

ORDINANCE 2024-0010

Adopted by the Sacramento City Council

May 14, 2024

An Ordinance Deleting, Amending, and Adding Various Chapters of Title 3 of the Sacramento City Code, Relating to Purchasing and Contracting Authority

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 3.04.010 of the Sacramento City Code is hereby amended to read as follows:

3.04.010 City manager's contracting authority.

- A. Income or expenditure less than \$250,000.
 1. Notwithstanding any other provision of this title, the city manager is authorized, without complying with the competitive bidding procedures of this title, to execute any contract, if the amount of the expenditure or income is less than \$250,000. If no expenditure or income amount is stated in a contract, the amount is the estimated value of the goods or services to be exchanged over the term of the contract, including any renewal options, as determined in good faith by city staff.
 2. For purposes of subsection A.1, for any contract regarding real property –
 - a. The amount of the expenditure or income:
 - i. Is the amount prior to any discount or reduction in price given or received, and
 - ii. includes the actual periodic rental or other payments required over the entire term of the contract, including any renewal option periods set forth in the contract.
 - b. The amount of the expenditure or income excludes:
 - i. Periodic expenses that the other party is required to pay, including utilities, taxes, insurance, repairs, and maintenance, and

- ii. Usual costs associated with the sale of real property, including real estate commissions, closing costs, escrow costs, and related costs and fees.
- 3. For purposes of subsection A.1, for the sale of real property owned by the city, the following procedures must be followed:
 - a. The price must be established based upon a fair market value appraisal conducted by city staff or under an agreement executed by the city manager with a qualified independent real estate appraiser. If the established price is less than \$250,000, the real property shall be listed on the open market by the city manager or with a licensed real estate broker under an exclusive or nonexclusive listing agreement executed by the city manager, unless the city manager determines that it is in the best interest of the city to do otherwise.
 - b. The entire net income from the sale of the property after reduction for city staff labor reimbursement, if applicable, shall be deposited into the specific city fund which, under city accounting procedures, carries or has carried the parcel or parcels of real estate as an asset of the fund.
- 4. For purposes of subsection A.1, for any contract establishing an externally funded program or any grant, the contract must also satisfy any restrictions otherwise established by resolution of the city council.
- 5. The city council may, by resolution, increase the city manager's authority under this section to execute any contract or category of contracts under circumstances the city council finds appropriate.

B. Income or expenditure of \$250,000 or more.

Unless otherwise specified in this title, all contracts involving income or expenditure of \$250,000 or more require approval of the city council, for signature of the city manager. The signature of the city manager constitutes certification that there remains unexpended and unapplied balances of the appropriations or applicable funds sufficient to pay for the city's obligations under the contract.

SECTION 2.

Section 3.04.020 of the Sacramento City Code is hereby deleted.

SECTION 3.

A new section 3.04.020 of the Sacramento City Code is hereby added to read as follows:

3.04.20 City manager's authority to execute contract amendments.

- A. Contract amendments that increase the contract amount.
 1. For contracts originally awarded for a price of less than \$250,000:
 - a. The city manager is authorized to execute contract amendments that increase the contract amount, provided that the contract amount remains less than \$250,000.
 - b. City council approval is required for a contract amendment that increases the contract amount to \$250,000 or more.
 - c. After the city council approves a contract amendment that increases the contract amount to \$250,000 or more, the city manager is authorized to execute contract amendments that further increase the contract amount, provided that the sum of all contract amendments executed by the city manager does not exceed \$25,000.
 2. For contracts originally awarded for a price of at least \$250,000, but less than \$1,000,000, the city manager is authorized to execute contract amendments that increase the contract amount, provided that the sum of all such contract amendments executed by the city manager does not exceed 10% of the original contract price.
 3. For contracts originally awarded for a price of at least \$1,000,000 but less than \$10,000,000, the city manager is authorized to execute contract amendments supplements that increase the contract amount, provided that the sum of all such contract amendments executed by the city manager does not exceed 8% of the original contract price.
 4. For contracts originally awarded for a price of \$10,000,000 or more, the city manager is authorized to execute contract amendments that increase the contract amount, provided that the sum of all contract amendments executed by the city manager does not exceed 6% of the original contract price.
- B. Notwithstanding subsection A, any single contract amendment that increases the contract amount by more than \$250,000 requires city council approval.

C. The city manager is authorized to execute contract amendments that increase the contract amount in excess of the limitations set forth in subsection A., to the extent that it becomes reasonably necessary in the judgment of the city manager to take such action to:

1. Prevent an interruption of work or services that would result in a substantial increase in cost to the city; or
2. Protect any person, property, equipment, materials, or the environment from substantial and immediate risk of damage or injury from any cause, or, where damage or injury has occurred, prevent the occurrence of further damage, injury, or deterioration.

For any action taken pursuant to this subsection, the city manager shall present a report to the city council describing the action taken and the reason for such action as soon as reasonably possible, but in any event not later than 30 days after taking such action.

D. If the city manager executes one or more contract amendments to increase the contract amount pursuant to the city manager's authority specified in this section, and the city council subsequently ratifies the contract amendment previously executed by the city manager, the city manager's authority to execute contract amendments is reset to the amounts set forth in subsection A.

E. In executing a contract amendment pursuant to the approval authority specified in this section, the city manager is not required to obtain city council approval for the transfer of funds necessary to pay for the contract amendment from any contingency previously approved for the contract by the city council.

F. For contracts in any amount, the city manager is authorized to execute contract amendments that decrease or do not change the contract amount.

G. The city manager's authority to execute contract amendments as specified in this section is limited to changes that do not exceed the general scope of the original contract unless in the judgment of the city manager a contract amendment exceeding the general scope of the original contract is necessary to protect any person, property, equipment, materials, or the environment from the risk of damage or injury, or, where damage or injury has occurred, to prevent the occurrence of further damage, injury, or deterioration.

