REGULATION GOVERNING THE AWARD

AND REJECTION OF BIDS/OFFERS

AND DEBARMENT OF CONTRACTORS FOR

PUBLIC WORKS PROJECTS

OF THE CITY OF ALBUQUERQUE

Effective JULY 25, 2008

REGULATION GOVERNING THE AWARD AND REJECTION OF BIDS/OFFERS AND DEBARMENT OF CONTRACTORS FOR PUBLIC WORKS PROJECTS OF THE CITY OF ALBUQUERQUE

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REGULATION GOVERNING THE AWARD AND REJECTION OF BIDS/OFFERS AND DEBARMENT OF CONTRACTORS FOR PUBLIC WORKS PROJECTS OF THE CITY OF ALBUQUERQUE

PART I: AWARD AND REJECTION OF BIDS/OFFERS

1.0 AUTHORITY

1.1 This Regulation is promulgated pursuant to Section 5-5-11.B ROA 1994, hereafter the "Public Purchases Ordinance".

1.2 In the event that this Regulation is in conflict with the provisions of the Public Purchases Ordinance, the provisions of the Public Purchases Ordinance shall prevail.

2.0 PURPOSE AND POLICY

2.1 The purpose of this Regulation is to establish procedures for solicitation and consideration of bids or requests for proposals, the award or rejection of bids or proposals, determining the responsibility of bidders or offerors, and to protect substantial interest of the City of Albuquerque and the integrity of the City's Public Works construction contracting process.

2.2 The policy of this Regulation is to establish procedures that will lead to award of bid to the responsible bidder submitting the lowest total cost bid after calculation of applicable preferences provided by this Regulation or the responsible offeror whose proposal is in the best interest of the City of Albuquerque.

3.0 APPLICABILITY

Award and rejection of bids and proposals for Public Works Projects solicited pursuant to this Regulation shall be governed exclusively by Part I of this Regulation. Part II of this Regulation shall not be controlling on any matter regulated under the provisions of Part I of this Regulation. References to "this Regulation" throughout Part I shall mean only those Sections contained in Part I of this Regulation.

This Regulation applies to all construction contractors obtaining or attempting to obtain contracts relating to all Public Works projects, except as follows:

3.1 Public Works Projects not exceeding $50,000.00 (FIFTY THOUSAND DOLLARS) procured through the Central Purchasing Office pursuant to the Public Purchases Ordinances shall not be subject to this Regulation;

3.2 Emergency procurement, as defined in Section 15.0 of this Regulation, shall not be subject to the requirement of competitive sealed bidding.

Part I of this Regulation applies only to Public Works Projects which have the first Public Advertisement for Bids published thirty (30) days after the effective date of this Regulation.

3.3 Any work for a Public Works Project performed by a contractor which has a current contract or price agreement pursuant to Section 13-1-129 NMSA 1978, with the state purchasing agent or a central purchasing office for construction meeting the same standards and specifications as the construction to be procured.

3.4 Any work for a Public Works Project performed by a contractor that is awarded a contract pursuant to the terms of any intergovernmental agreement to which the City of Albuquerque is a party whenever such agreement provides a governmental agency that is a party to the agreement, including the City of Albuquerque, may award a construction contract.

3.5 Determination on Use of RFP's: The Deputy Director will determine the appropriate procurement methodology, including whether competitive sealed proposals or bids should be used, for procurements managed by the CIP Division.

3.5.1 Purchases of goods, services or construction may be made by competitive sealed proposals if the use of competitive sealed bids is either not practicable or advantageous to the City.

3.5.2 The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" denotes a judgmental assessment of what is in the City's best interest. The use of competitive sealed bids may be practicable but not necessarily advantageous.

3.5.3 The key element in determining an advantage to the City is the need for flexibility in selecting a Contractor. The competitive sealed proposal method differs from the competitive sealed bid method in significant ways, including but not limited to:

3.5.3.1 It permits interviews with competing offerors;

3.5.3.2 It allows comparative subjective evaluations to be made when selecting among acceptable proposals for award of a contract; and

3.5.3.3 It allows more extensive negotiations with the recommended offeror prior to final award.

3.5.4 Factors which may, among others, be considered in the determination are:

3.5.4.1 Specifications cannot be adequately prepared that permit the award on the basis of the lowest evaluated bid price;

3.5.4.2 The use of proposals would promote innovation, the use of state of the art technology or overall efficiencies to the benefit of the City;

3.5.4.3 The use of proposals would allow project schedule compression and concomitant savings; and

3.5.4.4 Evaluation of responsive offers is dependent on levels of performance, expertise, financial capability, approach to project, or other criteria and should not be based solely on lowest price alone.

4.0 DEFINITIONS

4.1 **CAO** means Chief Administrative Officer, Office of the Mayor, City of Albuquerque, or his designee.

4.2 **Consultant** means the architect, engineer, landscape architect, or other professional person or firm who is responsible for the design of the Public Works Project or the construction inspection thereof or both. The Consultant may be either a City employee or a licensed professional person or firm with whom the City has entered into an agreement to provide such services.

4.3 **Deputy Director** means the Deputy Director of the Department of Municipal Development, Engineering Group, or his designee or successor.

4.4 **Offeror** means a business that submits a response to a competitive solicitation.

4.5 **Procurement Documents** means all documents, including those attached or incorporated by reference, utilized for soliciting bids or proposals for Public Works Projects.

4.6 **Public Works Project** means the constructing, altering, repairing, improving, or demolishing of any public structure, building, pipeline, drainage facility, waste water treatment facility, water systems facility, or other public improvement of any kind to any public real property including airports, parks and streets, except the routine repair or maintenance thereof.

4.7 **Responsible Bidder** means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that the bidder's financial resources, appropriate licenses, machinery, plant and other equipment, personnel, service reputation and experience are adequate to satisfactorily construct the Public Works project described in the Procurement Documents. A Contractor who is

debared under the procedures of Part II of this Regulation at the time he submits his Bid shall not be a Responsible Bidder.

4.8 **Responsible Offeror** means a business which has the capability in all respects to perform fully the contract requirements set out in the competitive solicitation, and the integrity and reliability which will assure good faith performance, and who has not violated or attempted to violate any provision of law or ethical conduct. Factors which may be considered in determining the offeror's capability to perform, among others, are its financial resources, production or service facilities, service reputation, and experience.

4.9 **Responsive Bid** means a bid which conforms in all material respects to the requirements set forth in the Procurement Documents

4.10 **Responsive Offer** means a written offer to furnish goods, services, or construction in conformity with standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.

5.0 ADVERTISING

An advertisement for bids or proposals shall be prepared for each Public Works Project and published at least two (2) times, with a minimum of seven (7) calendar days between each publication, in a local newspaper of general circulation. At a minimum, the advertisement for bids or proposals shall specify the time and place for the receipt, opening and reading of bids or receipt of proposals, the name and description of the Public Works Project, the name and address of the Consultant who designed the project, if applicable, and the location where procurement documents may be obtained.

5.1 In the event there is no pre-bid or pre-proposal conference, the last publication shall be not less than five (5) days prior to the date set for opening bids or receiving proposals.

5.2 In the event there is a pre-bid or pre-proposal conference, the last publication date shall be not less than five (5) days prior to the date set for the pre-bid or pre-proposal conference.

6.0 CANCELLATION OF OPPORTUNITY TO SUBMIT BIDS OR PROPOSALS

The cancellation of any opportunity to submit a bid or proposal prior to bid opening or receipt of proposals for Public Works Projects shall be governed as follows:

6.1 Notice: Procurement Documents shall provide that the opportunity to submit bids or proposals may be cancelled when it is in the best interest of the City.

6.2 Cancellation of Bids or Proposals: An opportunity to submit bids or proposals may be cancelled in whole, or in part, when the CAO makes a written determination that such action is in the City's best interest for reasons including, but not limited to:

6.2.1 The City no longer requires the construction

6.2.2 The City can no longer reasonably expect to fund the Public Works Project

6.2.3 Proposed addenda to the Procurement Documents significantly change the nature or conditions of the Public Works Project.

