the performance of work distinctive to a specific craft or trade or requiring
34 licensing for the performance of any type of construction work, when such violation

1 occurred in the course of a contract, and when such violation demonstrates an intent
2 by a contractor to evade the requirements of section 20-76 for the payment of
3 prevailing wages.

4 (5) Any violations described in D.R.M.C. section 28-77.

5 (6) The term "grounds for debarment" shall not include any isolated or insubstantial
6 violation of law that is promptly corrected by a contractor in accordance with the
7 requirements of the city.

8 (d) *Reports to debarment board.* ~~The auditor and any other~~ Any official officer or employee of
9 the city responsible for enforcing the laws set forth in paragraph (4) of subsection (c) of
10 this section, or for the administration of the contracts of the city shall promptly report to
11 the debarment board in writing any grounds for debarment coming to the attention of the
12 ~~auditor or such other official~~ officer or employee. Submittal of such a report to the board
13 by an officer or employee who is on the board or who works under any member of the
14 board shall not disqualify on its own that board member from serving his or her duties on
15 the board with regard to the submitted report.

16 (e) *Debarment investigation; notice to contractor.*

17 (1) Following the receipt of a report of grounds for debarment under subsection (d), the
18 debarment board shall conduct an investigation. ~~The board may call upon the mayor's~~
19 ~~office of contract compliance to assist in such investigation, and the mayor's office of~~
20 ~~contract compliance shall cooperate with the board if so requested.~~ After the board
21 has made an initial investigation of the facts and circumstances underlying the report,
22 the board shall send a written notice of investigation to the contractor against whom
23 the report was made. Such notice shall be sent by certified mail, return receipt
24 requested, and shall contain a concise statement of the report and the underlying facts
25 and circumstances as they appear to the debarment board at the time of the notice.
26 The notice shall inform the contractor that it has twenty (20) business days in which to
27 respond to the board in writing.

28 (2) The contractor's response shall include a statement of the following:

- 29 (i) Which, if any, of the facts cited in the notice the contractor does not contest;
30 (ii) Any facts not included in the notice which the contractor believes to be relevant
31 to the investigation;
32 (iii) The contractor's statement of the facts and circumstances relevant to the report
33 and investigation; and
34 (iv) Any mitigating factors related to the grounds for debarment.

1 (3) After receipt of the contractor's written response, the debarment board shall meet with
2 the contractor to discuss and review the facts and circumstances relevant to the report
3 under investigation. The board may meet more than once with the contractor during the
4 investigation. The contractor may be represented by counsel at such meeting(s), and may
5 present documentation and exhibits to the board for the board's consideration.

6 (4) It is not the intent of this subsection (e) that the debarment board shall conduct
7 informal or formal hearings during the investigation, but rather that the contractor against
8 whom the report is made shall have the opportunity to be notified of the investigation and
9 to present information relevant to the report. If a contractor does not timely respond to a
10 notice of investigation sent under this subsection (e), the board shall proceed with the
11 investigation.

12 (f) *Determination of debarment.* Following the investigation under subsection (e) of this
13 section, and after consultation with the city attorney, the debarment board may determine that
14 no further action is required, or may debar a contractor from consideration for any contract
15 upon the affirmative vote of at least three (3) members of the board for a period of up to three
16 (3) years. If the board determines to debar a contractor, then the board shall send a written
17 notice of debarment by certified mail, return receipt requested, to the contractor, and the notice
18 shall inform the debarred contractor of the right to appeal the decision administratively in
19 accordance with subsection (h) of this section.

20 (g) *Effect of debarment determination.* A debarment determination shall take effect thirty (30)
21 days after the contractor receives notice of the determination unless an appeal is filed during
22 that time in accordance with subsection (h) of this section. After the debarment decision takes
23 effect, the contractor debarred shall remain debarred unless a court or the board orders
24 otherwise or until the debarment period specified in the determination expires. A debarment
25 shall disqualify the contractor from the award of any contract during the period of debarment,
26 and shall be binding upon any and all city departments and agencies responsible for the award
27 of contracts.

28 (h) *Appeals.*

29 (1) Any contractor who disputes any determination of debarment made pursuant to this
30 section may petition the debarment board for a hearing concerning such determination no
31 later than thirty (30) days after having been notified of any such determination.

32 Compliance with the provisions of this subsection shall be a jurisdictional prerequisite to
33 any action brought under the provisions of this section, and failure of compliance shall
34 forever bar any such action.

1 (2) The debarment board shall designate a hearing officer to hold such hearing, and shall
2 be represented before the hearing officer by the city attorney.

3 (3) Such petition shall be filed in writing, and the facts and figures submitted shall be
4 submitted under oath or affirmation either in writing or orally at a hearing scheduled by the
5 hearing officer. The hearing, if any, shall take place in the city, and notice thereof and the
6 proceedings shall otherwise be in accordance with rules and regulations issued by the
7 board. The petitioner shall bear the risk of non-persuasion, and the standard of proof shall
8 conform to that in civil, non-jury cases in state district court.

9 (4) Thereupon, the hearing officer shall make a final determination. Such final
10 determination shall be considered a final order of the hearing officer and may be reviewed
11 under Rule 106(a)(4), C.R.C.P. by the petitioner or by the city.

12 (5) The district court of the second judicial district of the state shall have original
13 jurisdiction in proceedings to review all questions of law and fact determined by the
14 hearing officer by order or writ under Rule 106(a)(4) C.R.C.P.

15 (6) Any appeal of a debarment determination shall automatically stay the effect of the
16 debarment until the appeal is finally resolved.

17 (i) *Debarment list.* The debarment board shall maintain a list of any and all contractors
18 debarred in accordance with this section and shall promptly notify the auditor, the mayor, the
19 city council, the manager of public works, the manager of aviation, the manager of parks and
20 recreation, the director of the division of small business opportunity, and the manager of
21 general services of any additions or deletions to the debarment list.

22 (j) *Mandatory contract provision.* Every contract shall contain a provision prohibiting the
23 contractor from hiring any subcontractor that is currently debarred by the city in accordance
24 with this section.

25 (k) *Other remedies preserved.* The operation of the debarment process under this section 20-
26 77 shall not preempt or supersede existing remedies or penalties for violation of prevailing
27 wage, building code or other city laws and regulations, or other discretionary activities of
28 appropriate city officials with respect to contract issues that may be provided by law.

29 (l) *Guidelines; rules and regulations.* The debarment board is authorized to promulgate
30 guidelines and rules and regulations as may be necessary to effectuate the purposes of
31 this section 20-77.

32
33 Section 3. This ordinance shall be effective January 1, 2017.
34
35

1 COMMITTEE APPROVAL DATE: October 18, 2016
2 MAYOR-COUNCIL DATE: October 25, 2016
3 PASSED BY THE COUNCIL: _____, 2016
4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____, 2016
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2016; _____, 2016
10 PREPARED BY: Deanne R. Durfee, Assistant City Attorney DATE: October 27, 2016

11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
14 §3.2.6 of the Charter.

15 Kristin M. Bronson, Denver City Attorney

16 BY: _____, _____ City Attorney DATE: _____, 2016