H. The city council may, by resolution, increase the city manager's authority under this section to execute any contract amendment or category of contract amendments under circumstances the city council finds appropriate.

- I. Notwithstanding anything to the contrary in this section, the city manager's authority to execute amendments for assessment district proceedings is governed by the provisions of any applicable statutes, ordinances, or other laws.

3.04.025 Contracting authority generally.

- A. The city manager may adopt administrative policies for the delegation of the city manager's contracting authority.
- B. All contracts and contract amendments must be approved as to form by the city attorney before execution.
- C. For contracts in any amount, the city manager is authorized to execute options for renewal that decrease or do not change the contract amount.
- D. The following definitions apply in this chapter:

“City attorney” means the city attorney or designee.

“City manager” means the city manager or designee.

“Contract” means any written, legally binding agreement between the city and another person.

“Contract amendment” means any written modification to a contract.

SECTION 3.

Chapter 3.56 of the Sacramento City Code is hereby deleted.

SECTION 4.

A new Chapter 3.56 is hereby added to the Sacramento City Code to read as follows:

Chapter 3.56 PROCUREMENT

Article I. In General

3.56.010 Definitions.

The following definitions apply in this title:

“Affiliates” means persons that have the same or substantially the same management, ownership, control, or one or more of the same principal employees.

“Bid” means a submission to the city in response to the solicitation of a contract to be awarded to the lowest-responsible bidder.

“Bidder” means any person that submits a bid.

“Change order” means a written amendment to a contract for a public project.

“City manager” means the city manager or designee.

“Competitive bidding” means the process of soliciting bids and awarding a contract to the lowest-responsible bidder.

“Contract” means a written agreement to purchase goods, nonprofessional services, or professional services; or to construct, repair, or maintain a public project.

“Contract amendment” means a written modification to a contract, including change orders, supplements, task orders, and any other written instrument that modifies the contract.

“Contract amount” means the not-to-exceed amount of a contract, as modified by any contract amendment.

“Cooperative purchasing” means procurement conducted by, or on behalf of, two or more public agencies, to leverage their combined purchasing power.

“Debarment” means any action taken by the city manager, or a hearing examiner on appeal, pursuant to this chapter, or by another public agency, to suspend or render a person ineligible to bid upon, be awarded, or contract with any public agency.

“Expenditure” means the payment of funds or the provision of goods or services by the city.

“Goods” means supplies, equipment, or materials, including materials required for the maintenance or repair of any street, sewer, or water work.

“Lowest-responsible bidder” means the responsible bidder, as determined pursuant to section 3.56.020, whose bid is responsive to the bid requirements, including any local business enterprise program or local hire program requirements

included in the bid specifications, and whose bid price is the lowest after all bid prices are calculated to include any applicable bid price preferences.

“Maintenance” means recurrent, periodic, or scheduled work required to preserve a facility. It includes:

1. Work required to restore components that have deteriorated from wear and tear; and
2. Other work on a facility to prevent damage or deterioration to that facility which would be more costly to restore.

“Nonprofessional services” means services of a nonprofessional character of any type, description, or variety, including tree-trimming services, janitorial services, and repair services for office machines, equipment, and automotive vehicles.

“Piggybacking” means relying on a solicitation process conducted by another public agency, if permitted by the other public agency.

“Predecessor-in-interest” means a person whose rights, assets, debts, or obligations are acquired or assumed by another person.

“Principal” means any officer, director, owner, shareholder, partner, responsible managing employee, or person with primary management or supervisory responsibilities, including any person who has a substantial influence or substantive control over performance of a contract.

“Professional services” means services of a professional character, including services rendered by engineers, architects, auditors, actuaries, and attorneys.

“Proposal” means an offer in response to a solicitation for a contract to be awarded on a basis other than lowest cost.

“Proposer” means any person that submits a proposal, statement of qualifications, or other response to a solicitation for a contract to be awarded on a basis other than lowest cost.

“Protest” means a claim, filed by a bidder or proposer in accordance with the provisions of this chapter and city policies, alleging improprieties in the solicitation documents or challenging a recommendation to award a contract to a particular bidder or proposer.

“Protested contractor” means a bidder or proposer against whom a protest has been filed.

“Protester” means a potential contractor, or the potential contractor’s authorized representative, who files a protest in accordance with the provisions of this chapter and the city’s protest policy.

“Public project” means the following:

1. A project for the erection, improvement, and remodeling of public buildings and works;
2. Work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow;
3. Street, sewer, or water work, except maintenance or repair;
4. Maintenance and repair of public facilities other than street, sewer, or water facilities.
5. Furnishing goods for any such projects.

“Purchase” means the procurement of goods, nonprofessional services, professional services, or public projects, and includes the rental or leasing of goods.

“Remodel” means alteration or conversion work on an existing facility to change its use, function, or layout.

“Repair” means restoration of a facility or components to such condition that it may be used effectively for its designated purpose, by overhaul, or replacement of constituent parts or materials that have deteriorated by action of the elements, vandalism, or wear and tear that cannot be corrected through maintenance. Repair includes restoring or replacing components of facilities damaged by fire, storm, explosions, the elements, and other disasters.

“Request for bids” means a written request, invitation, or solicitation for bids to perform a contract issued by the city.

“Solicitation” means a written request for proposals, request for bids, request for qualifications, or other appropriate competitive method to select a contractor.

“Successor-in-interest” means a person who acquires or assumes the rights, assets, debts, or obligations of another person.

“Work” means the goods, nonprofessional service, professional service, or public project to be provided under a contract.