6.3 When an opportunity to Bid or Propose is cancelled, notice of the cancellation shall be given to all businesses that have obtained a set of Procurement Documents.

6.4 The notice of the cancellation shall identify the Public Works Project.

6.5 Cancellation of consideration of all bids after bid opening or proposals after receipt shall be considered a rejection and be governed pursuant to Section 9.0 of this Regulation.

7.0 RECEIPT, OPENING AND READING OF BIDS; RECEIPT OF PROPOSALS:

7.1 Bids or Proposals shall be received in the office of the City Clerk until the time specified in the advertisement for bids or proposals. Bids or Proposals submitted after the time specified in the advertisement for bids or proposals shall not be considered and should be returned to the bidder or offeror unopened. Delivery to the City Clerk is the sole responsibility of the bidder or offeror.

7.2 Bids shall be opened and read in public by the City Clerk or designee on the day specified for the receipt of bids and at a time as soon as practicable after the time specified in the advertisement for bids for the receipt of bids.

7.3 The person reading the bids shall determine if each bid appears to contain the information specified in the Procurement Documents and otherwise meets the requirements of the Procurement Documents. If any deficiencies or discrepancies in the bid are observed, they shall be announced and noted by the City Clerk or designee prior to reading the amount of the bid. Unsigned bids and bids submitted without bid security shall not be read or considered. Copies of the bids will then be forwarded to the Consultant for further review, as provided in Section 10.0 of this Regulation.

7.4 Proposals shall be evaluated and awarded based on the criteria in this Regulation and the Request for Proposals.

8.0 CORRECTION OR WITHDRAWAL OF BID OR PROPOSAL

8.1 Consideration For Award: Bids shall be unconditionally accepted for consideration of award without alteration or correction, except as authorized in this Regulation. Proposals shall be evaluated and awarded based on the criteria in these Regulations and the Request for Proposals.

8.2 General Principles: Correction or withdrawal of a bid/proposal because of an inadvertent, non-judgmental mistake in the bid/proposal requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid/proposal may not be corrected. Bid/proposal correction or withdrawal by reason of a non-judgmental mistake is permissible, but only to the extent authorized by this Regulation.

8.3 Confirmation of Bid: When the CAO knows or has reason to conclude that a mistake has been made in the low bid, the CAO should request the low bidder to confirm the bid. Situations in which confirmation should be requested include obvious errors regarding the amount of the bid which are apparent on the face of a bid, or a bid amount unreasonably lower than the other bids submitted. If a bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions in paragraph 8.4, below, are met.

8.4 Mistakes Discovered After Opening or Receipt: Mistakes in bids/proposals discovered after the time and date set for bid opening or receipt of proposals, including mistakes discovered by the contractor/offeror submitting the bid/proposal, may be corrected prior to the notice of award of the contract without forfeiture of bid security in the following circumstances:

8.4.1 Technical irregularities (Informalities): Technical irregularities are matters of form rather than substance, evident from the Procurement Documents, or insignificant mistakes that can be waived or corrected without prejudice to other bids/proposals; that is, when there is no effect on the price, quantity, quality, delivery, or contractual conditions. The CAO may waive such irregularities or allow the low bidder/offeror to correct them if either is in the best interest of the City. An example is the failure of the low bidder/offeror to acknowledge receipt of an addendum to the Procurement Documents, but only if it is clear from the bid/proposal that the low bidder/offeror received the addendum and intended to be bound by its terms, or bidder/offeror agrees to be bound by terms of the addendum, or the addendum involved had no effect on price, quantity, quality, or delivery.

8.4.2 Mistakes Where Intended Correct Bid is Evident: If the mistake and the intended correct bid are clearly evident on the face of a Procurement Document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face

of a Procurement Document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

8.4.3 Mistakes Where Intended Correct Bid is Not Evident: A low bidder alleging a material mistake of fact that makes the bid non-responsive may be permitted to correct the bid or withdraw the bid without forfeiture of bid security if (1) a mistake is clearly evident on the face of the Procurement Document and the intended correct bid is not evident, and (2) the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made, when:

8.4.3.1 The mistake is of such grave consequence that to enforce the contract based upon the bid as submitted would be unconscionable; and

8.4.3.2 The mistake relates to a material and fundamental feature of the contract; and

8.4.3.3 The bidder has acted in good faith, and the mistake has not come about as a result of the violation of a positive legal duty or from gross negligence; and

8.4.3.4 The bidder has been reasonably prompt in giving notice prior to the award of bid for the Public Works Project of the error in the bid; and

8.4.3.5 The City's status has not been changed, or if it has been changed, the City has been put in status quo to the extent that the City suffers no serious hardship or prejudice except the loss of bargain.

8.5 Modification or Withdrawal of Proposals. A proposal may be modified or withdrawn by an offeror prior to the proposal due date by delivering written notice to the location designated in the RFP as the place where proposals are to be received. Following the proposal due date a proposal may be withdrawn by delivering written notice to the CIP Division. An offeror must present proper identification before a proposal may be retrieved.

8.5.1 If an offer is withdrawn in accordance with these Regulations, the security, if any, shall be returned to the offeror.

8.5.2 Following the proposal due date a proposal may be modified:

8.5.2.1 To correct clerical errors which are clear on the face of the proposal and the correction for which is clear on the face of the proposal; and

8.5.2.2 To submit a modified proposal in response to an addendum.

8.6 Late Proposals and Modifications:

8.6.1 Any proposal or modification of a proposal received after the time and date for opening of proposals at the place designated for opening shall be considered late. Late proposals and modifications will not be accepted for consideration and, if possible, will be returned unopened to the offeror.

8.6.2 All documents relating to late proposals, modifications, or withdrawals shall be made a part of the appropriate procurement file. If a late proposal or modification is returned unopened, the return shall be noted on the log of proposals received and made a part of the file.

8.7 Written Determination: When a bid/proposal is corrected or withdrawn or a correction or withdrawal is denied, the CAO shall prepare a written determination showing that the relief was granted or denied in accordance with this Regulation.

8.8 Applicability: No provision of Section 8.0 of this Regulation shall be a basis for a change of the construction contract price after execution of construction contract.

9.0 REJECTION OF BIDS OR PROPOSALS

9.1 The City reserves the right to reject any and all bids or proposals and waive any and all informalities and technical irregularities in bids or proposals received and the right to disregard all non-conforming or conditional bids or counter-proposals. If a bid or proposal is rejected, written notice of the rejection, together with the reasons therefor, shall be given to the bidder or offeror. Bidders or offerors whose bids or offers are rejected shall not be entitled to recover damages of any nature against the City for any rejection of a bid or offer for cause or convenience.

9.2 Rejection of bid(s) or offer(s), after opening or receipt but prior to award: individual bids or offers may be rejected or all bids or offers received may be rejected when the CAO makes a written determination that such action is in the City's best interests for the City's convenience or for cause, including, but not limited to:

9.2.1 All the bids or offers are non-responsive

9.2.2 The construction being procured is no longer required

9.2.3 Ambiguous or otherwise inadequate specifications were part of the Procurement Documents.

9.2.4 The solicitation did not provide for consideration of all factors of significance to the City.

9.2.5 Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds.

9.2.6 All otherwise acceptable bids or offers are at clearly unreasonable prices.

9.2.7 There is reason to believe that the bids or offers may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

9.2.8 The business that submitted the bid or offer is not qualified, as determined under the provisions of this Regulation.

9.2.9 The construction offered in the bid or offer is unacceptable by reason of its failure to meet the permissible alternates, or other acceptability criteria set forth in the Procurement Documents.

9.3 Limitation of Bid: The Procurement Documents shall provide that the City has the right to disregard all nonconforming bids, offers or any counter-proposal.

