

Capalino + Company

Government and Community Relations Advocates

TO: CAPALINO+COMPANY TEAM
FROM: BEN KLEINBAUM
SUBJECT: INT 730
DATE: 12/13/2011
CC:

INT 730, introduced by Council Member Dominic Recchia on December 8th, requires that the Department of Housing Preservation and Development collect, and post online, information about the contractors the agency uses.

The agency would need to post online all of its prequalified lists as well as information on the contractors such as the name of all contractors that were denied prequalification and the reasons for their denial. Similarly, HPD would need to create a list of all those who lost their prequalification status and the reasons why.

The agency would also need to create a list that names the contractor for every project undertaken. But it would also need to include information on topics such as how they were chosen, whether there were any lower bids, and if there were any violations, complaints or legal proceedings against the contractor, developer or subcontractor within the last five years.

It seems likely that HPD would complain that the amount of data that would be compiled would be a huge burden for the agency.

The bill was referred to the Committee on Housing and Buildings, though no hearings are scheduled. The bill would go into effect 180 days after its enactment.

By Council Member Recchia

A Local Law to amend the administrative code of the city of New York, in relation to the disclosure of certain information regarding certain construction projects.

Be it enacted by the Council as follows:

Section 1. Chapter one of title 6 of the administrative code of the city of New York is amended by adding a new section 6-116.3 to read as follows:

6-116.3 Department of housing preservation and development construction contracts reporting requirements.

a. Definitions. For the purposes of this section only, the following terms shall have the following meanings:

(1) "Contractor" shall mean any individual, sole proprietorship, partnership, joint venture, corporation or other entity that enters into a contract or other agreement with or is otherwise engaged by a developer to perform work in connection with a project.

(2) "Department" shall mean the department of housing preservation and development.

(3) "Developer" shall mean any individual, sole proprietorship, partnership, joint venture, corporation or other entity that is selected by the department to sponsor or otherwise be responsible for performing work in connection with a project where "selected" shall mean chosen, approved, assigned, recommended or otherwise engaged by the department.

(4) "Employee" shall mean a natural person employed or otherwise engaged by a developer, contractor or subcontractor to perform work in connection with a project.

(5) "Financial assistance" shall mean any monies, tax credits, subsidies, mortgages, debt forgiveness, or other thing of value and shall include but not be limited to low income housing tax credits, funds administered by or through the United States

department of housing and urban development, and funds provided in accordance with any provision of the public housing law.

(6) "List identifier" shall mean a description of the purpose for which a prequalified list is used by the department including but not limited to the following information:

(i) whether the purpose of the prequalified list is to identify vendors that are prequalified for selection as developers;

(ii) whether the purpose of the prequalified list is to identify vendors that are prequalified to be recommended by the department to developers to perform work as contractors; and

(iii) the types of projects for which the prequalified list is used to select developers or recommend contractors to developers.

(7) "Prequalification criteria" shall mean criteria used by the department to determine whether a vendor is qualified to be on a prequalified list.

(8) "Prequalified list" shall mean a list compiled in accordance with section 324 of the charter and any applicable rules of the procurement policy board which identifies vendors that are prequalified to be selected as developers or recommended by the department to developers to perform work as contractors.

(9) "Principal officer" shall mean an individual who serves as or performs the functions of chief executive officer, chief financial officer or chief operating officer of a developer, contractor or subcontractor.

(10) "Principal owner" shall mean an individual, partnership, joint venture, corporation or other entity which holds a ten percent or greater ownership interest in a developer, contractor or subcontractor.

(11) "Project" shall mean construction, rehabilitation, alteration, maintenance, repair, demolition, planning or design of any residential building, residential facility or residential structure that (i) is performed pursuant to a contract or agreement of any kind

with the department where the aggregated value of all contracts or agreements related to such project exceeds one hundred thousand dollars or (ii) is funded in whole or in part by financial assistance provided by the city or which the department has assisted in obtaining where such financial assistance exceeds one hundred thousand dollars; provided that the value of a contract or other agreement shall mean value to the developer that is a party to such contract or other agreement.

(12) "Project identifier" shall mean a description of a project sufficient to identify such project.

(13) "Subcontractor" shall mean an individual, sole proprietorship, partnership, joint venture, corporation or other entity which enters into a contract or other agreement with or is otherwise engaged by a contractor to perform work in connection with a project.

(14) "Vendor" shall mean an actual or potential contractor.

b. The department shall prepare and make available online to members of the public, in a read-only and fully searchable format, the following information for each prequalified list created by the department:

(1) the list identifier;

(2) the name, address and federal taxpayer identification number and the name and title of each principal officer and principal owner of each vendor on such prequalified list;

(3) the name, address and federal taxpayer identification number and the name and title of each principal officer and principal owner of each vendor that was denied prequalification within the immediately preceding five-year period, and the bases for such denial of prequalification including but not limited to:

(i) the prequalification criteria, if any, that the vendor did not meet;

(ii) in the event that the denial of prequalification was due to an investigation, proceeding or other action by any court or government agency, then information

sufficient to identify that investigation, proceeding or other action including but not limited to case, docket number and court;

(iii) in the event that the denial of prequalification was due to conduct related to a contract or other agreement between the vendor and the city, then information sufficient to identify each such contract or agreement including but not limited to the the contract registration number assigned by the comptroller, where applicable;

(iv) whether the vendor appealed the denial of prequalification; and

(4) the name, address and federal taxpayer identification number and the name and title of each principal officer and principal owner of each vendor that had its prequalification revoked or suspended within the immediately preceding five-year period, and the bases for such revocation or suspension of prequalification including but not limited to:

(i) if the vendor had its prequalification suspended, the length of such suspension;

(ii) the prequalification criteria, if any, that the vendor did not meet;

(iii) in the event that the revocation or suspension of prequalification was due to an investigation, proceeding or other action by any court or government agency, then information sufficient to identify that investigation, proceeding or other action including but not limited to case, docket number and court;

(iv) in the event the revocation or suspension of prequalification was due to conduct related to a contract or other agreement between the vendor and the city, then information sufficient to identify each such contract or agreement including but not limited to the contract registration number assigned by the comptroller, where applicable;

(v) in the event the revocation or suspension of prequalification was due to a changed circumstance, condition, status of the vendor or its staff, or additional information acquired by the department or further analysis of the information already acquired by the department, then a description thereof;

(vi) whether the vendor appealed the revocation or suspension of prequalification.

c. For each project, the department shall prepare and make available online to members of the public, in read-only form, and in a fully searchable format the following:

(1) the project identifier;

(2) the address, block and lot number, height, gross square footage, and number of proposed dwelling units of such project;

(3) a description of the source and value of any financial assistance expended by the city in connection with such project or which the department assisted in obtaining in connection with such project;

(4) the dollar amount of each contract or other agreement related to such project including the original maximum and revised maximum expenditure authorized, current encumbrance and actual expenditures;

(5) the contract registration number, if any, assigned by the comptroller for each contract related to such project;

(6) the name, address, telephone number and federal taxpayer identification number and the name and title of each principal officer and principal owner of each developer, contractor and subcontractor;

(7) the manner in which the developer was selected including but not limited to:

(i) whether the developer was selected through competitive sealed bidding pursuant to section 313 of the charter, competitive sealed bidding from a prequalified list pursuant to section 318 of the charter, competitive sealed proposals pursuant to section 319 of the charter, competitive sealed proposals from a prequalified list pursuant to section 320 of the charter;

(ii) if the developer was selected through competitive sealed bidding or competitive sealed bidding from a prequalified list, a statement indicating whether the developer was the lowest responsible bidder and, if not, the reason the lowest responsible bidder was not selected;

(iii) if the developer was selected through competitive sealed proposals or competitive sealed proposals from a prequalified list, whether the developer's response to the request for proposals provided the lowest price option and, if not, the reason the lowest price option was not selected;

(iv) if the developer was selected from a prequalified list, the list identifier of the prequalified list and if bids or proposals were solicited from less than all of the vendors on the prequalified list or if less than all of the vendors on the prequalified list were considered for selection then:

A. the reason less than all of the vendors on the prequalified list were considered for selection;

B. the manner in which the department determined which vendors were to be considered for selection including but not limited to whether the vendors to be considered were chosen at random or on a rotational basis;

C. the name, address, and federal taxpayer identification number of each vendor considered for selection;

(v) if the developer was selected by a method other than competitive sealed bidding, competitive sealed bidding from a prequalified list, competitive sealed proposals, or competitive sealed proposals from a prequalified list, then:

A. a description of such other method;

B. the basis for the department's decision to use a method other than competitive sealed bidding, competitive sealed bidding from a prequalified list, competitive sealed proposals, or competitive sealed proposals from a prequalified list to select the developer;

C. specific reference to the section of the charter and procurement policy board rules or other law authorizing the department to select the developer in the manner used;

D. the criteria used by the department to select the developer;

E. the name, address, and federal taxpayer identification number of each vendor considered for selection;

(8) the date of each public hearing held with respect to each contract or other agreement related to such project, where applicable;

(9) the contract budget category to which each contract or other agreement related to such project is assigned, where applicable;

(10) whether any of the work in connection with such project will be subject to section 220 of article 8 of the labor law or any regulations or rules promulgated pursuant thereto;

(11) whether any of the work in connection with such project will be subject to subchapter IV of chapter thirty one of part A of subtitle II of title 40 of the United States Code or any regulations or rules promulgated pursuant thereto;

(12) all complaints, charges, allegations, judgments, injunctions or other relief filed or obtained within the prior five years in any judicial actions or proceedings with respect to section 220 of article 8 of the labor law or subchapter IV of chapter thirty one of part A of subtitle II of title 40 of the United States Code or any regulations or rules promulgated pursuant thereto against:

(i) the developer, the current principal owner or principal officer thereof or the former principal owner or principal officer thereof if he or she held such position or status within the immediately preceding five-year period;

(ii) the contractor, the current principal owner or principal officer thereof or the former principal owner or principal officer thereof if he or she held such position or status within the immediately preceding five-year period; or

(iii) the subcontractor, the current principal owner or principal officer thereof or the former principal owner or principal officer thereof if he or she held such position or status within the immediately preceding five-year period;

(13) the total number of violations of the building code issued in connection with the project in the immediately preceding five-year period and for each such violation, the

nature of the violation and the outcome of the violation including any remedial actions taken or ordered by the city; and

(14) the case and docket number for each judicial action or proceeding related to such project.

d. For each project, the department shall request that each developer, contractor and subcontractor prepare, maintain and file with the department the following information for each employee:

(1) a description of the work performed by such employee in connection with the project; and

(2) the weekly gross wages and weekly net wages paid to such employee by the developer, contractor or subcontractor for work performed in connection with the project and for each deduction from such wages, the amount and a description thereof.

e. Notwithstanding any other provision of law:

(1) for projects on which work is being performed as of the effective date of this section, the information required by subdivision c of this section shall be made available no later than one year after the effective date of this section; and

(2) the information required by subdivisions b and c of this section shall be updated monthly.

§2. This local law shall take effect one hundred eighty days after its enactment except that the commissioner of the department of housing preservation and development shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

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12/5/11