3.56.020 Determination of lowest-responsible bidder.

Where any provision of the charter, this code, or city policies requires award of a contract to the lowest-responsible bidder, the lowest-responsible bidder is determined as follows:

- A. In determining whether a bidder is responsible, consideration shall be given to: (1) the quality and performance of the work to be provided by the bidder; (2) the ability, capacity and skill of the bidder to perform the contract or effectuate the transaction; (3) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (4) the character, integrity, reputation, judgment, experience, and efficiency of the bidder, excluding all discriminatory consideration of age, ancestry, color, disability, genetic information, gender (including gender identity and gender expression), marital status, medical condition, national origin, race, religion, sex, sexual orientation, or other legally protected characteristic; (5) the quality of the bidder’s performance on previous contracts with the city; and (6) the ability of the bidder to provide future maintenance, parts, and repair services for the work provided.
- B. Based on the information provided in the bids, the city council or the city manager shall identify those bids that are subject to the city’s local sales or use tax under the provisions of part 1.5 of division 2 of the California Revenue and Taxation Code and chapter 3.24 of this code. The lowest- responsible bidder shall be determined after the amount of local sales or use tax that would be received by the city is deducted from the bids. This deduction is in addition to the application of any bid price preferences authorized by subsection C.
- C. The city council may, by resolution, adopt standard minimum qualifications for bidders on competitively bid contracts for public projects. If the standard minimum qualifications are included in the bid specifications for a contract, no bidder is considered “responsible” unless it is determined to be responsible pursuant to the factors set forth in subsection A, and also meets the standard minimum qualifications at the time of bid opening. The adoption and use of standard minimum qualifications does not in any way limit or affect the city’s right to: (1) review information contained in a bid, and additional relevant information, and determine whether the bidder is a responsive or responsible bidder; or (2) establish different or additional qualification requirements for specific contracts.

D. The city council may, by resolution, adopt programs or policies to provide price preferences, including preferences to promote the participation and utilization of local business enterprises and local workers in city contracts. These preferences shall be in addition to any deduction of sales or use tax required by subsection B.

3.56.030 Contract splitting prohibited.

No person shall reduce the amount of any purchase or the size of a public project where there is a reasonable knowledge that the same goods, services, or work on a public project will be required within the same budgetary term, there are funds available for that purchase or project, and the sole purpose is to knowingly avoid the requirements of this title or city policies.

3.56.40 Administrative procedures.

A. The city manager may adopt administrative policies to carry out the intent of this chapter, including policies for –

1. The solicitation of and contracting for professional services;
2. The use of purchase orders;
3. The control of petty cash funds without prior use of purchase orders or contracts; and
4. The hearing of protests, as set forth in section 3.56.290.

B. The city manager shall prepare, subject to approval by the city council, administrative policies regarding the solicitation of and contracting for goods, nonprofessional services, and public projects, including competitive bidding and alternative procurement methods for those purchases for which competitive bidding is not required.

3.56.050 Prohibition against collusion.

No city officer or employee shall provide an unfair advantage to any person in securing a contract to furnish goods, services, or to construct a public project. Additionally, no city officer or employee shall: favor one person over another by giving or withholding information; willfully mislead any person in regard to the character of the work called for; knowingly accept work of a quality inferior to that called for by the contract; or approve any payment for work that has not been received.

3.56.060 Unauthorized contracts.

No city officer or employee shall purchase or contract for work on behalf of the city, other than as prescribed in this chapter or policies established in accordance with section 3.56.040.B. Any purchase or contract made in violation of this section is void.

3.56.070 Transition employment period for displaced janitors.

The 60-day transition employment period set forth in California Labor Code section 1061 is extended to 90 days.

3.56.075 Procurement requirements for recovered organic mulch and paper.

- A. To meet its goals for the reduction of short-lived climate pollutants, the city shall comply with article 12 of title 14 of the California Code of Regulations when purchasing organic mulch, such as leaves, bark, or straw, for use or distribution by the city or its contractors.
- B. The city shall comply with article 12 of title 14 of the California Code of Regulations when purchasing paper.
- C. The city shall comply with the city's policy regarding the preferred purchase of sustainable products when purchasing organic mulch and paper.

Article II. Contracts

3.56.080 Authority of city manager.

The city manager is authorized to execute any contract – subject to approval as to form by the city attorney, the availability of funds, and the policies adopted pursuant to this chapter – expending less than \$250,000 in any one transaction, without competitive bidding or obtaining specific authorization by the city council.

3.56.090 Award of contracts by city council.

Unless otherwise provided in this title, all contracts involving an expenditure of \$250,000 or more must be authorized by the city council. Contracts must be executed by the city manager on behalf of the city, subject to approval as to form by the city attorney. The signature by the city manager certifies that there remains unexpended and unapplied balances of the appropriations or funds applicable to the contract sufficient to pay the estimated expense of executing the contract.

Article III. Solicitation

3.56.120 When competitive bidding is required.

- A. If the cost of goods or a public project is \$250,000 or more, competitive bidding is required. Competitive bidding must comply with applicable policies approved pursuant to section 3.56.040.
- B. Competitive bidding is not required for nonprofessional or professional services in any amount. The solicitation of services is subject to the procurement policies approved pursuant to section 3.56.040.
- C. If competitive bidding is required by this chapter, any other law, or funding requirements, a solicitation must be advertised in one or more of the following: daily or weekly newspapers; the official city newspaper; the city's website; trade association publications; trade journals; minority- or trade-oriented publications; or other media directed to minority or women's business enterprises. The city manager may require more than one advertisement of any solicitation.

3.56.130 Independent price determination.

- A. No person submitting any bid or proposal to the city in connection with the procurement of goods, services, or a public project shall:
 - 1. Submit prices that have not been arrived at independently without consultation, communication, or agreement with any other bidder or proposer for the purpose of restricting competition;
 - 2. Unless otherwise required by law, prior to opening of the bids or proposals, knowingly disclose any price to any other bidder or proposer;
 - 3. Make any attempt to induce any other person, firm, or other entity or association to submit or not to submit a bid or proposal for the purpose of restricting competition; or
 - 4. Knowingly be interested in more than one bid or proposal; provided, however, subcontractors to the principal bidders or proposers are excluded from this subsection. In the case of joint venture bids, the joint venture and each of its members is deemed to be the person submitting the bid or proposal for purposes of this subsection.