10.0 CONSIDERATION OF BIDS/ALTERNATES; EVALUATION OF PROPOSALS

10.1 After the opening and reading of the bids, the Consultant shall review the bids for arithmetic accuracy, tabulate all bids (including costs of all alternates the City wishes to accept), review the bids for conformance and compliance with the requirements of the Procurement Documents, and make a tentative determination of the qualifications of the apparent low bidder to perform the work.

10.2 Alternates

10.2.1 The City shall include the ranking of Alternates in the Procurement Documents. Such ranking will typically be found in the Bid form but other formats are permissible. The term "Alternates" shall include additive, deductive and/or additive-deductive bid alternates.

10.2.2 When no alternates are to be accepted by the City, the award of bid shall be made to the Responsible Bidder submitting the lowest base bid, if the base bid is within the funds available for construction, and if the City determines that it will proceed with an award of the bid.

10.2.3 When Alternates are to be accepted by the City, the review of the bids by the Consultant, pursuant to Section 10.1 of this Regulation, shall include acceptance of Alternates in the order in which they are listed in the Procurement Documents. Award of bid shall be made to the responsible bidder submitting the low combined bid which shall be the base bid and all accepted Alternates within the funds available for construction and if the City determines it will proceed with an award of bid.

10.2.4 Determination of the amount of funds available for construction shall be made by the City for all bid awards, whether Alternates are included or omitted, and such determination shall be final.

10.3 The Consultant shall submit a written recommendation of award of bid to the Deputy Director, together with the complete bid tabulation, including any deficiencies or discrepancies noted.

10.4 Evaluation of Proposals

10.4.1 The Mayor shall name an ad hoc advisory committee.

10.4.1.1 A minimum of one member will be from the User department;

10.4.1.2 The committee may include both City and non-City members;

10.4.1.3 The CIP Division will be represented by a non-voting member designated by the Deputy Director to manage the procurement.

10.4.1.4 The committee may include non-voting advisors to assist with the evaluation.

10.4.1.5 All committee members shall sign a non-disclosure statement.

10.4.2 The evaluation shall be based on the evaluation factors and the relative weights set forth in the RFP. Numerical rating systems will be used unless waived by the Deputy Director. A written determination by the Deputy Director documenting the rationale for the waiver will become a part of the procurement file.

10.4.3 Interviews may be conducted with all offerors or only the short-listed offerors.

10.4.4 Before conducting interviews, a "short list" may be generated by conducting a preliminary scoring of proposals in accordance with the evaluation criteria set out in the RFP. The preliminary scoring may be based solely on the technical proposal. All responsive and responsible offerors who submitted proposals are eligible for the short list. Those responsive and responsible offerors who are selected for the short list are the "short-listed offerors".

10.4.5 Interviews are held to:

10.4.5.1 Promote understanding of the City's requirements and short-listed offerors' proposals; and

10.4.5.2 Facilitate arriving at a contract that will be most advantageous to the City, taking into consideration the evaluation factors set forth in the RFP.

10.4.6 Short-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for interviews. The ad hoc advisory committee will establish the procedures and schedules for conducting interviews which shall be managed by the CIP Division representative. Any changes or clarifications required to the RFP as a result of the interviews will be transmitted to the CIP Division for development and distribution of an addendum to all offerors on the short-list. Any clarification requested by an offeror should be submitted in writing. Proposal changes shall not be permitted during interviews.

10.4.7 The Deputy Director may permit the submittal of best and final offers from all offerors, or the short-listed offerors if short-listing has occurred, during evaluation of offers. Offerors shall be informed that if they do not submit a notice of withdrawal or a best and final offer, their immediately previous offer will be construed as their best and final offer.

11.0 QUALIFICATIONS OF APPARENT LOW BIDDER OR OFFEROR

11.1 The Deputy Director may make such investigation of the qualifications of the apparent low bidder or any offeror he deems necessary, provided, however, that when qualification requirements exist, such requirements shall be referenced in the Procurement Documents.

11.2 In the event the Procurement Documents require qualification information, such requirement may be limited to those bidders or offerors who have not been awarded a contract by the City for similar construction within the past three (3) years. All other bidders or offerors need not submit qualification information unless the Procurement Documents require such information of all bidders or offerors.

11.3 When qualification information is required, matters investigated may be developed on a project-by-project basis. Information that may be required includes, but is not limited to:

11.3.1 A financial statement

11.3.2 A letter of credit from bidder's or offeror's bank showing credit available and bidder's or offeror's borrowing experience over the past five (5) years.

11.3.3 The name of bidder's or offeror's surety company and broker and number of times, if any, surety had to complete any of bidder's or offeror's work during the past three (3) years.

11.3.4 The names of other surety companies used in the past five (5) years.

11.3.5 The names of bidder's or offeror's insurance companies and their brokers.

11.3.6 A statement of insurance losses incurred during the past five (5) years and of workmen's accidental deaths during that period.

11.3.7 The company name, New Mexico License number(s) and classification and permanent main office address.

11.3.8 Background information on the organization of the company, when organized, if a corporation, where incorporated, and the number of years engaged in business under the present firm name or prior company names.

11.3.9 A statement as to whether the bidder or offeror is a parent or subsidiary of any other company, if so, the name of and relationship with all such companies.

11.3.10 A schedule of contracts on hand showing the amount of the contract, the approximate completion percentage to date and anticipated date of completion.

11.3.11 The general character of work performed by the bidder or offeror.

11.3.12 Whether the bidder or offeror has ever failed to complete any work awarded to it and, if so, where and why.

11.3.13 Whether the bidder or offeror has ever defaulted on a contract and, if so, where and why.

11.3.14 A list of more important projects recently completed by the bidder or offeror stating the approximate cost of each and the month and year completed.

11.3.15 A list of the bidder's or offeror's major equipment available for the project.

11.3.16 A description of the bidder's or offeror's organization, including the names and titles of supervisory personnel expected to be utilized on the project.

11.3.17 An estimate of the manpower expected to be employed on the project by job classification and duration.

11.3.18 A schedule for execution of the project.

11.3.19 A description of the bidder's or offeror's experience in work similar to the project with special attention to urban traffic handling.

11.3.20 A list of all subcontractors, subconsultants and principal material and equipment suppliers expected to be used on the project.

11.3.21 A summary of the background and experience of principal members of the bidder's or offeror's organization including the officers and supervisors.

11.3.22 A statement of specific measures that the bidder or offeror will utilize to ensure that the quality of materials utilized on the project are in compliance with the plans and specifications.

11.3.23 A statement of specific measures that the bidder or offeror will utilize to ensure that the workmanship on the project will conform to the requirements of the plans and specifications.

12.0 AWARD OR REJECTION OF BID/OFFER

12.1 The Deputy Director may recommend to the CAO that the bid/offer of any bidder/offeror is not a responsible or qualified bid/offer for any of the following:

12.1.1 Failure to submit a responsive bid/offer.

12.1.2 Failure to provide any information requested by the Deputy Director to determine the bidder's/offeror's qualifications to perform the work.

12.1.3 Lack of competency, financial ability or adequate machinery, plant or other equipment to perform the work.

12.1.4 Uncompleted work, for which the bidder/offeror is responsible, which in the judgment of the Deputy Director might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

12.2 In the event that the CAO determines that any bidder or offeror is not a responsible or qualified bidder or offeror, the bidder or offeror shall be given prompt written notice of the determination and rejection of the bid/offer. The notice shall be mailed by certified mail, postage prepaid, to the bidder/offeror or otherwise given to the bidder/offeror and contain the Deputy Director's statement as to the basis of the determination. No administrative appeal shall exist for the bidder/offeror who submitted the rejected bid/offer.

12.3 After review of the Consultant's recommendation, taking into consideration the User Department's requirements and recommendations, the availability of funds, any other relevant considerations, and making such investigation as deemed necessary, the Deputy Director shall make a recommendation to the CAO as to the award or the rejection of the bid/offer.

