

# CITY OF OAKLAND

## AGENDA REPORT

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OFFICE OF THE CITY CLERK  
OAKLAND

2008 OCT 16 PM 6:23

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Department of Contracting and Purchasing  
DATE: October 28, 2008

RE: **Second Supplemental to the Informational Report on the Status of Compliance Analysis Performed on Construction Projects Closed during Fiscal Year (FY) 03-04 and FY 04-05 without Benefit of Local Employment Program (LEP) and 15% Oakland Apprenticeship Program Compliance Analysis and a Proposed Ordinance Adding Chapter 2.05, Section 2.05.010-110 to the Oakland Municipal Code and entitled the "Oakland Contractor Debarment Program".**

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### SUMMARY

This report provides responses to additional questions raised by the Public Works Committee relative to the July 8, 2008 report on the status of compliance analyses performed on construction projects that were closed out by a City department but were not closed out by the Department of Contracting and Purchasing (DCP), Social Equity Division.

Specifically, the Public Works Committee requested the following additional information:

1. Debarment Ordinance;
2. Due Process for Non-Compliant Contractors, Consultants, Developers and Vendors;
3. More data reflecting actual hours worked by Oakland residents,
4. Local Employment Data to include (a) number of Oakland residents employed on City projects as a result of the Local Employment Program, 15% Apprenticeship Program and the Local Construction Employment Referral Program (LCERP) policies; and (b) data from 1993 to present.

### FISCAL IMPACT

There are no fiscal impacts.

### BACKGROUND

City Council directed staff to establish a method of debarment as a consequence of willful misconduct while under contract with the City. Examples of willful misconduct may include, but are not limited to: (a) repeated unexcused delays and poor performance, (b) failure to comply with the material terms of a contract, (c) a pattern and practice of disregarding or repudiating terms or conditions of City contracts including, without limitation, breach of contract, non-compliance with any City contracting requirements or programs, or (d) collusion in obtaining award of any City contract, or payment or approval.

Item: \_\_\_\_\_  
Public Works Committee  
October 28, 2008

In concert with the Office of the City Attorney, a proposed Debarment Ordinance has been created. The Ordinance provides a comprehensive guide to debarment proceedings and includes a detailed description of topics such as: (a) Grounds for Debarment – Chapter 2.05.020, (b) Pre-Hearing Procedures – Chapter 2.05.080, and (c) Term and Effect of Debarment.

City Council also requested the steps taken to afford due process to contractors, consultants, vendors and developers when a non-compliance is determined. This process already exists and is outlined in detail below. The general intent is to afford contractors, consultants, developers and vendors the opportunity to dispute findings of non-compliance such as payroll data and local business participation.

The three programs that have been discussed in previous reports include (a) Local Employment Program (LEP), (b) The 15% Apprenticeship Program, and (c) the Local Construction Employment Referral Program (LCERP).

The LEP policy has gone through three modifications since 1993. Staff has outlined that data according to the policies in place at the time of those program iterations. It is also important to note that the employment hours and employment numbers represented in this report do not include the number of hours and number of residents dispatched from the union halls or those hours and employees from non-city funded projects.

## **KEY ISSUES AND IMPACTS**

### **1. Debarment**

Debarment and Suspension programs are found throughout federal procurement. For example, the Environmental Protection Agency's (EPA) Suspension and Debarment Program protects the government from doing business with individuals/companies/recipients who pose a business risk to the government. The EPA applies this program as an administrative tool to address abuse, fraud, poor performance or other misconduct. The program is designed to prevent such companies and individuals from participating in government contracts, subcontracts, loans, grants and other assistance programs.

The Oakland Municipal Code (OMC) Section 2.04.060 "Lowest Responsible Bidder" allows the City to determine whether a bidder is a responsible contractor. However, it stops short of addressing remedies for non-performance or non-compliance with City policies and/or quality of deliverables.

