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AN ACT

RELATING TO PROCUREMENT; REVISING PROVISIONS RELATED TO
DEBARMENT AND SUSPENSION; INCLUDING CIVIL VIOLATIONS AS CAUSE
FOR DEBARMENT OR SUSPENSION; PROVIDING LIMITATIONS ON
CONTINUATION OF CONTRACTS AND SUBCONTRACTING WITH DEBARRED OR
SUSPENDED PARTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Procurement Code is
enacted to read:

"DEFINITION--PERSON.--"Person" means an individual,
corporation, business trust, estate, trust, partnership,
limited liability company, association, joint venture or
other legal or commercial entity."

SECTION 2. Section 13-1-177 NMSA 1978 (being Laws 1984,
Chapter 65, Section 150) is amended to read:

"13-1-177. AUTHORITY TO SUSPEND OR DEBAR.--

A. The state purchasing agent or a central
purchasing office, after consultation with the using agency,
may suspend a person from consideration for award of
contracts if the state purchasing agent or central purchasing
office, after reasonable investigation, finds that a person
has engaged in conduct that constitutes cause for debarment
pursuant to Section 13-1-178 NMSA 1978.

B. The term of a suspension pursuant to this

1 section shall not exceed three months; however, if a person,
2 including a bidder, offeror or contractor, has been charged
3 with a criminal offense that would be a cause for debarment
4 pursuant to Section 13-1-178 NMSA 1978, the suspension shall
5 remain in effect until the criminal charge is resolved and
6 the person is debarred or the reason for suspension no longer
7 exists.

8 C. The state purchasing agent or a central
9 purchasing office, after reasonable notice to the person
10 involved, shall have authority to recommend to the governing
11 authority of a state agency or a local public body the
12 debarment of a person for cause from consideration for award
13 of contracts, other than contracts for professional services.
14 The debarment shall not be for a period of more than three
15 years. The authority to debar shall be exercised by the
16 governing authority of a state agency or a local public body
17 in accordance with rules that shall provide for reasonable
18 notice and a fair hearing prior to debarment.

19 D. As used in this section, the terms "person",
20 "bidder", "offeror" and "contractor" include principals,
21 officers, directors, owners, partners and managers of the
22 person, bidder, offeror or contractor."

23 SECTION 3. Section 13-1-178 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 151) is amended to read:

25 "13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME

1 LIMIT.--

2 A. The causes for debarment or suspension
3 occurring within three years of the date final action on a
4 procurement is taken include but are not limited to the
5 following:

6 (1) criminal conviction of a bidder, offeror
7 or contractor for commission of a criminal offense related to
8 obtaining unlawfully or attempting to obtain a public or
9 private contract or subcontract, or related to the unlawful
10 performance of such contract or subcontract;

11 (2) civil judgment against a bidder, offeror
12 or contractor for a civil violation related to obtaining
13 unlawfully or attempting to obtain a public or private
14 contract or subcontract, or related to the unlawful
15 performance of such contract or subcontract;

16 (3) conviction of a bidder, offeror or
17 contractor under state or federal statutes related to
18 embezzlement, theft, forgery, bribery, fraud, falsification
19 or destruction of records, making false statements or
20 receiving stolen property or for violation of federal or
21 state tax laws;

22 (4) conviction of a bidder, offeror or
23 contractor under state or federal antitrust statutes relating
24 to the submission of offers;

25 (5) criminal conviction against a bidder,

1 offeror or contractor for any other offense related to
2 honesty, integrity or business ethics;

3 (6) civil judgment against a bidder, offeror
4 or contractor for a civil violation related to honesty,
5 integrity or business ethics;

6 (7) civil judgment against a bidder, offeror
7 or contractor pursuant to the Unfair Practices Act;

8 (8) violation by a bidder, offeror or
9 contractor of contract provisions, as set forth in this
10 paragraph, of a character that is reasonably regarded by the
11 state purchasing agent or a central purchasing office to be
12 so serious as to justify suspension or debarment action,
13 including:

14 (a) willful failure to perform in
15 accordance with one or more contracts; or

16 (b) a history of failure to perform or
17 of unsatisfactory performance of one or more contracts;
18 provided that this failure or unsatisfactory performance has
19 occurred within a reasonable time preceding the decision to
20 impose debarment; and provided further that failure to
21 perform or unsatisfactory performance caused by acts beyond
22 the control of the contractor shall not be considered to be a
23 basis for debarment;

24 (9) any other cause that the state
25 purchasing agent or a central purchasing office determines to

1 be so serious and compelling as to affect responsibility as a
2 contractor; or

3 (10) for a willful violation by a bidder,
4 offeror or contractor of the provisions of the Procurement
5 Code.

6 B. As used in this section, the terms "bidder",
7 "offeror" and "contractor" include principals, officers,
8 directors, owners, partners and managers of the bidder,
9 offeror or contractor."

10 SECTION 4. Section 13-1-180 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 153) is amended to read:

12 "13-1-180. DEBARMENT OR SUSPENSION--NOTICE OF
13 DETERMINATION.--A copy of the determination made pursuant to
14 Section 13-1-179 NMSA 1978 shall be:

15 A. mailed to the last known address on file with
16 the state purchasing agent or central purchasing office, by
17 first class mail, within three business days after issuance
18 of the written determination; or

19 B. transmitted electronically within three
20 business days after issuance of the written determination."

21 SECTION 5. A new section of the Procurement Code is
22 enacted to read:

23 "CONTINUATION OF CURRENT CONTRACTS--RESTRICTIONS ON
24 SUBCONTRACTING.--

25 A. Notwithstanding the debarment, suspension or

1 proposed debarment of a person, a state agency or local
2 public body may continue contracts or subcontracts in
3 existence at the time that the person is debarred, suspended
4 or proposed for debarment unless the governing authority of
5 the state agency or local public body directs otherwise.

6 B. Unless the governing authority of a state
7 agency or local public body issues a written determination
8 based on compelling reasons holding otherwise, a person that
9 has been debarred or suspended or whose debarment has been
10 proposed shall not, after the date that the person is
11 debarred, suspended or proposed for debarment:

12 (1) incur financial obligations, including
13 those for materials, services and facilities, unless the
14 person is specifically authorized to do so under the terms
15 and conditions of the person's contract; or

16 (2) extend the duration of the person's
17 contract by adding new work, by exercising options or by
18 taking other action.

19 C. Unless pursuant to written authorization based
20 on the compelling reasons of the governing authority of a
21 state agency or local public body, the state purchasing agent
22 or a central purchasing office shall not consent to enter a
23 subcontract subject to the Procurement Code with a person
24 that has been debarred, suspended or proposed for debarment.

25 D. A person that has entered into a contract

1 subject to the Procurement Code shall not subcontract with
2 another person that has been debarred, suspended or proposed
3 for debarment without the written authorization of the state
4 purchasing agent or a central purchasing office. A person
5 that wishes to subcontract with another person that has been
6 debarred, suspended or proposed for debarment shall make a
7 request to the applicable state agency or local public body
8 that includes the following:

9 (1) the name of the proposed subcontractor;

10 (2) information about the proposed
11 subcontractor's debarment, suspension or proposed debarment;

12 (3) the requester's compelling reasons for
13 seeking a subcontract with the proposed subcontractor; and

14 (4) a statement of how the person will
15 protect the interests of the state agency or local public body
16 considering the proposed subcontractor's debarment, suspension
17 or proposed debarment."