12.4 In the event that two or more of the bids submitted are identical in price and are the low bid, the CAO may:

12.4.1 If, after application of the Resident Contractor Preference the identical low bids are submitted by a resident business and a non-resident business, award to the Resident Contractor:

12.4.2 Award by lottery to one of the identical low bidders.

12.5 Except for improvement districts, a conditional award of the bid may be made if the approval or concurrence of a non-City party or agency or an appropriation of funds by the City Council is required prior to the award of the bid and the entering into a contract.

12.6 The final decision as to the rejection, award or conditional award of a bid/offer shall be made by the CAO, except for improvement districts and those Public Works Projects where the contract amount is $50,000.00 or less. The City Council shall make the decision as to improvement districts and the Director of the Department of Municipal Development shall make the decision as to Public Works Projects where the contract amount is $50,000.00 or less.

12.7 If the bid/offer of the apparent low bidder/offeror is rejected for any reason, and the CAO determines to proceed to make an award, such award shall go to the next lowest responsible and qualified bidder, or the offeror whose offer is in the best interest of the City.

13.0 CONTRACT EXECUTION

13.1 The bidder/offeror to whom the award is made shall be given a notice of award specifying the time provided in the Procurement Documents for the bidder/offeror to execute the contract and provide the required bonds and insurance.

13.2 Unless another governmental agency, which is providing funding for the Public Works project, requires otherwise, the successful bidder/offeror shall furnish a performance bond and a labor and material payment bond each in the amount of the contract and shall provide proof of insurance coverage as required by State Law and the Procurement Documents, including liability insurance in amounts not less than those amounts specified in the Tort Claims Act (Section 41-4-1 through 41-4-27 NMSA 1978)

13.3 The Procurement Documents shall specify the number of copies of the contract to be executed by the successful bidder/offeror; provided, however, that at a minimum, an original and four (4) copies shall be executed. The City Clerk shall receive and retain the original and the copies shall be provided to the successful bidder/offeror, bidder's/offeror's surety, consultant and the user department that will operate the facility.

14.0 RETENTION OF BIDS/OFFERS

14.1 All bids/offers, exclusive of bid security, except those bids/offers submitted after the time specified in the advertisement for bids for the receipt of bids/offers, shall be retained in the care and custody of the City Clerk for a period of at least seven (7) years after the bid opening/receipt of proposals, during which time the bids/offers shall be subject to inspection by the public.

15.0 EMERGENCY PROCUREMENT

15.1 Upon a determination by the CAO that there exists a threat to the public health, welfare, safety or property which requires the procurement of a Public Works Project under emergency conditions, the procurement of such project may be accomplished without complying with the formal procedures specified in these regulations; provided, however, that such emergency procurement shall be made with such competition as is practicable under the circumstances.

15.2 An emergency condition is a situation which creates a threat to the public health, welfare, safety or property such as may arise by reason of floods, epidemics, riots, equipment failures, infrastructure failures or similar events. The existence of the emergency condition must also result in an immediate and serious need for the procurement of a Public Works Project which cannot be met through normal procurement methods.

15.3 A complete record of each emergency procurement shall be maintained as a public record for at least six (6) years following the completion of the Public Works Project. At a minimum, such record shall contain a full description of the conditions necessitating the emergency procurement, the Public Works project, the amount and duration of the project, and the name and address of the contractor.

15.4 Each such emergency procurement shall be reported to the City Council by the CAO quarterly, giving a full description of the emergency condition, the Public Works Project, the contract amount, and the name and address of the contractor.

16.0 FINALITY OF AWARD

The procedures leading to award, rejection, or conditional award of the bid/offer, as established by these Regulations, shall not be stayed nor shall the award itself be halted except as required by statute or ordered by a Court of competent jurisdiction. The determination of award, rejection, or conditional award of the bid/offer by the CAO shall otherwise be final.

17.0 THE PRE-BID/PRE-PROPOSAL CONFERENCE

17.1 When held, pre-bid/pre-proposal conferences may be conducted to explain the project. They shall be announced by the advertisement for bid/request for proposal or

by addenda. The conference should be held long enough after the advertisement has been issued to allow bidders/offerors to become familiar with the Procurement Documents, but sufficiently before opening/receipt to allow consideration of the conference results in preparing their bids/offers. Nothing stated at the pre-bid/pre-proposal conference shall change the Procurement Documents unless a change is made by addenda as provided in these Regulations. Notice of this fact should be contained in the Procurement Documents, if a pre-bid/pre-proposal conference was required therein, or in the notice of pre-bid/pre-proposal conference.

17.2 Attendance at the pre-bid/pre-proposal conference shall be mandatory only when so required in the Advertisement for Bids, Request for Proposal, or by Addenda. When attendance is mandatory, failure to attend shall disqualify the prospective Bidder/Offeror from submitting his Bid/Offer. Whenever attendance is not mandatory, prospective Bidders/Offerors are encouraged to attend. The failure of a bidder/offeror to attend a non-mandatory pre-bid/pre-proposal conference shall mean that the Procurement Documents are clear, unambiguous, and acceptable to all non-participants, with respect to all who submit Bids/Offers.

18.0 ADDENDA TO PROCUREMENT DOCUMENTS

18.1 Notice: Addenda shall be in writing and delivered in person, by facsimile or electronically to all prospective bidders/offerors who have obtained a set of Procurement Documents.

18.2 Form: Addenda to Procurement Documents shall be identified as such and shall require that the bidder/offeror acknowledge receipt of all addenda issued. The Addenda shall refer to the portions of the Procurement Document it amends.

18.2.1 All Addenda shall identify, through official letterhead or other designation, the consultant issuing the Addenda. All Addenda shall include a signature of an appropriate official of the issuing consultant firm.

18.2.2 All Addenda shall be signed by the Deputy Director.

18.3 Timeliness: Addenda shall be delivered within a reasonable time, but not less than two working days prior to bid opening/receipt of proposals, to allow prospective bidders/offerors to consider them in preparing their bids/offers. If the time and date set for receipt of bids/proposals will not permit such preparation, such time and date shall be extended by addenda, or, if necessary, by telegram, telephone, facsimile or electronically and confirmed in the addenda.

18.4 Use of Addenda: Addenda should be used to:

18.4.1 Make any changes in the Procurement Documents, such as changes or clarifications in quantity, purchase or bid item descriptions, delivery

schedules, and opening dates, and change in the time or place for receipt, opening or reading of bids or proposals.

18.4.2 Correct defects or ambiguities; or

18.4.3 Furnish to other bidders/offerors information given to one bidder/offeror if such information will assist the other bidders/offerors in submitting bids/offers or if the lack of such information would prejudice the other bidders/offerors.

19.0 BID SECURITY

19.1 All Procurement Documents shall give notice that:

Each bid/offer shall be accompanied by a bid security in the amount of five percent (5%) of the bid/offer amount, pledging that the bidder/offeror will enter into a contract with the City on the terms stated in his/her bid/offer, and will furnish bonds covering the faithful performance of the contract and payment of all obligations arising thereunder. Should the bidder/offeror refuse to enter into such contract or fail to furnish such bonds, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as penalty.

The City will have the right to retain the bid security of the three apparent lowest bidders or all offerors until either (a) the construction contract has been executed and labor and material and performance bonds have been furnished; (b) the time specified in the Procurement Documents has elapsed so that bids/proposals may be withdrawn; or (c) all bids/offers have been rejected, whichever first occurs.

20.0 RESIDENT PREFERENCE

20.1 A "resident contractor" is any person, firm, corporation or other legal entity if, at the time bids are advertised and opened, it maintains its principal place of business in New Mexico (hereinafter "the State"), has all required licenses and has a Resident Preference number issued by the State Purchasing Agent pursuant to Section 13-4-2, NMSA 1978.