Section 2.04.60 of the Oakland Municipal Code includes the following factors against which "lowest responsible bidder" may be evaluated:

- The quality and performance of the supplies or services to be provided ;
- The ability, capacity and skill of the bidder to perform;
- The ability of the bidder to provide the supplies or services promptly, or within the time specified, without delay;

Item: \_\_\_\_\_  
Public Works Committee  
October 28, 2008

- The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- The quality of bidder's performance on previous purchases by, or contracts with, the City; and
- The ability of the bidder to provide future maintenance, repair parts and services for the use of the supplies purchased

Draft Debarment Ordinance: The proposed ordinance is designed to work in concert with Section 2.04. of the Oakland Municipal Code because it provides for punitive actions if the above factors are not maintained throughout the life of a contract. The proposed Debarment Ordinance was drafted by the City Attorney's Office and reviewed by the Department of Contracting and Purchasing. Please note that the ordinance has not been presented to using agencies or to external stakeholders for input. Staff suggests taking the proposed ordinance to both internal and external stakeholders for review and feedback prior to full implementation of the ordinance.

Significant points of the Debarment Ordinance include:

1. The scope covers any individual person or business entity who submits a qualification statement, proposal, bid or quote or who contracts directly or indirectly with the City for the purpose of providing any goods or services to or for the City, including any contractor, subcontractor, consultant, sub consultant or supplier at any tier;
2. Grounds for debarment (Chapter 2.05.020) include:
  - a. Submission of false information in response to advertisements or solicitations;
  - b. Failure to comply with the material terms of a contract;
  - c. A patterns and practice of disregarding or repudiating terms or conditions;
  - d. Submission of false claims;
  - e. A verdict, judgment, settlement, stipulation or plea agreement establishing the contractor's violation of civil or criminal law against any government entity; and
  - f. Collusion in obtaining an award of any city contract or payment or approval.
3. Contractors have the right to request a hearing within 15 days after receipt of a "Notice of Proposed Debarment".
4. The term of debarment (Chapter 2.05.100) is not to exceed five years.

## **2. Due Process for Non-Compliant Contractors:**

The due process and formal notification procedures followed by the Department of Contracting and Purchasing are applied in the event of non-compliance on the part of the developer or contractor.

The Contracting and Purchasing Director or designee (hereafter referred to as the Director) determines whether a developer or contractor has complied with the requirements of the

Item: \_\_\_\_\_  
Public Works Committee  
October 28, 2008

Program(s). If the Director determines that the developer or contractor failed to comply with the Program(s), the developer or contractor has the burden of proving compliance with, and its obligations under, the Program(s).

The City Administrator has the power, in addition to any other remedy the City may have under the contract or by operation of law, to suspend the contract in whole or in part, upon a satisfactory showing to the City Administrator of the developer's or contractor's ability to comply.

- a. The Director causes to be delivered a "Written Notice of Non-Compliance" to the developer or contractor. The notice specifies the matters which constitute the non-compliance; the specific action required to correct the non-compliance; and the time period during which such correction shall occur. In no event shall this be more than ten (10) working days after receipt of the notice by the developer or contractor.
- b. The developer or contractor has the burden of proving compliance with the program and must submit written evidence to the Director to establish compliance.
- c. In the event the Director agrees that compliance has occurred, the Director or designee will promptly deliver to the developer or contractor, a "Written Notice of Correcting a Non-Compliance" specifying the original non-compliance which has been corrected.
- d. In the event the Director does not agree that compliance has occurred, the Director notifies the developer or contractor by a "Written Notice of Failure to Correct a Non-compliance," citing the specific facts constituting the continuing non-compliance.
- e. In the event the developer or contractor contends that they are in compliance, and the Director does not concur, then the developer or contractor have the right to request a hearing before the City Administrator or his designee, who shall make the final determination.
- f. The request for a hearing before the City Administrator must be made within a period of ten (10) working days after receipt of the "Written Notice of Failure to Correct a Non-compliance." The developer or contractor must exhaust this administrative remedy prior to commencing further legal action.
- g. In the event no such request is made, the determination of failure to correct a non-compliance by the Director is final.
- h. Should the developer or contractor fail to comply with the "Written Notice of Non-compliance" within the time period specified by the Director, and a final determination of non-compliance is subsequently made, the developer or contractor shall pay the amount of any incurred penalties, commencing with the first day of non-compliance and continuing until compliance is established to the satisfaction of the City Administrator or

until the work of the non-complying developer or contractor under such contract is completed, or the contract of the developer or contractor is terminated, whichever shall occur first.