B. Any bid or proposal received or contract awarded where there was a violation of this section is void and the city may proceed in the same manner as if the person involved failed to execute the contract after award.

3.56.140 Forms.

All bids and proposals must be made on forms the city prepares and includes in the solicitation. The preparation of any forms is subject to policies formulated by the city manager, including controls over erasures, corrections, and interlineations.

3.56.150 Security.

For any purchase or contract the city deems advisable, each bidder or proposer shall submit with the bid or proposal, as security, cash, a cashier's check, surety bond, or certified check in favor of and payable to the city, in an amount determined to be sufficient, but not to exceed 10% of the aggregate amount of the bid or proposal. If the person to whom the contract is awarded fails to enter into the contract and file the required bonds within 20 calendar days of contract award, the security is forfeited and the city manager shall draw the money due on the security and pay it, or any cash deposited, into the city treasury. The security shall not be returned to the defaulting bidder or proposer in such case unless the city council approves the return thereof in whole or in part. Upon good cause being shown, the city manager may extend the time to enter into the contract for a period not to exceed 30 calendar days.

3.56.160 Opening of bids and proposals —Awards.

All bids and proposals must be submitted to the city at the place and time specified in the solicitation. To the extent it is required by law or funding requirements, bids and proposals shall be opened by the city clerk or the clerk's designee, in public, at the time and place designated in the solicitation. Bids and proposals received after the specified time will not be accepted and will be returned unopened. The city may reject any and all bids or proposals and waive any informalities or minor irregularities in the bids or proposals.

3.56.170 Re-advertisement or alternative award.

If the city rejects any and all bids or proposals or the person to whom the contract is awarded fails to enter into the contract as required and the council does not award the contract to the next lowest-responsible bidder or other proposer, the city may re-advertise for bids or proposals, or dispense with competitive bidding, as provided in this chapter or in the policies adopted pursuant to section 3.56.040.B.

3.56.180 Disposition of security.

All securities and bonds shall be returned to the unsuccessful bidders or proposers after award of the contract. The security of the successful contractor shall be returned after execution of the contract and deposit of the necessary performance and payment bonds.

3.56.190 Faithful performance bonds.

The city may require a faithful performance bond be given on any contract in an amount determined by the city to be sufficient, up to and including 100% of the contract amount. The bond must be in a form approved by the city attorney.

3.56.210 Time of completion.

The contract must specify the time within which the contractor shall furnish goods, nonprofessional services, professional services, or public project to the city and may provide for liquidated damages for the contractor's failure to comply. The city manager may extend the time for acts of the city, acts of God, weather, strikes, or other circumstances over which the contractor has no control.

3.56.220 Failure of completion.

If the contractor fails to complete the work within the time specified in the contract or any extension approved under section 3.56.210, the city may terminate the contract and the contractor shall not be paid or allowed any further compensation for any work done under the contract. The city council may proceed to complete the contract either by reletting or otherwise, and the contractor and surety, if any, shall be liable to the city for all loss or damage that the city may suffer on account of the failure to complete the contract on time.

Article IV. Exceptions to Competitive Bidding

3.56.230 Generally.

The restrictions and provisions of this chapter requiring the award of contracts by competitive bidding shall not apply to the following:

- A. Any transaction where maintenance, remodel, or repair work is to be performed by city employees.
- B. When, after advertising for bids as required in this chapter, no valid bids are received.
- C. When, after receiving bids, the city rejects all of the bids.

- D. When the bidder to whom an award is made fails to enter into the contract as required and the city does not make an award to the next lowest- responsible bidder, as provided in this chapter.
- E. When, upon a two-thirds vote of the city council or the approval of the city manager, consistent with the thresholds in sections 3.56.080 and 3.56.090 of this chapter, it is determined that it is in the best interests of the city to suspend competitive bidding or utilize an alternative method of procurement for any contract.
- F. When any contract is entered into pursuant to or under any special assessment proceedings in which competitive bidding policies are specified by laws of the state of California.
- G. Purchases pursuant to sections 3.56.240, 3.56.250, and 3.56.260.

3.56.240 Cooperative purchasing.

The city may utilize piggybacking or cooperative purchasing agreements without separate competitive bidding by the city. Purchases through cooperative purchasing agreements or piggybacking are exempt from chapters 3.54, 3.58, 3.62, and 3.64.

3.56.250 Purchase of surplus goods.

When it is advantageous to the city, the city may purchase surplus goods from any public agency without compliance with the requirements of this chapter.

3.56.260 Emergency purchases.

- A. For purchases that do not individually exceed \$250,000, the city manager may execute contracts or other purchasing documents, subject to approval as to form by the city attorney, without advertising for bids or proposals, when public interest and necessity demand immediate action, repair, or replacement to safeguard life, health, or property; to permit the continued conduct of city operations or services; or to mitigate further damage.
- B. Following any purchase authorized by this section, the city manager shall present a report to the city council, at the next available meeting of the council, describing the emergency, the actions taken, and the number and value of contracts executed.
- C. When public interest and necessity demand immediate action, repair, or replacement to safeguard life, health, or property, to permit the continued conduct of city operations or services, or to mitigate further damage, and the cost is

estimated to exceed \$250,000, the city manager may immediately execute a contract, subject to approval as to form by the city attorney, to initiate the necessary emergency services without advertising for bids or proposals. At the next available council meeting, the city manager shall present a report as outlined above and include the additional remedial actions required, and the total estimated costs. The council may contract for the additional emergency services or authorize the city manager to negotiate and execute change orders to the original contract or execute additional contracts within limits then established by the city council.

Article V. Contracts for Official Advertising

3.56.270 Contracts.

The city shall award a contract for the official advertising for the city. For this purpose, the city shall advertise for two consecutive days, setting forth distinctly and specifically the work contemplated to be done. The city shall award the contract for the official advertising to a person publishing a daily newspaper in the city that is a newspaper of general circulation.