20.2 When bids are received only from non-resident contractors and resident contractors and the lowest responsible bid is from a non-resident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the bid price of the otherwise low non-resident contractor if the bid price of the resident contractor is made lower than the bid price of the non-resident contractor when multiplied by a factor of ninety-five one-hundredths (95/100).

20.3 No contractor shall be treated as a resident contractor in awarding of Public Works contracts by the City of Albuquerque unless the Contractor has been certified by the

State Purchasing Agent (Director of the Purchasing Division, General Services Department) of the State of New Mexico, or his successor, as a resident contractor and has been issued a certification number that is valid at the time the Public Works Project is advertised for bid. The certification number shall be clearly identified in the bid. The Contractor shall be denied resident contractor status if he does not have the certification number issued to him prior to submitting his bid and he fails to submit the certification number at the time of submitting his bid.

20.4 The provisions of Section 20.0 of this Regulation shall not apply to Federal Aid Construction projects or when the expenditure of Federal funds designated for a specific contract is involved.

20.5 Contracts in Violation Declared Void: All contracts executed in violation of Section 20.0 of this Regulation shall be void and of no effect.

20.6 Qualification-based selections may include residency status as a factor in evaluation.

21.0 LOCAL PARTICIPATION PREFERENCE

21.1 Scope of Preference: All Public Works Projects contracts of City of Albuquerque that have a total construction cost, as estimated by the Consultant, to exceed ten million dollars ($10,000,000.00) may be subject to the Local Participation Preference Requirement, as determined by the Deputy Director.

21.2 Requirements of Local Participation Preference: The requirement for the local participation preference shall be prepared by the Consultant with concurrence of City, who shall set forth a percentage of the base bid amount that a bidder must demonstrate to the City it shall provide from New Mexico resident subcontractors and/or suppliers of goods and services, hereafter "Residents". For purposes of this Section, the resident status of such Residents shall be established in the same manner required for a resident contractor, pursuant to Section 20.0 of this Regulation. The percentage of the base bid amount shall be based on the Consultant's determination of the amount of expenditures for the construction that can reasonably be expected to be from available Residents.

21.3 Procurement Document Requirements: The Procurement Documents for each construction project shall include the requirements a bidder/offeror must meet in order to be eligible for the local participation preference.

21.4 Demonstration of Ability to Comply: The Procurement Documents shall require the documentation the bidder/offeror shall submit with his bid/proposal to demonstrate his ability to meet the percentage requirements with Residents. Such expenditures with Residents may include work by the Contractor himself if he qualifies as a resident contractor pursuant to Section 20.0 of this Regulation.

21.5 Effect of Preference: A bidder/offeror that fails to document, to the satisfaction of the City, its ability to meet the percentage requirement with Residents, shall not have its bid/proposal considered, unless all bidders/offerors fail to qualify for the local participation preference, in which event, should the CAO choose to proceed to award the contract, all bids/proposals otherwise responsive shall be considered in accordance with the requirements of this Regulation.

21.6 Resident Contractor Preference and the Local Participation Requirement: Both resident and non-resident contractors shall meet the local participation requirement in order to qualify for award.

21.7 Substitution of Resident Subcontractors or Suppliers: The bidder/offeror shall be allowed to substitute other Residents for those identified in the Procurement Documents as long as the percentage of expenditures of said local participation meets the quantity of local participation demonstrated in his bid/offer and the substitution does not violate the Subcontractors Fair Practices Act.

21.8 Failure to Maintain Local Participation Percentage: The contract between the City and the Contractor shall provide that:

Contractor shall maintain no less than the percentage of local participation demonstrated in his bid/offer. In applying for payment throughout the performance of the contract, contractor shall demonstrate participation in the project by Residents, including authorized substitutes that are identified in the Procurement Documents, showing quantity of expenditures with each such Resident. If the contractor fails to maintain the quantity of local participation, as contracted, the City shall withhold payment from Contractor in the amount of ten percent (10%) of the quantity of local participation not supplied up to that time in the construction schedule. Such monies shall be held by City until the Contractor restores the deficiency in the quantity of local participation. If the deficiency is not restored at the time of final payment of the project, the contract amount shall be reduced in an amount equal to the percentage of the deficiency that was not performed.

21.9 Federal Aid Projects Exempt: The provisions of Section 21.0 of this Regulation shall not apply to Federal Aid construction projects or when the expenditure of Federal funds designated for a specific contract is involved

22.0 FEDERAL GOVERNMENT REQUIREMENTS

Whenever a Public Works project receives Federal or State aid or State or Federal funds are designated for such project and receipt or use of such funds is conditioned upon the City meeting certain requirements in its Public Works Project construction contract, then this Regulation shall govern to the extent it is not in conflict with said State or Federal requirements. In addition, this Regulation shall be interpreted to compliment, explain, and embellish any such State or Federal requirements.

23.0 GROSS RECEIPTS TAX

Instructions to Bidders shall require that the City of Albuquerque shall not be responsible for payment of taxes to any taxing authority of any governmental unit for taxes which the Contractor is responsible and that the bidder/offeror shall include all applicable taxes, except New Mexico Gross Receipts Tax, in all bid amounts, including Base Bid, Unit Price and Alternate Bid amounts. The Base bid shall contain a separate entry for New Mexico Gross Receipts Tax immediately preceding the Base Bid. All Alternates shall contain a separate entry for New Mexico Gross Receipts Tax immediately preceding the total amount of the Alternate. No Unit Prices or Lump Sum Amounts contained within the bid shall include New Mexico Gross Receipts Tax.

24.0 CONTRACTS OF OTHER GOVERNMENTAL AGENCIES

The City of Albuquerque is allowed to contract and/or pay for work performed on Public Works Projects without the use of competitive sealed bids with a contractor which has a current contract or price agreement entered into pursuant to Section 13-1-129 NMSA 1978, with the State (of New Mexico) Purchasing Agent or a central purchasing office for construction, provided that such contract or price agreement meets the same standards and specifications as the construction to be procured, the quantity purchased does not exceed the quantity which may be purchased under the applicable existing contract or price agreement, and the purchase order from the City to such contractor, state purchasing agent, or central purchasing office, as the case may be, adequately identifies the contract relied upon. For purposes of this paragraph "central purchasing office" means those offices as defined in Section 13-1-37, NMSA 1978.

25.0 INTERGOVERNMENTAL AGREEMENTS

Intergovernmental Agreements include, but are not limited to, contracts or agreements between the City of Albuquerque and any agency of the state of New Mexico or any political subdivision of the state of New Mexico or any political subdivision of the United States Government, whether such agreement is entitled cooperative agreement, joint powers agreement or otherwise. The City of Albuquerque is allowed to contract and/or pay for work performed on Public Works Projects where the construction contract is awarded pursuant to the terms of the Intergovernmental Agreement, regardless of which party to such Intergovernmental Agreement actually awards the bid and contracts with the contractor. The requirement that the contractor's contract with another governmental agency be competitively bid/procured to such agency satisfies the City's policy of procuring construction by competitive process. The use of such Agreements is a benefit to the City in that lower prices for the same quality of work is obtained and this assists the City in saving tax dollars. The use of such agreements is limited to specific types of projects and saves time in the contracting process, thereby providing needed services to the public in less time and at less cost.

PART II: THE DEBARMENT OF CONTRACTORS

1.0 PURPOSE

1.1 The purpose of this Regulation is to:

(1) Protect the City from risks associated with awarding contracts to persons having exhibited an inability or unwillingness to perform faithfully contracts awarded to them by the City; and

(2) Protect substantial City interests and the integrity of the City's Public Works Projects construction contracting process by establishing a procedure whereby persons determined to have displayed improper conduct can be debared from doing business with the City.

1.2 It is not the purpose of the regulation to impose punishment upon persons for any acts or omissions.

1.3 There shall be no debarment, or discrimination of any kind against any person because that person has complained or protested, formally or informally, the City's procurement processes or decisions.