**3. Local Employment Program (LEP), 15% Apprenticeship and Local Construction Employment Referral Program (LCERP):**

The Public Works Committee requested additional information on the Local Employment Program (LEP) and 15% Apprenticeship Program. The LCERP while not a policy is an internal system that helps to connect Oakland residents to contractors. The contractors submit such a request in writing to the Department of Contracting and Purchasing.

The information provided includes the number of Oakland residents and Oakland apprentices employed on City monitored projects; the Local Construction Employment Referral Program (LCERP) data and referrals to contractors on City of Oakland monitored projects; and a comparison of the LEP and 15% Apprenticeship Program performance since 1993. Data obtained for this report comes from the Labor Compliance Program (LCP) Tracker, a software program that compiles data culled from certified payroll information supplied by the contractor.

The LCP Tracker software allows staff to report the number of Oakland residents and Oakland apprentices employed; the hours worked by employees on construction projects ( broken down by hours worked by Oakland residents and hours worked by Oakland apprentices); and the wages and benefits paid to Oakland residents on City monitored projects. The LCP Tracker has been a requirement for all City monitored construction projects since June of 2005.

From 1993 to present, there have been two revisions to the Local Employment Program (LEP); and a change was made to the 15% Apprenticeship Program in 2002.

The original Local Employment Program (LEP), adopted on February 2, 1993, set the following goals:

- 40% of the workforce hours on a craft-by-craft basis must be Oakland residents
- All (100%) new hires must be Oakland residents, and
- Failure to comply could result into a monetary penalty of \$1,000 a day or 1% of the contract amount, whichever is less.

On February 25, 1997, the LEP was revised to establish new goals and alternative penalty resolution opportunities for non-compliant contractors assessed with monetary penalties. The new requirements and penalty resolution are:

- 50% of all hours worked on a craft-by-craft basis must be worked by Oakland residents
- 50% of all new hires must be Oakland residents on a craft-by-craft basis (the first new hire must be an Oakland resident and every other new hire thereafter) and

- Contractors assessed with a monetary penalty have an option to reduce or eliminate the penalty by hiring an Oakland resident on subsequent non-City of Oakland funded projects.

Both versions of the LEP maintained the on-site achievement of their respective 40% and 50% Oakland resident employment goals, with the February 25, 1997 modification allowing for employment of Oakland residents on non-City funded projects as a penalty resolution option in lieu of forfeiture of penalty dollars.

In 1997, shortfalls in resident employment could only be satisfied with resident employment provided subsequent to the City's project. Both versions of the LEP required on-site employment as the only way to address the resident hiring goal before the application of a penalty for non-compliance. This resulted in significant work hours being leveraged directly on City-funded projects.

The LEP was modified again in 2002. Those modifications resulted in resident hiring goals being tied to project work that would not be performed by existing or core employees. If there was no hiring needed to perform the work of the contract, the LEP and 15% Apprenticeship Program would not be triggered.

There proved to be a significant number of contractors who could perform their scope of work with core employees and conducted no new hiring for the City's project(s). A core employee is defined as an apprentice or journey level employee who: possesses any license required by state or federal law for the project work to be performed; has worked a total of at least 1000 hours in the construction craft during the prior three years; was on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award; and has the ability to perform safely the basic functions of the applicable trade.

In an effort to maintain leverage on some of the work hours generated on City of Oakland projects, the utilization of core employees to perform contracted work was capped at 50% of the total project's work hours. This resulted in an effective minimum resident hiring goal of 25% when adjusted for core employee utilization.

In addition, the contractor can address up to 50% of their established resident hiring goal by employing Oakland residents on non-City funded projects. The contractor may now submit Oakland resident work hours accrued on non-City funded projects in the year preceding the City's project, concurrent non-City funded projects, and subsequent non-City funded projects for up to six(6) months following completion of work.

The ability to submit resident work hours accrued on non-City funded projects increased the tracking requirements to appropriately evaluate and apply work hours submitted. In spite of this reduced capacity to require resident employment on site, staff has been able to achieve resident employment directly on site, with contractors providing resident employment on non-City funded projects when employment shortfalls occur.

The 2002 program modifications resulted in fewer resident work hours being leveraged directly on the City of Oakland's project(s).