3.56.280 Official newspaper.

The newspaper to which the award of the advertising is made shall be known and designated as the official newspaper. Except when otherwise provided in the charter, city code, or by other law, all official publications made by the city shall be made in the official newspaper.

Article VI. Protests

3.56.290 Protest policies.

The city manager shall establish protest policies, subject to the requirements set forth in this article. Only a bidder or proposer on a contract, or the authorized representative of the bidder or proposer, may file a protest on that contract.

3.56.300 Grounds for protest.

A protest may be filed based on any of the following:

- A. Failure to follow the requirements of the solicitation;
- B. Failure to comply with applicable law;
- C. Alleged error or misconduct in the solicitation process or documents; or

- D. Any grounds in the city manager's established protest policy.

3.56.310 Time for filing a protest.

- A. Any protest alleging improprieties in the solicitation documents must be filed no later than five business days prior to the deadline for submissions in response to the solicitation.
- B. For any protest not covered by subsection A, the protest must be filed with the city no later than five business days after the protestor knew or should have known of the facts giving rise to the protest, but in no event later than five business days after the city issues a written notice of recommendation for award or approval.

3.56.320 Form of protest.

- A. Protests must be in writing and must include the following:
 1. The name, address, e-mail address, and telephone number of the protester;
 2. A description of the contract to which the protest pertains, including the contract number and date that bids or proposals for the contract were received by the city;
 3. The city department or division issuing the solicitation;
 4. The factual and legal grounds for the protest;
 5. The desired relief sought by the protester; and
 6. Any written materials that the protester wishes to have considered.
- B. Protests shall be addressed to the City Clerk, 915 I Street, New City Hall, Sacramento, CA 95814, or to the contract manager, as set forth in the city's protest policies.
- C. Any protest that does not comply with this section and the city's protest policies is invalid and shall not be considered.

3.56.330 Protest fee.

- A. At the time a protest is filed, the protester shall deposit with the city a protest fee in an amount established by resolution of the city council. Any protest that is not accompanied by the protest fee is invalid and shall not be considered.

- B. The city shall use the protest fee to pay costs incurred by the city for the hearing and hearing examiner. If the costs are less than the protest fee, the city shall return any unexpended amounts. If the costs exceed the protest fee deposited, and the protest is denied, the city may invoice the protester for any additional unpaid costs, and the protester shall pay all costs due no later than 30 calendar days after the date of the invoice. Any protester that fails to pay an invoice within 30 days is barred from filing a protest on any subsequent city contract until the city receives payment of all costs due plus interest, at the rate of 10% per annum, beginning 30 calendar days after the date of the invoice.

3.56.340 Consideration of protest.

If a valid protest is filed, either a hearing examiner or the city council may consider the protest, as set forth in the city's protest policies.

Article VII. Debarment of Contractors

3.56.350 Application.

This article applies to all contracts let by the city, including purchases and contracts for goods, nonprofessional services, public projects, and professional services.

3.56.360 Debarment—Effect.

Notwithstanding any other provision of this code:

- A. The city manager, or a hearing examiner on appeal, may debar any person from submitting a bid or proposal, or being awarded, any contract with the city, or from being a subcontractor or supplier at any tier of a contract, in accordance with the procedures established by this article.
- B. During the time period that the debarment pursuant to this article of any person is in effect, the city shall not accept bids or proposals from, enter into contracts with, or allow performance of subcontracts or supply contracts by, that person, in accordance with the procedures established by this article.
- C. During the time period that the debarment of any person by a state or federal agency is in effect, the city shall not, in conjunction with any city project receiving funds from the state or federal agency, accept bids or proposals from, contract with, or allow performance of subcontracts or supply contracts by, that person, whether or not that person has been debarred pursuant to this article.

3.56.370 Notice.

Whenever notice is required to be given under this article, it is effective on the day the notice is either personally delivered or deposited in the U.S. mail, first class postage prepaid and addressed to the last known address of the person to be notified.

3.56.380 Grounds for debarment.

Debarment may be imposed on a person by the city manager, or a hearing examiner on appeal, in accordance with the procedures established by this article on any of the following grounds:

- A. Commission by the person of any act of:
 - 1. Fraud, bribery, collusion, or conspiracy;
 - 2. Bid rigging, price fixing, or any other act in violation of any federal, state, or local law in connection with the bidding upon, award or performance of any contract; or
 - 3. Embezzlement, theft, forgery, falsification or fabrication of records, or perjury.
- B. Submission by the person of a bid, proposal, or other document pertaining to or required by a city contract, or pertaining to or required by any provision of this code, that is known by the person to be false or contain false information.
- C. The person knowingly doing business with a debarred third person in performance of any city contract awarded after debarment of the third person.
- D. More than one occurrence of substandard performance by the person on any city contract, including: (1) a material breach of the contract; (2) a failure to complete work required under the contract on time or within budget when the failure is attributable to the person's negligent or wrongful actions or inactions; (3) substandard quality of work; or (4) any negligent or wrongful failure to cooperate with the city such that timely, satisfactory completion of the work was jeopardized. The occurrences of substandard performance described herein may occur on the same contract or on different contracts.
- E. One or more serious violation by the person, during the performance of any city contract, of any labor or safety statutes, regulations, or standards, including applicable local, state, or federal statutes, regulations, or standards governing

prevailing wage, occupational safety and health, and nondiscrimination requirements.

- F. One or more serious violation by the person of any law or regulation governing the handling, transfer, storage, or disposal of hazardous materials or hazardous waste.
- G. One or more serious violation by the person of any law or regulation governing the handling, transfer, storage, or disposal of solid waste generated in connection with construction or demolition.
- H. A violation by the person of any law or regulation governing conflict of interest.
- I. The issuance to the person, within a two-year period, of three final administrative penalty orders for violating any section of chapter 12.20. Multiple administrative penalty orders issued for continuing violations occurring on the same calendar day is considered one administrative penalty order for purposes of this section.