2.0 APPLICABILITY

Debarment of contractors for Public Works Projects shall be governed exclusively by Part II of this Regulation. Part I of this Regulation shall not be controlling of any matter regulated under Part II of this Regulation except that violation of requirements imposed upon Contractors under Part I of this Regulation may be a basis for debarment. References to "this Regulation" throughout Part II shall mean only those Sections contained in Part II of this Regulation.

2.1 This regulation is applicable to all Contractors obtaining or attempting to obtain contracts relating to Public Works Projects.

3.0 AUTHORITY

3.1 This regulation is based on Section 5-5-11 ROA 1994, hereafter the "Public Purchases Ordinance".

4.0 POLICY

4.1 The policy of this regulation is to provide reasonable notice and require a fair hearing prior to any debarment of any Contractor from consideration for award of contracts.

5.0 DEFINITIONS

5.1 CAO means the Chief Administrative Officer, Office of the Mayor, City of Albuquerque, or his designee.

5.2 Contractor means any bidder or offeror, including construction contractor, but excluding contractors for Professional Services, who has been awarded or is seeking award of one or more contracts from the City of Albuquerque for Public Works Projects. "Contractor" includes individuals, joint ventures, corporations, and all other business entities.

5.3 Debarment means a final order of the hearing officer that denies a Contractor the right to bid or offer to enter into a contract, other than a contract for Professional Services, with the City. The period of debarment specified in an order of debarment shall be for no more than three (3) years. Any period of time a contractor is ineligible to have his bids considered and accepted by the City shall be counted toward the length of debarment imposed upon the same contractor, if such period of time is based upon the same probable cause and notice of debarment that led to the debarment. A debarment period shall begin on the day the Contractor receives notice of the final order of debarment and shall automatically expire no later than the end of the term specified in the order.

5.4 Deputy Director means the Deputy Director of the Department of Municipal Development, Engineering Group, City of Albuquerque, his designee, or his successor.

5.5 Hearing means an examination (proceeding) of the issue before the hearing officer, whether the issues are of law or fact. When the hearing officer determines that the contested issues are only of law, the examination need not include oral argument of the parties or their counsel or an evidentiary proceeding.

5.6 Participants to a debarment proceeding means the Deputy Director, User Agency (if any) and Contractor.

5.7 Party means the Contractor who is the subject of a determination under Section 6.1 of this regulation.

5.8 Professional Services means the services of architects, archeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, and researchers and persons and businesses providing similar services.

5.9 Public Works Projects means the constructing, altering, repairing, improving, or demolishing of any public structure, building, pipeline, drainage facility, waste water treatment facility, water systems facility, or other public improvement of any kind to

any public real property including airports, parks and streets, except the routine repair or maintenance thereof.

5.10 Unsatisfactory Performance means a record of poor performance or default on one or more contracts for construction, services, (other than Professional Services) or tangible personal property including, but not limited to, overshipments, undershipments, providing damaged or defective goods, making unauthorized substitutions, billing errors, or service deficiencies. The term includes negligent or intentional failure, without good cause, to perform in accordance with contract provisions or a history of failure to perform, when the poor performance or the failure to perform was not caused by acts beyond the control of the Contractor, as those acts are defined in Section 6.6.2 (d) (2) of this regulation.

5.11 User Agency means any City agency or agencies, including, but not limited to, departments, divisions, commissions and any other subdivision of the City of Albuquerque that:

(1) receive or were designated to receive any benefit, including, but not limited to, supplies, services or construction, pursuant to a contract which is the basis of any proposed debarment action, and

(2) (a) initiated the grievance that led to issuance of a determination of probable cause under Section 6.1 of this Regulation and/or

(b) is determined to have had an integral role in the events which form the basis for the debarment action. Such determination shall be made by the hearing officer. No agency of City government shall be a participant to a debarment unless designated as a participant pursuant to this section. Only a User Agency designated as a participant shall be entitled to notices required by this regulation.

6.0 DEBARMENT PROCEDURES

6.1 Initiation

The Deputy Director, his staff or the User Agency may initiate a request to determine whether probable cause exists for debarment of a Contractor. The requests shall be to the Deputy Director. Should the Deputy Director determine that probable cause exists for debarment, he shall make a written determination stating the basis for such determination. The Deputy Director, User Agency and all employees thereof are not parties to the proceedings, but shall be Participants as set forth in Section 5.6.

6.2 Debarment Procedures

6.2.1 Notice to the Contractor: The Deputy Director or his designee shall cause written notice of the proposed debarment to be sent by certified mail, return

receipt requested, to the Contractor. The notice shall contain the following statements:

(a) this is a Notice of Proposed Debarment, and

(b) the maximum time period of the debarment is three years (also give the recommended maximum time of debarment, if less than three years), and

(c) the reasons for the action, which shall include a summary of the Contractor's conduct to which the action relates and a listing of any contracts related to such conduct, and

(d) sufficient facts exist, unless rebutted, to support the proposed debarment and, that the Deputy Director shall proceed to debar unless Contractor requests, in writing, a hearing within fifteen (15) consecutive calendar days from the day Contractor receives the notice of the proposed action and,

(e) the address where Contractor's request for hearing shall be sent, and the name of the person to whom the request shall be sent, and

(f) the Contractor may be represented throughout the proceeding by an attorney licensed to practice law in the State of New Mexico, and

(g) that the Contractor's Bids on Public Works Projects will not be considered or accepted by the City for a maximum period of sixty (60) days after Contractor's receipt of this notice, and that any such period is for completion of the investigation into the possible debarment.

6.2.2 Failure to Request Hearing on Debarment: If the Contractor fails to deliver a written request for a hearing to the person designated pursuant to Section 6.2.1 of this regulation within the fifteen (15) days required in Section 6.2.1(d), a final determination shall be made by the Deputy Director. Issuance of a debarment order by the Deputy Director shall be filed with the City Clerk and sent to the Contractor by certified mail, return receipt requested. Debarment shall take effect upon filing with the City Clerk.

6.2.3 Hearing Officer Appointment: Where a timely request for hearing is received, the CAO shall appoint a hearing officer to conduct the hearing and render a final decision.

6.2.4 Notice of Hearing: When hearing is requested under Section 6.2.1, the hearing officer shall send written notice to the Contractor of the time and the place of the hearing. The hearing shall be held no sooner than five (5) days after the Contractor receives notice of the hearing. The hearing shall be held within sixty (60) days after Contractor's receipt of the Notice sent pursuant to

Section 6.2.1. of this Regulation unless an extended time is agreed to by Contractor or the hearing is continued by the hearing officer.

6.2.5 Dismissal of Proposed Debarment: Except as provided hereafter, in the event of dismissal of the proposed debarment, the Deputy Director may renew the proposed debarment based, in whole or in part, on the previous probable cause issued pursuant to Section 6.1 of this Regulation, by following the procedures of Section 6.0 of this Regulation.

6.2.5.1 In the event that dismissal occurs prior to the receipt by the City of the Contractor's request for hearing, the dismissal shall be without prejudice to the City and future proposed debarment proceedings may be based upon the same probable cause that existed for the dismissed proposed debarment.

6.2.5.2 In the event that dismissal occurs after the receipt by the City of the Contractor's request for hearing, the dismissal shall be without prejudice to the City unless otherwise requested by the Contractor who is the subject of the proposed debarment. Dismissal in this instance shall be effective only after notice of the dismissal is given to Contractor by certified mail, return receipt requested. The Contractor shall have fifteen (15) days after his receipt of the notice of dismissal to request that the contemplated action be dismissed with prejudice against the City or that the proceeding continue to final resolution. The hearing officer shall make a determination to proceed or dismiss with prejudice. Such determination shall be given to the Deputy Director and the Contractor in writing.

6.2.5.3 Effect of dismissal with prejudice: In the event a debarment proceeding is dismissed with prejudice, the facts which were given in the probable cause and notice of proposed debarment, pursuant to Section 6.2.1 of this Regulation, shall not serve as a basis for probable cause and notice of proposed debarment for any future debarment against the same contractor or who was the subject of the debarment proceeding dismissed with prejudice.

