

ORDINANCE NUMBER O- 19093 (NEW SERIES)

ADOPTED ON SEP 03 2002

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 8, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 22.0801, 22.0802, 22.0803, 22.0804, 22.0805, 22.0806, 22.0807, 22.0808 AND 22.0809; AND B CREATING NEW SECTIONS 22.0801, 22.0802, 22.0803, 22.0804, 22.0805, 22.0806, 22.0807, 22.0808, 22.0809, 22.0810, 22.0811, 22.0812, 22.0813, 22.0814, 22.0815, 22.0816, 22.0817, 22.0818, 22.0819, AND 22.0820, ALL RELATING TO DEBARMENT.

WHEREAS, by statute, case law and regulations, the City must do business only with responsible contractors; and

WHEREAS, debarment is a non-punitive means of furthering these policies; and

WHEREAS, debarment is a discretionary administrative action taken to implement these policies; and

WHEREAS, debarment is a remedial action taken solely in the public interest and for the protection of the competitive selection process; and

WHEREAS, removal of persons whose participation on City contracts is detrimental to public purposes is remedial by definition; and

WHEREAS, debarred contractors are excluded from conducting business with the City in every way, even as a subcontractor, supplier, or employee of a prime contractor; and

WHEREAS, this ordinance allows imputation of knowledge in certain circumstances as a recognition that critical evidence needed to prove a person's conduct is often within the control of that person, the company for whom they are employed, or others who may face debarment if the

evidence is disclosed. As such, it recognizes the difficulty of proving information that is exclusively within the control of those with no incentive to disclose it; and

WHEREAS, suspension pending a final debarment decision is a critical tool necessary to protect the integrity of the bidding process. Without the authority to suspend a person pending a debarment decision, the person may have incentive to significantly under-bid work. The person is aware that the City will not intend to award the contract to the person, thus minimizing the likelihood the person would have to follow through on the under-bid contract, but could increase the person's claim for damages and potential lost profits in future litigation subsequent to an unfavorable debarment decision, while the City is affording the requisite due process and adequate time to prepare for the debarment decision. Responsible contractors submitting responsible bids must be protected against others gaining entitlement to contracts by under-bidding, and potentially enjoining the City from awarding to someone other than the non-responsible under-bidder; and

WHEREAS, suspension is legally defensible because suspension is based upon a finding by the City of adequate evidence that a contractor is not a responsible contractor and because the period of suspension is for a limited, reasonable period of time; and

WHEREAS, this ordinance is generally patterned after existing federal regulations governing several federal agencies. These regulations are located in Title 48 of the Code of Federal Regulations, Part 9.4, entitled "Debarment, Suspension, and Ineligibility." These regulations were used as a model in part because they offer a cogent, relatively concise scheme for debarment and in part because there is an existing body of law interpreting them, which may be utilized in the event of future legal challenges to this ordinance; and

WHEREAS, the affiliate provision intends to prevent a situation where the debarred individual or entity could in fact continue to do business with the City through a newly created corporation or other legal entity; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 8, of the San Diego Municipal Code is hereby amended by repealing Sections 22.0801, 22.0802, 22.0803, 22.0804, 22.0805, 22.0806, 22.0807, 22.0808 and 22.0809.

Section 2. That Chapter 2, Article 2, Division 8, of the San Diego Municipal Code is hereby amended by creating new Sections 22.0801, 22.0802, 22.0803, 22.0804, 22.0805, 22.0806, 22.0807, 22.0808, 22.0809, 22.0810, 22.0811, 22.0812, 22.0813, 22.0814, 22.0815, 22.0816, 22.0817, 22.0818, 22.0819, and 22.0820, to read as follows:

Division 8: Debarment

§22.0801 Statement of Purpose

- (a) The *City* intends to accept bids or responses to requests for proposals or qualifications from, award *contracts* to, execute *contracts* with, consent to subcontracts, or do business in any way only with responsible *persons*. *Debarment* and *suspension* are discretionary actions that, taken in accordance with this Division, are appropriate means to effectuate this policy. *Debarment* and *suspension* are designed to protect the *City* by ensuring full and open competition by having contractual relationships only with responsible *persons*.
- (b) The serious nature of *debarment* and *suspension* requires that these sanctions be imposed only in the public interest for the *City's* protection, not for purposes of

punishment, and only for the grounds listed and in accordance with procedures set forth in this Division.