3.56.390 Determination of grounds.

- A. The city manager, or a hearing examiner on appeal, may determine that grounds for debarment exist, as described in section 3.56.380. Written notice of proposed debarment must be provided within three years of the date of the events relied upon for the proposed debarment. The following are sufficient to determine that grounds for debarment exist:
 - 1. The person has been convicted of a criminal charge for any act or omission described in section 3.56.380, whether entered upon a verdict or a plea, including a plea of no contest;
 - 2. A final civil judgment arising out of any act or omission described in section 3.56.380 has been entered against the person;
 - 3. A significant penalty or sanction, including monetary penalties and other sanctions, such as debarment, has been imposed on the person by a federal, state, or local agency for any act or omission described in section 3.56.380; or
 - 4. The person has committed one or more acts or omissions described in section 3.56.380 as established by a preponderance of evidence in the record of facts and information presented to the city manager or a hearing examiner on appeal.

B. Conduct may be imputed to a person for whom debarment is being considered as follows:

1. An act or omission, as described in section 3.56.380, of any principal, may be imputed to the person when the conduct occurred in connection with the principal's performance of duties for or on behalf of the person, or with the person's knowledge, approval, or acquiescence.
2. An act or omission, as described in section 3.56.380, of a person may be imputed to any principal who participated in, knew of, or had reason to know of the person's conduct.
3. An act or omission, as described in section 3.56.380, of one person in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of the participants. Acceptance of the benefits derived from the conduct is evidence of the knowledge, approval, or acquiescence.

C. In determining whether to debar a person, and the duration of any debarment, the city manager or a hearing examiner may consider, in addition to any other relevant factors, the following:

1. The degree to which the person cooperated fully with local, state, or federal authorities during any investigation or any administrative or judicial proceeding that forms the grounds for debarment.
2. The degree to which the person has paid or has agreed to pay all criminal, civil, and administrative liability resulting from any of the acts or omissions set forth under section 3.56.380, including any investigative or administrative costs incurred by any public agency, and has made or has agreed to make full restitution for any damages incurred as a result of any of the acts or omissions.
3. Whether the person had effective standards of conduct and internal control systems in place at the time of any of the acts or omissions set forth in section 3.56.380 or had adopted the procedures before any investigation of the acts or omissions.
4. Whether the person brought any of the acts or omissions set forth in section 3.56.380 to the attention of the appropriate public agency or agencies in a timely manner.

5. Whether the person has fully investigated the circumstances surrounding any of the acts or omissions set forth in section 3.56.380 and, if so, has made the result of the investigation available to the city.
6. Whether the person has taken appropriate disciplinary action against the individuals responsible for any of the acts or omissions set forth in section 3.56.380.
7. Whether the person has implemented or agreed to implement remedial measures to prevent a recurrence of any of the acts or omissions set forth in section 3.56.380, including new or revised review and control procedures and ethics training programs, as well as any other measures identified by any public agency.
8. Whether the person has had adequate time to eliminate the circumstances within the organization that led to any of the acts or omissions set forth in section 3.56.380.

3.56.400 Scope of debarment.

- A. A debarment of a group, association, firm, corporation, partnership, company, or other entity under this article constitutes debarment of all of the entity's divisions and other organizational elements from all city contracts, unless the debarment decision is limited by its terms to one or more specifically-identified individuals, divisions, or other organizational elements.
- B. The debarment of a person may include any existing affiliate of the person where the affiliate is specifically named and given notice of the proposed debarment and an opportunity to respond. The debarment automatically includes any successor-in-interest or any affiliate of the debarred person formed after the debarment.
- C. Debarment of any person includes debarment of any business entity, whether or not the business entity was in existence at the time of the debarment, for which the debarred person acts as a principal during the debarment period.

3.56.410 Period of debarment.

- A. The period of debarment must be commensurate with the seriousness of the grounds, as determined by the city manager, or by a hearing examiner on appeal. An initial period of debarment may not exceed three years.
- B. Before the debarment period imposed under this article expires, the city manager may review the record of the evidence presented during the debarment

proceedings, as well as any additional facts or information relevant to a review of the debarment. The city manager may extend the existing debarment, for successive additional periods of up to two years each, if the city manager determines that the extension is necessary to protect the public interest. If the city manager determines that debarment for an additional period is necessary, the city manager shall follow the procedures established by section 3.56.400 before imposing the extension.

- C. Unless the city manager has extended the debarment pursuant to subsection B, the debarment automatically terminates upon expiration of the debarment period.

3.56.420 Debarment procedures.

- A. Before debarring any person under this article, the city manager shall mail by certified or registered mail, return receipt requested, or deliver by personal service a written notice of the proposed debarment to the person proposed to be debarred, hereinafter referred to as "respondent." The notice must contain the following:
 1. Notice that a debarment is being considered;
 2. The grounds for the proposed debarment, in terms sufficient to put the respondent on notice of the conduct or transactions upon which it is based;
 3. The potential period of the debarment;
 4. The city's procedures governing debarment; and
 5. The address to which a request for a hearing or information and argument in opposition to the proposed debarment must be delivered or mailed.
- B. Within 30 days after personal service or mailing of the notice of proposed debarment, the respondent or the respondent's representative may submit in writing a request for a hearing or information and argument in opposition to the proposed debarment. The written request or information and argument must also specify the address to which subsequent notices and other communications to the respondent should be mailed.
- C. If the respondent requests a hearing in accordance with subsection B, the city manager shall, within 30 days after receipt of the request, schedule an informal hearing at which the respondent or the respondent's representative shall have a reasonable opportunity to provide information and argument, including the presentation and questioning of witnesses, to the city manager. The city manager shall mail the respondent, by certified or registered mail, return receipt requested,

written notice of the time, date, and location of the hearing, which must be held no sooner than 10 days from the date of the notice of hearing.