6.2.6 Effect of Decision: When the Deputy Director issues his probable cause determination, pursuant to Section 6.1 of this Regulation, the Contractor's bids on Public Works Projects shall not be accepted or considered by the City for a maximum of sixty (60) days beginning the day the Contractor received the notice of proposed debarment pursuant to Section 6.2.1 of this Regulation. Notice that the Notice of Proposed Debarment has been received by the Contractor shall be filed by the Deputy Director with the City Clerk. Notice of the enlargement or termination of the sixty (60) day period shall be filed with the City Clerk except when followed immediately by debarment. The sixty (60) days may be ended only by: (1) the Deputy Director; (2) a Court of competent jurisdiction; or (3) when the sixty (60) days (or more, if extended

pursuant to Section 6.2.6.1 of this Regulation) has run or when a debarment decision is issued, whichever first occurs.

6.2.6.1 Ineligibility to submit bids: Upon the expiration of the maximum sixty (60) day period in which the Contractor's Bids shall not be accepted pursuant to Sections 6.2.1(g) and 6.2.6 of this Regulation, the Contractor shall be eligible to submit bids to the City of Albuquerque for Public Works projects if no debarment order has been issued by the hearing officer. Provided, however, that when the Contractor agrees or requests that the Hearing be postponed or continued beyond the maximum sixty (60) day period, such period shall be enlarged by the number of days of the postponement or continuation and the Contractor's bids shall not be accepted or considered by the City during the time of the extension.

Failure to begin a hearing by the end of the sixty (60) days (including any time extensions) shall not bar the hearing officer from proceeding with the debarment hearing, nor shall City's failure to hold the debarment hearing during the sixty (60) day period serve as an affirmative defense for Contractor to the debarment proceedings.

6.2.7 Debarment Hearing Procedures:

(a) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. However, in no event shall the hearing officer be required to adhere to formal rules of evidence or procedure. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the Participants may be regarded and used as evidence at the hearing. The Participants may stipulate the testimony that would be given by a witness as if the witness were present. The hearing officer may require evidence in addition to that offered by the Participants.

(b) A hearing shall be recorded but need not be transcribed except at the request and expense of the party or Participant requesting the transcription. In the event of multiple requests for transcriptions, costs of transcription shall be borne equally by those making the requests. In addition to the recording, a record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the Hearing shall be sufficient record.

(c) Opening and closing statements may be made by the Participants at the discretion of the hearing officer.

(d) Witnesses shall testify under oath or affirmation. All witnesses may be cross-examined.

(e) Hearing Requirement: The hearing officer may require a final hearing. The hearing officer may define the scope of such hearing and limit presentation to evidentiary, legal matter and/or summation of the case. Should such hearing be held, it shall be open to the public.

(f) The hearing officer shall make a final determination within thirty (30) days after the record is closed in the examination.

6.3 Authority of the Hearing Officer:

The hearing officer may, among other things:

6.3.1 conduct hearings and hold informal conferences in person or by telephone, to settle, simplify, or establish the issues in a proceedings, or to consider other matters that may aid in the expeditious disposition of the proceeding either by request of the Participants or as required by the hearing officer;

6.3.2 require Participants to state their positions with respect to the various issues in the proceeding, including requiring the submission of briefs on any issues in the proceedings;

6.3.3 require Participants to produce for examination those relevant witnesses and documents under their control and permit or prohibit discovery;

6.3.4 rule on motions and other procedural matters;

6.3.5 regulate the course of the proceedings, procedural schedules, and the conduct of Participants therein;

6.3.6 receive, rule on, exclude, or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial, or repetitious;

6.3.7 fix time limits for submission of written documents.

6.3.8 Impose appropriate sanctions against any Participant or person failing to obey a directive under these procedures, which sanctions may include, but not limited to:

(a) refusing to allow the non-complying Participant to support or oppose designated claims or defenses, or prohibiting that Participant from introducing evidence when such evidence is the subject of or related to the non-compliance;

(b) excluding all testimony of an unresponsive or evasive witness; and

(c) expelling any Participant or person from further participation in the hearing;

6.3.9 take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of official or administrative notice.

6.4 Final Order: The final order of the hearing officer shall recite the evidence relied upon and the reason for the action taken. The final order shall inform the Contractor of any action taken against him and specify any period of debarment imposed. The final order shall also inform the Contractor that in the event he disagrees with the hearing officer's order, the Contractor may file an appeal to the Debarment Appeals Board and that such appeal must be filed within thirty (30) days of the Contractor's receipt of the final order issued by the hearing officer. The final order shall also inform the Contractor that if he wishes to appeal the hearing officer's order, he may elect to appeal directly to the District Court of the Second Judicial District by waiving review of the Debarment Appeals Board pursuant to Section 6.5.4 of this Regulation. In the event the Contractor waives Debarment Appeals Board review or fails to file a Notice of Appeal pursuant to this Regulation, the final order of the hearing officer shall be an exhaustion of the Contractor's administrative remedies. The final order shall be mailed by the hearing officer or his designee to the Contractor by certified mail, return receipt requested. The final order shall be filed with the City Clerk only when the Contractor is debared. A copy of the final order shall be sent to the Deputy Director and those participants the hearing officer deems appropriate.

6.5 Appeals:

6.5.1 The Nature of the Appeal: An appeals board, which shall be the "Debarment Appeals Board", shall hear Contractor appeals from final orders of the hearing officer in any case in which debarment is imposed. The appeal shall be by "Notice of Appeal" which shall specify to the Debarment Appeals Board the nature of the error claimed, including a summary of the proceedings before the hearing officer, indicating the nature of the allegations on which the debarment was based, the ruling of the hearing officer, and a summary of facts relevant to the issues presented to the Debarment Appeals Board. Such summary must be accompanied by references to the record proper, transcript of proceedings or exhibits, showing a finding of proof of each factual allegation contained in the appeal. The Notice of Appeal shall also contain argument. That argument shall contain the contentions of the Contractor on each issue raised on appeal and citations to authorities and parts of the record proper, transcript of proceedings or exhibits relied upon. The Contractor shall be restricted to arguing only those issues specified in the Notice of Appeal. The argument in the Notice of Appeal shall set forth a specific attack on any finding or such finding shall be deemed conclusive. Should the Contractor contend that the hearing officer's final order or any of the findings of fact by the hearing officer are not supported by substantial evidence, such contentions shall be deemed waived unless the Contractor includes in his summary of the proceedings, which is a part of the Notice of Appeal, the substance of the evidence bearing upon this contention and in his argument identify with particularity, the facts not proved which require the relief sought. The Notice

of Appeal shall also contain a conclusion containing a precise statement of the relief sought by the Contractor. The City may file a Reply to the Notice of Appeal, which shall follow the same rules set forth immediately heretofore for the Notice of Appeal, except that such Reply shall not be required to contain a conclusion which states a precise statement of the relief sought. The Reply shall be filed within thirty (30) days of receipt by the Deputy Director of the Contractor's Notice of Appeal. Failure of the City to file the Reply within the thirty-day period shall preclude the Debarment Appeals Board from considering such Reply unless said Board extends the reply time. Failure of the City to submit a reply shall not, by itself, have the effect of entitling Contractor to the relief he seeks in his Notice of Appeal.

6.5.2 Debarment Appeals Board Membership: The Debarment Appeals Board shall consist of five of the members serving on the Construction Industry Advisory Committee (created by City Council Resolution - enactment 188-1978). The method of selection of committee members to serve on each case appealed to the Debarment Appeals Board shall be determined by the committee.