§22.0802 **Definitions**

All defined terms in this Division appear in italics. For purposes of this division:

“*Adequate evidence*” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"*Affiliate*" means a *person* who:

- (a) is the assignee, successor, subsidiary of, or parent company, of another *person*; or,
- (b) is a *controlling stockholder*; or,
- (c) has the same or similar *management* of the *debarred* corporate or other legal entity;
or,
- (d) directly or indirectly controls, or has the power to control, another *person*, or is directly or indirectly controlled by another *person*. Indicia of control include but are not limited to, interlocking *management* or ownership, identity of interests among *relatives*, shared facilities and equipment, common use of employees, or a business entity organized following the *debarment*, *suspension*, or proposed *debarment* of a *person* which has the same or similar *management*, ownership or principal employees as the contractor that was *debarred*, *suspended* or proposed for *debarment*, or the *debarred person* or the business entity created after the *debarment*, *suspension* or proposed *debarment* operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division.

"*Bidder*" means a *person* who has submitted a bid, proposal or other document seeking award of a *contract*.

"*Contract*" means any written agreement between the *City* and another *person*. It also includes a *public works contract*. It also includes a City issued purchase order.

"*Controlling stockholder*" means a stockholder who:

- (a) owns more than 25% of the voting stock of a corporation; or,
- (b) notwithstanding the number of shares that the stockholder owns, has the power to direct or control the direction of the *management* or policies of a corporation.

"*Debar*" or "*Debarment*" means the disqualification of a *person* from:

- (a) bidding on a *contract*; or,
- (b) submitting responses to City's requests for proposals or qualifications; or,
- (c) being awarded a *contract*; or,
- (d) executing a *contract*; or
- (e) participating in a *contract* as a *subcontractor*, material supplier, or employee of a *prime contractor* or another *subcontractor* for a period of time specified by the *Debarment Hearing Board* following a hearing.
- (f) directly or indirectly (e.g. through an *affiliate*) submitting offers for, or executing *contracts*, or subcontracts with the City; or
- (g) conducting business with, or reasonably may be expected to conduct business with, the City as an employee, agent, or representative of another *person*.

"*Debarment Hearing Board*" means a board established by the City to hold hearings, take evidence, and to make determinations about *debarment* for the City.

“*Department*” means a City department organized under authority of the City Manager.

“*Final Construction Contractor Performance Evaluation*” means a City-issued evaluation of a *person’s* overall performance on a *public works contract*. This evaluation is generally issued subsequent to completion of performance on the *public works contract*. It does not include *performance evaluations, final performance evaluations, or partial construction contractor performance evaluations*.

“*Final Performance Evaluation*” means a City-issued final evaluation of a *person’s* overall performance on a *contract* which is generally issued subsequent to completion of performance on the *contract*. It includes *final construction contractor performance evaluations*. It does not include *performance evaluations or partial construction contractor performance evaluations*.

“*Management*” means the officers, partners, owners, foremen or other individuals responsible for the financial and operational policies and practices of a *person*.

“*Partial Construction Contractor Performance Evaluation*” means a City-issued evaluation of a *person’s* performance on a specific *public works contract*. It includes only evaluations issued during performance of a *public works contract*. It does not include *final construction contractor performance evaluations*.

“*Performance Evaluation*” means a City-issued evaluation of a *person* describing the *person’s* performance on a specific *contract*. It includes evaluations issued during performance of a *contract* and *partial construction contractor performance evaluations*. It does not include *final performance evaluations or final construction contractor performance evaluations*.

"Person" has the same meaning as that in San Diego Municipal Code section 11.0210. In addition, if a *person* is a corporate or other legal entity, it includes individuals who constitute the *person's management*. It also includes any individual or other legal entity that

- (a) Directly or indirectly (e.g. through an *affiliate*), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a *contract*, or a subcontract under a *contract*; or
- (b) conducts business, or reasonably may be expected to conduct business, with the City as an agent or representative of another *person*.

"*Preponderance of the evidence*" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"*Prime contractor*" means a *person* who enters a *contract* directly with the *City*.

"*Public works contract*" means a *contract* for the construction, reconstruction or repair of public buildings, streets, utilities, and other public works.

"*Relative*" means:

- (a) an individual related by consanguinity within the second degree as determined by the common law; or,
- (b) a spouse; or,
- (c) an individual related to a spouse within the second degree as determined by the common law; or,
- (d) an individual in an adoptive relationship within the second degree as determined by the common law; or
- (e) any individual considered to be "family" in commonly understood terms of the word.