- D. The city manager's debarment decision shall be made within 30 days after expiration of the 30-day period specified in subsection B, or within 30 days after a hearing is held, whichever is later. If the city manager decides it is in the best interest of the city to impose debarment, the decision must be in writing, contain findings of fact, and specify the grounds for debarment based on the record of facts and information presented to the city manager.
- E. A copy of the decision by the city manager shall be mailed to the respondent by certified or registered mail, return receipt requested, no later than five days after the decision is made. If the city manager decides to impose debarment, the decision must specify the period of debarment. Except in cases where the city manager's debarment decision is appealed in accordance with section 3.56.430, the period of debarment begins on the date the decision is mailed to the respondent. If the city manager's debarment decision is appealed in accordance with section 3.56.430, the period of debarment begins on the date that the hearing examiner makes a decision to uphold or modify the city manager's debarment decision, in accordance with section 3.56.430.
- F. If the respondent fails to submit either a written request for a hearing or written information and argument in opposition to a proposed debarment within the 30 day period specified in subsection B, or if respondent fails to appear at the hearing, the decision of the city manager is final, and is not subject to appeal pursuant to section 3.56.430.
- G. The city manager may reverse a decision to debar a person, or may reduce the scope or time period of debarment for any reason that obviates the need for the debarment or that indicates a shorter debarment period will adequately protect the public interest. Those reasons include, but are not limited to, the following:
 1. Newly discovered material evidence;
 2. Reversal of the conviction, civil judgment, or administrative penalty or sanction upon which the debarment was based;
 3. Bona fide change in ownership or management; or
 4. Elimination of other grounds for which the debarment was imposed.

The reversal or reduction in scope or time period of the debarment may be initiated by the city manager or by the debarred person upon a request submitted to the

city manager. The debarred person's request must be in writing and supported by documentation. The debarred person shall provide any additional documentation requested by the city manager to review the request. The city manager shall notify the debarred person of the decision made upon any such request submitted by a debarred person within 30 days after receipt of the request or any supporting documentation. A debarred person may not submit such a request until a minimum of 12 months have elapsed after the period of debarment begins, and no more than one such request may be submitted during each successive 12-month period thereafter.

3.56.430 Appeal of a debarment decision.

- A. Any appeal of a decision of the city manager regarding a debarment or the period or scope of debarment imposed must be heard by a hearing examiner from a panel of hearing examiners designated for this purpose by resolution of the city council. A hearing examiner may not be a city employee at the time of the hearing.
- B. The respondent or respondent's representative may appeal any decision made by the city manager regarding a debarment or the period or scope of debarment imposed, by delivery to the city clerk of a written notice of appeal no later than 30 calendar days after the date that notice of the city manager's decision is mailed to the respondent. The written notice of appeal must include a copy of the city manager's debarment decision and must comply with the requirements set forth in article I of chapter 1.24.
- C. If a valid notice of appeal is timely filed, the city clerk shall establish the date of the hearing before the hearing examiner, and shall mail the respondent written notice of the hearing that specifies the location, time, and date of the hearing, which shall be held no sooner than 10 days from the date of the notice of hearing.
- D. The hearing by the hearing examiner is a de novo hearing. The hearing examiner has no power to declare the provisions of this article unenforceable or unconstitutional, and the hearing examiner's decision must be based on the criteria specified in this article.
- E. The proceedings at the hearing must be recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. The hearing examiner may, upon request of either party, grant continuances for good cause shown, or upon his or her own motion. The hearing examiner shall administer the oath or affirmation. California Government Code section 11513, subdivisions (a), (b), and (c) apply to hearings under this section, except that relevant hearsay evidence may be sufficient in itself to support a finding

if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

- F. At the hearing, the city manager bears the burden of showing, by a preponderance of evidence in the record of facts and information presented to the city manager and the hearing examiner, that there exist grounds for debarment in accordance with the provisions of this article. The hearing examiner may take official notice, either before or after the close of the hearing, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.
- G. After the close of the hearing, the hearing examiner may uphold, reverse, or modify the city manager's debarment decision. Any decision upholding or modifying the city manager's decision must be in writing, contain findings of fact, specify the grounds for debarment based on the record of facts and information presented to the city manager and the hearing examiner, and specify any modifications to the city manager's decision. A copy of the hearing examiner's decision must be mailed to the respondent no later than five days after the decision is made.
- H. The decision of the hearing examiner is final. Judicial review of any decision made by a hearing examiner pursuant to this section is governed by section 1094.5 of the California Code of Civil Procedure.

3.56.440 Requirement to submit information.

The city may require any person bidding or submitting a proposal on a city contract to certify under penalty of perjury, as a part of any bid or proposal submitted, whether the person, including any principal, affiliate, or predecessor-in-interest of the person:

- A. Is currently under debarment, or has been under debarment at any time during the preceding three years, by any federal, state, or local agency; and
- B. Has, at any time during the preceding three years, been convicted, been subject to a civil judgment, or been subject to a penalty or sanction by any federal, state, or local agency, for any act or omission described in section 3.56.380.

3.56.450 Doing business with debarred person.

In the performance of any city contract, no person shall knowingly utilize the services of any person who is debarred under this chapter. No person shall knowingly use or list, in any bid or proposal for a city contract, any subcontractor or supplier who is debarred. Violation of this section may result in rejection of the bid or proposal, nonpayment by the city for work performed by the debarred person, annulment of award or termination of

contract, issuance of a stop work order, debarment, or any other remedy provided by law. If a person lists a debarred subcontractor or supplier without knowledge of the debarment, the person will be allowed to substitute the debarred subcontractor or supplier listed in accordance with provisions of the contract governing contract changes.

3.56.460 Renewal of existing contracts.

The city shall not renew or extend the term of any existing contract with any person who is debarred in accordance with this chapter, unless the city council upon a two-thirds vote determines that the renewal or extension is in the best interest of the city.