4. **Additional Data:** Below is a comparison of the Local Employment Program (LEP) performance for the periods FY1993-1996, FY 1999-2002, and FY 2005-2008

**LEP Workforce Hours - Fiscal Years 1993–1996**  
**Goal = 40% Resident Hours**

**Table 1**

<b>Fiscal Year</b>	<b>Total Workforce Hours</b>	<b>Total Oakland Resident Hours</b>	<b>Percentage</b>
FY 93-94	418,697	168,395	40%
FY 94-95	511,577	200,981	39%
FY 95-96	418,535	180,796	43%
<b>Total 93-96</b>	<b>1,348,809</b>	<b>550,172</b>	<b>41%</b>

The figures above reflect LEP policy that required **all** resident work hours to occur on the City project's worksite, with non-compliance being addressed through monetary penalty at completion of the project.

**LEP Workforce Hours - Fiscal Years 1999–2002**  
**Goal = 50% Resident Hours**

**Table 2**

<b>Fiscal Year</b>	<b>Total Workforce Hours</b>	<b>Total Oakland Resident Hours</b>	<b>Percentage</b>
FY 99-00	329,873	185,181	56%
FY 00-01	175,663	93,698	53%
FY 01-02	180,665	92,067	51%
Total 99-02	686,201	370,946	54%
<b>Total All Periods</b>	<b>2,035,010</b>	<b>921,118</b>	<b>45%</b>

LEP required **all** resident work hours to occur on the City project's worksite, with non-compliance being addressed through monetary penalty or the provision of employment to Oakland residents on non-City funded projects at completion of the project.

**LEP Workforce Hours - Fiscal Years 2005–2008  
 Total All Periods**

**Table 3**

<b>Fiscal Year</b>	<b>Total Workforce Hours</b>	<b>Total Oakland Resident Hours</b>	<b>Percentage</b>
FY 05-06	281,904.22	96,531.99	34%
FY 06-07	709,106.60	269,667.02	38%
FY 07-08	1,290,197.88	417,348.02	32%
<b>Total All Periods</b>	<b>2,281,209</b>	<b>783,547.03</b>	<b>34%</b>

LEP allows contractors to meet up to 50% of their resident hiring goal(s) on non-City funded projects, and the resident hiring goal(s) may be adjusted for “core employees”; and non-compliance may be addressed through monetary penalty or employing Oakland residents on non-City funded projects at completion of the project.

**15% Apprentice Workforce Hours  
 Fiscal Years 2005–2008**

**Table 4**

<b>Fiscal Year</b>	<b>Total Workforce Hours</b>	<b>Total Apprentice Hours</b>	<b>Oakland Apprentice Hours</b>	<b>Percentage*</b>
FY 05-06	281,904.22	31,668.33	15,867.50	6%
FY 06-07	709,106.60	127,419.95	72,146.65	10%
FY 07-08	1,290,197.88	258,454.00	133,824.70	10%

15% Apprenticeship Program allows contractors to meet 50% of their resident apprentice hiring goal(s) on non-City funded projects, and the resident hiring goal(s) may be adjusted for “core employee” utilization. Non-compliance may be addressed through monetary penalty or employing Oakland residents on non-City funded projects at completion of the project.

**15% Apprentice Workforce (actual number of workers)**

**Table 5**

<b>Fiscal Year Workers</b>	<b>Total Workers</b>	<b>Oakland Workers</b>	<b>Total Apprentice Workers</b>	<b>Oakland Apprentices</b>
FY 05-06	1714	412	220	81
Percentage*	<b>100%</b>	<b>24.04%</b>	<b>12.84%</b>	<b>4.73%</b>
FY 06-07	3592	859	618	232
Percentage*	<b>100%</b>	<b>23.91%</b>	<b>17.21%</b>	<b>6.46%</b>
FY 07-08	5,247	1123	989	328
Percentage*	<b>100%</b>	<b>22.48%</b>	<b>15.09%</b>	<b>4.91%</b>

\*Percentage is in relationship to total workers

**Oakland Wages Reported.**

**Table 6**

<b>Fiscal Year</b>	<b>Total Oakland Wages</b>	<b>Total Apprentice Wages</b>
FY 05-06	\$4,031,514.47	\$528,653.72
FY 06-07	\$ 11,866,467.31	\$ 2,567,435.33
FY 07-08	\$ 20,671,256.69	\$ 4,014,350.51
<b>FY05-08</b>	<b>\$ 36,569,238.47</b>	<b>\$ 7,110,439.56</b>

As noted above, from 2005 to 2008, wages paid to Oakland residents as a result of Council policy totaled approximately \$36,569,238.47.