6.5.3 Nature of Appellate Hearing: The Debarment Appeals Board shall review only those issues raised by the Notice of Appeal and the Reply. The Debarment Appeals Board shall have the discretion to allow or disallow oral argument, provided that if oral argument is permitted, both parties shall have the right to make such presentation. The Debarment Appeals Board may impose restrictions on the length of oral argument and require the parties to respond to particular issues. The Debarment Appeals Board shall neither receive nor consider new testimony offered during the appeal, nor may it issue any order intervening in the debarment procedures prior to issuance by the hearing officer of a final order debaring a Contractor.

6.5.4 Exhaustion of Administrative Remedies: Except in those instances where a case is remanded by the Debarment Appeals Board to the hearing officer for further hearing, the final order of the Debarment Appeals Board shall be an exhaustion of the Contractor's administrative remedies. The Contractor may elect to waive all appeals to the Debarment Appeals Board by filing a Petition for Writ of Certiorari in the Second Judicial District Court of Bernalillo County, New Mexico, within thirty days of the Contractor's receipt of the hearing officer's final order debaring the Contractor. The Petition for review shall be limited to the record of the proceedings of the hearing officer.

6.5.5 Debarment to Remain In Effect: Any order of debarment shall remain in effect throughout all appeals of the debarment order unless ordered otherwise by a court of competent jurisdiction.

6.5.6 Decision of the Appeals Board: The Debarment Appeals Board shall base its decision on the record proper, transcripts and exhibits cited on appeal, and any applicable law. The Debarment Appeals Board shall issue a written decision in each case brought before it, and shall affirm the hearing officer, reverse the

debarment and dismiss the debarment, modify the debarment, or remand the matter to the hearing officer for further proceedings. In each instance, the Debarment Appeals Board shall address its final order to the Deputy Director, the Contractor, and the hearing officer, giving the reasons for its decision. Each member of the Debarment Appeals Board shall sign the decision, indicating concurrence or dissention with the opinion. Those dissenting need not write a dissenting opinion.

6.5.7 Cost of Appeal: The Debarment Appeals Board may not assess appellant Contractor any costs related to the appeal.

6.5.8 The exclusive remedy for any party dissatisfied with any final decision of the Debarment Appeals Board shall be the filing of a Petition for Writ of Certiorari to the District Court within thirty days after receipt of notice of the decision of the Debarment Appeals Board. The Petition for review shall be limited to the record of the proceedings of the Debarment Appeals Board.

6.6 Effect of Debarment Decision

6.6.1 A debarment shall take affect upon receipt of the final order by the Contractor. The Contractor shall remain debared until a court of competent jurisdiction, the Debarment Appeals Board, or the hearing office orders otherwise or until the debarment period, as specified in the final order, expires. The hearing officer may order the debarment reduced or ended only as provided in Section 6.9 of this regulation.

6.6.2 Any business entity which must hold a state license as a prerequisite for award of a Public Works Project construction contract shall also be debarred if the holder of such license is a debarred Contractor and the business entity holds no other license.

6.6.3 Debarments shall apply to all Public Works Projects contracts regardless of the subject matter of future contracts.

6.7 Causes for Debarment:

6.7.1 The causes for debarment must occur within three years of a Public Works Project procurement. For purposes of this Section, the procurement is the date the contract with the Contractor is fully executed and Contractor is authorized to proceed with his performance of the contract, in accordance with the terms of the contract. The notice of proposed debarment must be issued within three (3) years after a procurement in order for that procurement to qualify as a ground for debarment.

6.7.2 Those causes include, but are not limited to the following:

(a) conviction of a Contractor for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) conviction of a Contractor under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;

(c) conviction of a Contractor under state or federal antitrust statutes arising out of submission of bids;

(d) violation by a Contractor of contract provisions as set forth in this subsection, of a character which is reasonably regarded to be so serious as to justify suspension or debarment action;

(1) willful failure to perform in accordance with one or more contracts, provided that this failure has occurred within a reasonable time preceding the decision to impose debarment. For purposes of this Section "reasonable time" shall be within three (3) years of the procurement, but may be less than three years if the circumstances support such a determination; or

(2) a history of failure to perform, or of Unsatisfactory Performance of one or more contracts, provided that this failure or Unsatisfactory Performance has occurred within a reasonable time preceding the decision to impose debarment and provided further that failure to perform or Unsatisfactory Performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for debarment. In particular, there shall be no debarment where the Unsatisfactory Performance is found to be caused by:

(a) acts of God, including floods, epidemics, or unusually severe weather;

(b) acts of war;

(c) acts of the government;

(d) acts of another person not under the control of the Contractor, or any tier of Subcontractor;

(e) fires that are not the willful or criminally negligent act of Contractor;

(f) strikes; and

(g) the person could not reasonably act to overcome the delays, Unsatisfactory Performance, or default caused by (a) – (f) above.

(e) any other cause occurring within three years of a procurement determined to be so serious and compelling as to affect responsibility as a Contractor;

(f) debarment or suspension by another local, state or federal government unit: Debarment or suspension of a Contractor may be a basis for establishing probable cause under Sections 6.1 and 6.2 of this Regulation, provided, however, that evidentiary requirements and all provisions of this Regulation shall apply to such proceedings.

(g) A Contractor may be debarred if the hearing officer makes a determination that such Contractor established the business entity (seeking award of a Public Works contract) or operates such business in a manner designed to evade the application or defeat the purpose of this Regulation.

(h) A Contractor may be debarred if he is a successor, assignee, subsidiary, or affiliate of a debarred Contractor.

6.8 Deferment of Proceedings: The hearing officer may defer debarment proceedings pending final disposition of a related claim or dispute if he finds:

(a) that the cause of the action brought against the Contractor is related to a good faith claim or dispute pending before a New Mexico state agency, the Deputy Director, or on judicial appeal, and;

(b) a delay in the proceedings will not be prejudicial to the public interest.

6.9 Termination or Modification of Debarment:

6.9.1 Any Contractor debared under this Regulation may petition the Deputy Director to shorten or terminate the debarment. The petition shall show good cause for the requested relief and may not be filed during the pendency of any hearing or appeal on the same debarment which the Petition addresses.

6.9.2 A Contractor's request for modification or termination of debarment must be supported by good cause shown including documentation providing reasons for such modification or termination, including, but not limited to:

(a) Bona fide change in ownership and management of the business; or

(b) Elimination or mitigation of cause for which the debarment was imposed; or

(c) Compliance with terms that were set forth in the debarment order.

6.9.3 Procedure: The Deputy Director shall admit or deny review of the petition. If review is allowed, the petition shall be reviewed pursuant to the procedures described in Section 6.2 of this regulation. Denial of the petition shall not be appealable to the Debarment Appeals Board.

6.9.4 Upon termination of debarment, a Contractor debared under this Regulation shall automatically be reinstated with rights to submit bids on Public Works Projects. Such determination by the hearing officer shall be sent and filed pursuant to the requirements of Section 6.4 of this Regulation

6.9.5 Appeal: A petition for termination or modification of a final order of debarment shall not be treated as a motion for reconsideration and shall not stay the running of time in which a Contractor has to appeal a final order issued pursuant to Section 6.4 of this Regulation. The hearing officer's final order on the petition for termination or modification of an order of debarment shall be the final determination for purposes of time limits for seeking judicial review where there is a denial or partial denial of such petition.

[6.9] Maintenance of List of Debared Contractors:

The Albuquerque City Clerk shall maintain and update a list of debared Contractors. The list shall reflect all modifications and terminations of debarments. All purchasing agencies and subdivisions of the City, and the public shall be supplied with this list upon request. The City Clerk may charge a reasonable fee for the expense of copying and mailing such list. The City Clerk shall send updates of this list to all User Agencies and subdivisions of the City as he deems necessary.

EFFECTIVE DATE AND FILING

The Regulation Governing the Award and Rejection of Bids and the Debarment of Contractors for Public Works Projects of the City of Albuquerque shall become effective on the date filed in the office of the City Clerk.

ADOPTED THIS __25____ day of ___JULY__, 2008.