"*Subcontractor*" means:

- (a) a *person* who contracts directly with a *prime contractor* but not directly with the *City*; or,
- (b) any *person* under contract with a *prime contractor* or another *subcontractor* to provide any service, materials, labor or otherwise perform on a *contract*.

Subcontractor includes a trade contractor or specialty contractor.

"*Suspend*" or "*Suspension*" means the *debarment* of a *person* for a temporary period of time pending the completion of an investigation and any proceedings before a *Debarment Hearing Board* and any appeals therefrom.

"*Willfully failed to cooperate*" means:

- (a) intentionally failed to attend a hearing and/or give testimony, or
- (b) intentionally failed to provide documents, books, papers, or other information upon request of the City Manager, the *Debarment Hearing Board*, or the City Council.

§22.0803 **Scope of Division**

- (a) This **Division** establishes procedures for determining whether a *person* is to be *debarred* or *suspended*.
- (b) This **Division** sets forth the grounds for *debarment* and *suspension*.
- (c) This **Division** provides that a list of *debarred* and *suspended persons* is to be created and maintained by the City Manager. It further spells out the consequences of a *person's debarment* and *suspension*.

§ 22.0804 ***Debarment Hearing Board* to be Established**

Upon receipt of a recommendation for *debarment* from a City *department*, the City Manager shall appoint a fair and impartial board called a *Debarment Hearing Board* to hear and determine whether a *person* should be *debarred*. The City Manager shall appoint three individuals to serve on each *Debarment Hearing Board*. These individuals shall be unbiased and may be City employees, but shall not be employees who have participated in the decision to recommend the *debarment* nor are subject to the authority, direction or discretion of employees or have participated in the decision to recommend *debarment*. The *Debarment Hearing Board* shall follow procedures set forth in this Division and shall make decisions based on evidence taken at a hearing. The *Debarment Hearing Board's* scope of authority and duties are set forth in this Division.

§22.0805 *Suspension* Once City Manager Decides to Recommend *Debarment*

- (a) Once a determination has been made by the City Manager that *adequate evidence* exists supporting *debarment*, the City Manager may *suspend* the *person* pending a *debarment* decision where the City Manager finds that doing so is in the public interest.
- (b) The City Manager shall notify the *person* of the *suspension* in accordance with Section **22.0806**, pending the *Debarment Hearing Board* or City Council's ruling on the matter.
- (c) Once the City Manager has *suspended* a *person*, the *suspension* shall continue until the *Debarment Hearing Board* makes a final decision on the proposed *debarment* or until there has been a final ruling by the City Council following an appeal of a permanent *debarment* decision, if any appeal is filed.

§22.0806 Notices

- (a) Whenever a notice is required to be delivered under this Division, the notice shall be delivered by any of the following methods. Service is effective as described herein unless different provisions are specifically stated to apply:
- (1) Personal delivery, service shall be deemed effective on the date of delivery;
or,
 - (2) Certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice may be sent by regular mail. If a notice that is sent by certified mail is returned unsigned, then delivery shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned. Service shall be deemed effective on the date of mailing; or,
 - (3) Publication. Service shall be deemed effective on the first date of publication.
- (b) Proof of delivery of notice may be made by the certificate of any officer or employee of the City or by declaration under penalty of perjury of any *person* over the age of eighteen years. The proof of delivery shall show that delivery was done in conformity with this Division or other provisions of law applicable to the subject matter concerned.
- (c) The failure of any *person* to receive any notice served in accordance with this Division shall not affect the validity of any *debarment* proceedings.

§22.0807 **Grounds for *Debarment*.**

- (a) A final conviction, including a plea of *nolo contendere*, or final unappealable civil judgment of any one or more of the grounds lists in Section 22.0807(a)(1)-(5)

constitutes grounds for permanent *debarment* of the *person* who is subject to, or is the *affiliate* of the *person* who is subject to, the criminal conviction, plea, or civil judgment:

- (1) under any state or federal statute or municipal ordinance for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any offense indicating a lack of business integrity or business honesty which affects the *person's* or its *affiliate's* responsibility; or,
- (2) for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; or,
- (3) for violations of California Government Code sections 84300(c) and 84301 (sections of the California Political Reform Act requiring disclosure of true campaign donor), as they exist on May 15, 1996, or as amended thereafter, which violations occurred on or after May 15, 1996, and which violations occur with respect to a City election; or,
- (4) for fraud or criminal offense in connection with obtaining a public contract; or,
- (5) for a conviction under federal or state antitrust statutes involving public contracts or the submission of offers or bid proposals;

- (b) A Fair Political Practices Commission enforcement order against a *person*, either following a hearing or by stipulation, that makes a finding of a violation of California Government Code sections 84300(c) and 84301, as those sections exist on May 15, 1996, or as amended thereafter, which violations occurred on or after May 15, 1996, and which violations occurred with respect to a City election, constitutes grounds for permanent *debarment* of the *person* who is subject to, or is the *affiliate* of the *person* who is subject to, the enforcement order.
- (c) Any one of the following acts or omissions by a *person* also constitute grounds for permanent *debarment*:
- (1) the *person* committed any offense, taken any action, or failed to take an action, which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the *person* on future *contracts* with the *City*; or,
 - (2) the *person* committed a violation of San Diego Charter section 97; or,
 - (3) the *person* has committed any corrupt practice in bidding for or in any way seeking award of a *contract*, or has committed any corrupt practice in any way relating to a *City contract*; or,
 - (4) the *person* was established to, or operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division;
- (d) Any two or more of the following acts or omissions by a *person* constitute grounds for *debarment* of that *person* for no less than three years and up to and including permanently:

- (1) *the person* submitted two or more claims of computational or other error in a bid to the *City* within a two-year period; or,
- (2) *the person* unsatisfactorily performed a *contract*; or,
- (3) *the person* unjustifiably refused to properly perform or complete *contract* work or warranty performance; or,
- (4) *the person* unjustifiably failed to honor or observe contractual obligations or legal requirements pertaining to the *contract*; or,
- (5) *the person* used substandard materials, or has failed to furnish or install materials in accordance with *contract* requirements, even if the discovery of the defect is subsequent to acceptance of the project and expiration of the warranty thereof, if such defect amounts to intentionally deficient or grossly negligent performance of the *contract* under which the defect occurred; or,
- (6) *the person* committed a violation of the Drug-Free workplace Act of 1988 (41 USC sections 701-707); or,
- (7) *the person willfully failed to cooperate* in the investigation or hearing of the proposed *debarment*; or,
- (8) *the person* performs, or fails to perform, a *contract* in such a way that environmental damage results or a violation of environmental laws or permits is committed; or,
- (9) *the person* has not implemented its Equal Employment Opportunity Plan required by Municipal Code section 22.2705, or practices unlawful

discrimination in employment, and the *person* has not taken corrective action after sufficient notice by the *City*;

(10) the *person* has falsified a statement of gross income submitted under the *City's* Minor Public Works Construction Project program; or,

(11) the *person* has committed an act or omission of so serious or compelling a nature that:

(a) it affects the present responsibility of the *person* to be awarded a *contract* or to participate as a *subcontractor* in a *contract*; or,

(b) it affects the integrity of the procurement process.

(12) the *person* was established to, or operates in a manner designed to evade the application of this Division or to defeat the purpose of this Division;

(e) Any one of the acts or omissions by a *person* listed in Section 22.0807(d) shall constitute grounds for *debarment* of that *person* for no less than three years.

(f) The following acts or omissions by a *person* constitute grounds for *debarment* of that *person* for no less than one year.

(1) the *City* issued the *person* two or more *performance evaluations* from the *City* with a rating of unsatisfactory within a two-year period; or,

(2) the *City* has issued the *person* a *final performance evaluation* with a rating of unsatisfactory.

(3) the *person* has failed to timely submit bond, *contract* documents, insurance documents or any other item required by the *City*, acceptable to the *City* which conform to bid, request for proposal and/or *contract* requirements.

- (4) the *person* who is notified that they are the apparent low bidder on a *contract* has failed to timely submit on two or more occasions complete Equal Opportunity Outreach documentation that is required by Municipal Code section 22.2705 or by policies adopted pursuant to that Division and that is acceptable to the City.

§22.0808 *Debarment* Proceedings before the *Debarment Hearing Board* or City Council

The proceedings shall be as informal as is compatible with the requirements of justice. The *Debarment Hearing Board* and/or City Council need not be bound by the common law or statutory rules of evidence and procedure, but may make inquiries in the matter through all means and in a manner best calculated to make a just factual determination.