Due to the combined affects of reduced required on-site Oakland resident work hours, the increased number of Oakland residents that entered the industry during the interim period of time, and the ability to address a portion of the City's resident hiring goal(s) on non-City funded projects, there have been fewer requests submitted to the LCERP for Oakland residents.

In addition, please note that all figures above reflect City figures only and do not include data from the union halls or new hire residents on non-city funded projects as only hours are counted.

The City established the Local Construction Employment Referral Program (LCERP) to link Oakland residents to contractors who perform work on City funded projects. There are currently 654 residents registered with the LCERP. LCERP applicants are secured through outreach workshops conducted at various community based organizations, local high schools and colleges, local construction projects, and the faith based community throughout Oakland. An average of 30 residents have been employed through referral from the LCERP for the period FY 05-08. This referral activity is significantly below the average referral numbers for the periods FY 93-96 and FY 99-02.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** The Local Employment and Oakland Apprenticeship Programs provide employment of local Oakland residents and contracting opportunities for local Oakland certified firms.

**Environmental:** No environmental opportunities have been identified.

**Social Equity:** The Local Employment and Oakland Apprenticeship Programs provide benefits to Oakland residents and local businesses.

**DISABILITY AND SENIOR CITIZEN ACCESS**

There are no ADA or senior citizen access issues contained in this report

**RECOMMENDATION(S) AND RATIONALE**

It is recommended that Council accept the proposed Debarment Ordinance to serve as an administrative tool to address abuse, fraud, poor performance or other misconduct.

**ACTION REQUESTED OF THE CITY COUNCIL**

Accept the Debarment Ordinance and the additional information contained in this agenda report.

Respectfully submitted,



DEBORAH L. BARNES  
Director, Department of Contracting &  
Purchasing

Prepared by:  
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APPROVED AND FORWARDED TO THE  
PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Item: \_\_\_\_\_  
Public Works Committee  
October 28, 2008

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INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

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APPROVED AS TO FORM AND LEGALITY

**DRAFT**

City Attorney

2008 OCT 16 PM 6:23

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

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### ORDINANCE AMENDING TITLE 2 OF THE OAKLAND MUNICIPAL CODE TO ADD CHAPTER 2.12 – ARTICLE I, CONTRACTOR DEBARMENT

**WHEREAS**, the City of Oakland wishes to establish an administrative process to identify contractors and businesses that contract with and do business with the City and that have not complied with the City's contracting requirements, or that have engaged in willful misconduct, or demonstrated bad faith or engaged in fraudulent or bad business practices or methods, in order to avoid doing business with and not enter into any further contracts with such contractors;

**WHEREAS**, the City of Oakland, through such an administrative process, wishes to declare any such potential bidders or contractors, for a period of time, as ineligible and to disqualify such bidders or contractors from participating in the competitive process for future contracts or from entering into new contracts with the City; and

**WHEREAS**, this ordinance will establish such an administrative process for the debarment of contractors or bidders that are determined by the Council, upon the recommendation of the City Administrator, to have engaged in such conduct; now, therefore

#### THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Chapter 2.12, Article I is hereby added to the Oakland Municipal Code and is entitled the "Oakland Contractor Debarment Program".

#### Chapter 2.12 – Contractor Debarment

##### Section 2.12.010 - Definitions

The following definitions apply for only the purposes of this Section.

- (1) **Affiliate**. Any individual person or business entity related to a contractor where such individual or business entity, directly or indirectly, controls or has the power to control the other, or where a third person controls or has the power to control both. *Indicia of control include, but are not limited to:* interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a business entity organized or following the suspensions, debarment,

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bankruptcy, dissolution or reorganization of a person which has the same or similar management; and/or ownership or principal employee as the contractor.

- (2) Contractor. Any individual person or business entity who submits a qualification statement, proposal, bid or quote or who contracts directly or indirectly with the City for the purpose of providing any goods or services to or for the City including without limitation any contractor, subcontractor, consultant, subconsultant or supplier at any tier. The term "contractor" shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract.
- (3) Debarment. The administrative determination against a potential bidder, or contractor declaring such potential bidder or contractor irresponsible and disqualified from participating in the competitive process for contracts with the City or from entering into contracts, with the City for a period specified in the debarment order.
- (4) City Administrator. The City Administrator of the City of Oakland or an officer specifically designated to act for and carry out the City Administrator's duties.

## **Section 2.12.015 – Debarment Authority**

Notwithstanding any other City ordinance, the Council shall have authority to issue a Final Notice of Debarment against any contractor in accordance with the procedures set forth in this Section.

## **Section 2.12.020 – Grounds For Debarment**

The Council may issue a Final Notice of Debarment for any contractor who the hearing officer, based on evidence presented, finds to have engaged in any willful misconduct in connection with any City bid, request for qualifications, request for proposals, purchase order and/or contract. Such willful misconduct may include, but need not be limited to the following: (1) submission of false information in response to an advertisement or invitation for bids or quotes, a request for qualifications or a request for proposals; (2) failure to comply with the material terms of a contract; (3) a pattern and practice of disregarding or repudiating terms or conditions of City contracts including, without limitation, breach of contract, non-compliance with any City contracting requirements or programs in connection therewith, or repeated unexcused delays and poor performance; (4) submission of false claims as defined in California Government Code, Section 12650 et seq. and Title 31 U.S.C. Section 3729 et seq.; (5) a verdict, judgment, settlement, stipulation or plea agreement establishing the contractor's violation of any civil or criminal law against any government entity relevant to the contractor's ability or capacity to honestly to perform under or comply with the terms and conditions of a City contract; and/or (6) collusion in obtaining award of any City contract, or payment or approval thereunder.

## **Section 2.12.030 – Initiating The Proceedings; Notice Of Proposed Debarment**

The City Administrator may initiate a debarment proceeding by issuing a Notice of Proposed Debarment. Such Notice may be issued against any contractor relating to any matter consistent with the foregoing grounds for debarment. The City Administrator may issue a Notice of Proposed Debarment regardless of whether the City Administrator awarded, was responsible for or was involved in any way with the underlying contract or circumstances leading to the Notice of Proposed Debarment.

## **Section 2.12.040 – Service Of The Notice Of Proposed Debarment**

The City Administrator shall serve the Notice of Proposed Debarment on each named individual person or business entity in a manner ensuring confirmation of delivery. For example, service may be achieved by United States Postal Service certified mail, return receipt, requested or with other delivery confirmation, hand delivery (messenger service) or other commercial delivery service that provides written confirmation of delivery.

## **Section 2.12.050 – Request For Hearing**

Within 15 days after receipt of the Notice of Proposed Debarment, the contractor may submit a written request for an administrative hearing. The contractor may make such request through counsel or other authorized representative.

## **Section 2.12.060 – Failure To Respond To The Notice Of Proposed Debarment**

Failure of the contractor to submit to the City a written request to be heard within the time required in Section 2.12.050, or failure of the contractor or the contractor's representative to appear for a requested hearing that has been duly noticed, shall be deemed an admission by the contractor to the allegations set forth in the Notice of Proposed Debarment. In accordance with the procedures set forth below, the City Administrator shall present evidence in support of the debarment to the appointed hearing officer and the hearing officer shall make a determination on such evidence.

## **Section 2.12.070 – Appointment Of The Hearing Officer**

The City Administrator shall appoint a hearing officer for any debarment proceeding and notify the contractor of the appointment. The notice of appointment shall include the name of the hearing officer. The contractor may object to the appointed hearing officer within five business days of the notification. If the City Administrator, at his/her sole discretion, appoints a new hearing officer, then he/she shall notify the contractor as soon as practicable but not more than 15 days after receipt of the objection. The hearing officer shall be a retired state or federal judge in good standing.

## Section 2.12.080 – Pre-Hearing Procedure

A. The City Administrator shall notify each contractor named in the Notice of Proposed Debarment of the scheduled hearing date. The hearing must commence within 120 days of the date of the City Administrator served the Notice of Proposed Debarment. The hearing officer may extend the 120-day period only upon good cause shown; proceeding as expeditiously as possible in the public's best interest.

B. Discovery pursuant to the California Code of Civil Procedure is not applicable to this debarment procedure. The California Administrative Procedures Act is not applicable to this debarment procedure.