§22.0809 *Debarment Hearing Board's* Authority to *Debar*; *Debarment Hearing Board's* Decision Final.

- (a) After notice and hearing held in accordance with the procedures set forth in this Division and as further developed in accordance with policies adopted by the City Council, the *Debarment Hearing Board* shall determine whether a *person* is to be *debarred* and for what length of time. To *debar* a *person*, the *Debarment Hearing Board* must find by a *preponderance of the evidence* that one or more grounds for *debarment* stated in Section 22.0807 exist.
- (b) Except as provided in Section 22.0809(c), a *Debarment Hearing Board's* decision shall be final.
- (c) A decision by a *Debarment Hearing Board* to permanently *debar* a *person* may be appealed to the City Council in accordance with Section 22.0810. The filing of a

request for appeal of the *debarment* decision shall not stay the *Debarment Hearing Board's* decision pending a final decision of the City Council

- (d) The *Debarment Hearing Board* shall deliver notice of the decision to the *person* subject to the *debarment* hearing and to the City Manager.

§22.0810 Appeals to City Council from Certain Decisions of *Debarment Hearing Board*.

- (a) If a *Debarment Hearing Board* has made a determination to *debar* a *person* permanently, that *person* may appeal that decision to the City Council in accordance with procedures set forth in this Division and procedures adopted by the City Council.
- (b) A *person* who has been *debarred* may request an appeal to the City Council no later than five working days from the date of the notice of the *Debarment Hearing Board's* *debarment* decision. The *debarred person's* request for appeal shall set forth in detail the reasons why the *person* disagrees with the decision. The *person* shall file the notice of appeal with the City Clerk, who shall calendar the appeal hearing in front of the City Council after consultation with the City Manager and Mayor.
- (c) The filing of a request for an appeal shall not stay the *Debarment* decision.

§22.0811 Submission of Argument on Appeal.

- (a) At the City Council hearing on the appeal, no new evidence may be presented by the City or any *person*. However, if the *person* who filed the appeal under Section 22.0810 wishes to submit argument supporting the appeal, that *person* shall submit argument in writing with the City Clerk no later than 4:00 p.m. ten calendar days prior to the date on which the hearing is scheduled to be held. Filing shall also

be made on all *persons* subject to the *debarment* and on the *Debarment Hearing Board*.

- (b) Where argument is submitted in accordance with Section 22.0811, the City may submit rebuttal arguments, which shall be filed with the City Clerk no later than 4:00 p.m. five calendar days prior to the date on which the hearing is scheduled to be heard. Filing shall also be made on all *persons* subject to the *debarment*.

§22.0812 Standard of Proof

The standard of proof for the *Debarment Hearing* shall be a *preponderance of the evidence*.

§22.0813 Imputation of Knowledge and Conduct

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individuals associated with a *person* may be imputed to the *person* when the conduct occurred in connection with the individual's performance of duties for, or on behalf of, the *person*, or with the *person's* knowledge, approval, or acquiescence. The *person's* acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a *person* may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the *person* who participated in, knew of, or had reason to know of the *person's* conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one *person* participating in a joint venture or similar arrangement may be imputed to other participating *persons* if the conduct occurred for, on approval of, or acquiescence of these *persons*.

Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§22.0814 Judicial Review

Once a *Debarment Hearing Board* or the City Council has issued a final decision as provided in this Division, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6.

§22.0815 through §22.0819 Reserved for Future Use

§22.0820 Creation of List of *Debarred* and *Suspended Persons*

- (a) The City Manager shall create and maintain a list of *persons* who have been *debarred* or *suspended* in accordance with polices and procedures of this Division.
 - (1) This list shall include the names and addresses of all *persons* who have been *debarred* or *suspended*.
 - (2) For each *debarred* or *suspended person*, the list shall state the date of commencement and expiration of the *debarment* or *suspension*.
- (b) The City Manager shall establish procedures to provide for the effective use of the list to ensure that the *City* does not do business with *persons* who have been *debarred* or *suspended*.

§22.0821 Effect of *Debarment* or *Suspension*.

- (a) *Persons* who have been *debarred* or *suspended* are excluded from conducting business with the *City* on behalf of themselves or as agents or representatives of other *persons* for the duration of the *debarment* or *suspension*.