C. The hearing officer may, in his/her sole discretion, direct any named contractor and the City Administrator to submit in advance of the hearing, statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent to the determination of willful misconduct. The hearing officer may request the respective parties to submit rebuttals to such information. The hearing officer may limit the length, scope or content of any such statement, analysis, list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for all written presentations.

D. If the hearing officer determines, with the written agreement of each named contractor and City Administrator, that the hearing shall be by written presentation, all final writings shall be due no later than 120 days of the date the City Administrator served the Notice of Proposed Debarment.

## Section 2.12.090 – Fact-Finding Hearing And Determinations

A. Hearings may occur in person or in writing, as set forth above. If the hearing is to occur in person, the hearing officer shall specify the time and place for the City Administrator to present the case and for the Contractor to rebut the charges. The hearing officer may, in his/her sole discretion, allow offers of proof, set time limitations and limit the scope of evidence presented based on relevancy. Each side shall be entitled to call witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing officer may ask questions of any party for the purpose of reaching a determination.

B. The hearing officer shall consider the evidence submitted by the City Administrator and the Contractor. The standard of proof for the fact-finding hearing shall be preponderance of the evidence. Within 15 business days of the hearing, or of the date final written presentations are due, the hearing officer shall issue his/her Statement of Decision addressing only whether or not the City Administrator has substantiated that the Contractor engaged in any of the conduct described above in subdivision (c) hereof. The hearing officer shall not opine as to whether or not debarment is warranted or the duration of such debarment. The hearing officer shall serve the Statement of Decision on the City Administrator, the named Contractor(s),

and/or their respective counsels or authorized representatives, and shall submit the same to the City Clerk.

C. If the hearing officer finds that the named Contractor has engaged in any of the conduct described in the subdivision (c), the City Administrator may submit to the full Council or a Committee of the Council his/her recommendation regarding debarment. The Council or the Council Committee shall act on the City Administrator's recommendation at a properly noticed meeting; however, only the Council shall have the authority to impose a debarment. The City Clerk shall serve the Final Notice on each named Contractor, his/her/their counsel or authorized representative, if any. A Final Notice of Debarment under this Section shall be a final administrative determination by the City, reviewable pursuant to Code of Civil Procedure, Section 1094.5.

### **Section 2.12.100 – Term And Effect Of Debarment; Violation Of Final Notice Of Debarment**

A. A Final Notice of Debarment shall provide for a term of debarment not to exceed five (5) years from the date of service. The Final Notice of Debarment shall prohibit any named contractor and the Contractor's Affiliates from participating in any contract at any tier, directly or indirectly, with or for the City; any contractor and the Contractor's affiliates named in a Final Notice of Debarment shall be deemed responsible and disqualified for the purposes of all City contracts. Upon such Final Notice of Debarment, the City may terminate any existing contract with a debarred Contractor or direct the cancellation of an existing subcontract to which a debarred Contractor is a party. In the event of such termination, no recovery shall be had on that contract by the debarred party other than for work satisfactorily completed as of the date of termination.

B. Debarment shall neither exclude nor preclude any other administrative or legal action taken by the City.

C. Violation of a Final Notice of Debarment, such as by submission of a proposal, bid or sub-bid during the debarment period, may be considered a false claim as provided in the California Government Code and the U.S. Code.

### **Section 2.12.110 – Publication And Reports Of Debarment**

Any Final Notice of Debarment issued under this Section shall be a public record. The City Clerk shall maintain and publish on the City's Internet website a current list of Contractors subject to Final Notices of Debarment and the expiration dates for the respective debarment terms.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

**DRAFT**

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: \_\_\_\_\_

NOTICE AND DIGEST

**DRAFT**

**ORDINANCE AMENDING TITLE 2 OF THE OAKLAND MUNICIPAL CODE  
TO ADD CHAPTER 2.12, ARTICLE I, CONTRACTOR DEBARMENT**

This ordinance will provide limited authority to the City Administrator, pursuant to an administrative process and based upon the grounds set forth in the ordinance , to identify, disqualify, and to declare as ineligible from doing any further contracting or business with the City of Oakland for a period not to exceed five (5) years, those contractors and businesses that have not complied with the City's contracting requirements, or that have engaged in willful misconduct, or demonstrated bad faith or engaged in fraudulent or bad business practices or methods.