- (b) *Persons* who have been *debarred* or *suspended* are excluded from submitting bids, directly or indirectly (e.g., through an *affiliate*), submitting responses to requests for proposal or qualifications, receiving *contract* awards, executing *contracts*, participating as a *subcontractor*, employee, agent or representative of another *person* contracting with the *City*, or receiving *contracts* for the period of *debarment* or *suspension*.
- (c) *Persons* who have been *debarred* or *suspended* are excluded from acting in a capacity where the *person* reasonably may be expected to submit offers for or be awarded, a *contract*, or a subcontract under a *contract*; or
- (d) *Persons* who have been *debarred* or *suspended* are excluded from conducting business, or from acting in a capacity where the *person* reasonably may be expected to conduct business, with the *City* as an agent or representative of another *person*.
- (e) The *management* of a corporate or other legal entity that has been *debarred* or *suspended* shall not conduct business or act in a capacity where they reasonably may be expected to conduct business with the *City* under a different corporate name.
- (f) The *City* shall not accept, receive, open a bid, evaluate for award, or include any proposals, quotations, bids, or offers from any *debarred* or *suspended* *person* for the duration of the *debarment* or *suspension*.
- (g) The *City* shall not award or approve the award of a *contract* or execute a *contract* under which a *debarred* or *suspended* *person* is intended to participate as a *subcontractor* or material supplier.

- (h) A *prime contractor* who is awarded a *contract* shall not employ, subcontract with, nor purchase materials or services from a *debarred* or *suspended person*;
- (i) When a *debarred person* sells or otherwise transfers to a *relative* or to any other *person* over whose actions the *debarred person* exercises substantial influence or control, then that *relative* or other *person* is automatically *suspended* or *debarred* or proposed for *debarment* to the same extent as the seller or transferor is *debarred*, *suspended*, or proposed for *debarment*.

§22.0822 Effect of *Debarment* or *Suspension* on an *Affiliate*.

- (a) If the City determines that a *person* is an *affiliate* of a *person* that is *debarred*, *suspended* or proposed for *debarment*, the *affiliate* is *debarred* or *suspended* to the same extent as the *person* that is *debarred*, *suspended* or proposed for *debarment*.
- (b) The *affiliate* debarred under Section 22.0822(a) may request an appeal of the decision to the *Debarment Hearing Board* by submitting a written request to the City Clerk. An appeal under Section 22.0822(b) shall be governed by the same rules and regulations in accordance with this Division as are applicable to a *Debarment Hearing Board's* procedure to *debar* a *person*.
- (c) The filing of a request for review under Section 22.0822(b) shall not stay the decision to *debar* the *affiliate*.

§22.0823 Effect of *Debarment* or *Suspension* by Another Governmental Agency.

If a *person* has been *debarred* by another governmental agency, that *person* may be automatically *debarred* by the City Manager permanently, or for three years, or until the other governmental agency's term of *debarment* expires, in the sole discretion of the City Manager.

§22.0824 **Liability for Increased Costs.**

Any *person* who enters a *contract* with the City, either directly as a *prime contractor* or indirectly as a *subcontractor*, during a period of *suspension* or *debarment* imposed upon that *person* by the City under its rules and regulations shall be liable to the City for increased costs incurred as a result of replacing the *debarred* or *suspended person*.

§22.0825 **Effect of *Debarment* or *Suspension* on Existing *Contracts*.**

- (a) Except as otherwise provided in this section and notwithstanding the *debarment*, *suspension*, or proposed *debarment*, of a *person*, the *City* may continue *contracts* or subcontracts it has with that *person* that are in existence at the time the *person* was *debarred*, *suspended*, or proposed for *debarment*.
- (b) If the basis of a *person's debarment* or *suspension* is so serious that the City Manager believes that termination of *contracts* or subcontracts the *City* has with that *person* that are in existence at the time the *person* is *debarred* or *suspended* is in the best interests of the *City*, the City Manager may take actions necessary to terminate those *contracts* or subcontracts only after consultation with the City Attorney to ensure the propriety and legality of the proposed action.
- (c) The *City* may continue to place orders against existing *contracts*, including delivery *contracts*, held by a *debarred* or *suspended person*, unless the *contract* has been terminated.
- (d) The *City* shall not renew or otherwise extend the duration of current *contracts*, or consent to subcontracts, with *debarred* or *suspended persons*, unless the *City* Manager states in writing the compelling reasons for renewal or extension.