3.56.470 List of debarred persons.

- A. The city manager shall maintain a list of all persons who are currently debarred by the city pursuant to this article and the dates of each debarment. The list must not include a person debarred by another local agency or the state or federal government unless the person also has been debarred under this article. The list must be filed with the city clerk. The city clerk shall make the list available for inspection and copying by any person during reasonable hours and upon reasonable notice.
- B. The list of persons who are currently debarred shall be included in the solicitation for any city contract governed by this chapter. By including the list, bidders and proposers are deemed to be on notice as to the persons debarred under this article.

SECTION 5.

Chapter 3.60 of the Sacramento City Code is hereby deleted.

SECTION 6.

A new chapter 3.60 is hereby added to the Sacramento City Code to read as follows:

Chapter 3.60 Additional Procurement Requirements for Public Projects

3.60.010 Generally.

Contracts for public projects are subject to the requirements of this chapter, in addition to the requirements of chapter 3.56 and the city's administrative policies.

3.60.020 Exemption of the City of Sacramento from various provisions of the California Public Contract Code.

- A. Intent. Senate Bill 974, Chapter 832 of Statutes, 2001, added section 1100.7 to the California Public Contract Code, which provides that all provisions of the California Public Contract Code apply to charter cities unless a particular city's charter or ordinances expressly exempt the city from those provisions. In enacting this section, the city specifically declares itself exempt from any and all provisions of the California Public Contract Code except as specified in this section.
- B. Declaration of general exemption. The city declares that it is exempt from all provisions of the California Public Contract Code including those provisions specified in subsection C, except for:
 - 1. Those California Public Contract Code provisions that have been judicially declared to be matters of statewide concern in a final appellate court decision;
 - 2. Those provisions specified in subsection D;
 - 3. Those provisions that are specifically and expressly included in and made applicable to the city by a contract;
 - 4. Those provisions that the city specifically and expressly agrees are applicable to the city as a condition to receipt of state funding or a required state approval; and
 - 5. Those provisions that are made expressly applicable to the city by resolution adopted by the city council.
- C. Specific exemptions from California Public Contract Code. The city is exempt from the following provisions of the California Public Contract Code:
 - 1. Division 2, part 1, chapter 6, sections 6100 through 6108, inclusive;
 - 2. Section 7102;
 - 3. Section 7103;
 - 4. Section 7104;
 - 5. Section 9203;
 - 6. Division 2, part 2, sections 10100 et seq.;

7. Division 2, part 3, chapter 1, sections 20100 et seq., except as set forth in subsection D;
8. Division 2, part 3, chapter 1.5, sections 20930 et seq.;
9. Division 2, part 3, chapter 2, sections 22000 et seq.;
10. Division 2, part 3, chapter 2.5, sections 22050 et seq.;
11. Division 2, part 3, chapter 3, sections 22101 et seq.

D. Applicable provisions. The city is subject to the following provisions of division 2, part 3, chapter 1 of the California Public Contract Code :

1. Section 20103.5;
2. Section 20103.8;
3. Section 20104.50;
4. Section 20104.70;
5. Article 27;
6. Article 29;
7. Article 30;
8. Article 31;
9. Article 32;
10. Article 54;
11. Article 56;
12. Article 57;
13. Article 58;
14. Article 59.

3.60.030 Standard specifications.

The city council shall, from time to time, adopt standard specifications setting forth terms and controls for public project contracts and the bidding and award thereof. The standard specifications must conform to the purposes and intent of this chapter, and must include the following:

- A. Bid forms and requirements governing the proper completion thereof by the bidder;
- B. Bid security forms and requirements for the use thereof, including forfeiture in certain cases and return to unsuccessful bidders;
- C. Faithful performance bond forms and requirements;
- D. Payment bond forms and requirements;
- E. Labor and material bond forms and requirements;
- F. Terms governing the time to complete the contract, extending the time to complete the contract, and liquidated damages; and
- G. Terms governing a failure of completion by the contractor, payment of the contractor for work performed in the event of failure, and the completion of the contract in such instance.

3.60.040 Payment of prevailing rate of wages—Maximum hours of labor—Penalties.

Every contract for any construction project, as defined in Section 1782 of the California Labor Code, to be performed within the state at the expense of the city, or paid out of city moneys, whether such work be done directly under contract award, or indirectly by or under subcontract or by any other arrangement whatsoever, must provide, in addition to other provisions required by law, that any person performing labor in the state in performance of such contracts, subcontracts, or any other arrangement, shall be paid not less than the general prevailing rate of wages; provided, however, that the requirement to pay the general prevailing rate of wages shall not apply to: (a) contracts for any construction project originally awarded or executed in an amount of \$25,000 or less; (b) contracts for any alteration, demolition, repair, or maintenance work originally awarded or executed in an amount of \$15,000 or less; (c) materials for which no manufacturing plant exists in the city; or (d) standard materials or commodities carried in stock by dealers or manufacturers generally.

The general prevailing rate of wages shall be the general prevailing rate of wages for the area in which the city is located as determined by the director of the department of

industrial relations pursuant to California Labor Code section 1773. Every contract for which the payment of the general prevailing rate of wages is required shall provide that the determination of the director of the department of industrial relations in force at the time the notice to bidders is published with respect to the general prevailing rate of wages in private employment in the city for similar work shall be binding upon the parties any contract awarded as a result of such notice. If any worker is paid less than the general prevailing rate of wages for the work or craft in which the worker is employed by the contractor or any subcontractor for any work done under the contract, the city may withhold contract payments equal to the amount of underpayment. In addition, the contractor shall forfeit as a penalty to the city not more than \$50 for each calendar day, or portion thereof, for each worker paid less than the general prevailing rate of wages, as determined by the director of the department of industrial relations, for the work or craft in which the worker is employed by the contractor or any subcontractor for any work done under the contract, and every contract shall have inserted therein a clause to that effect.

In the performance of the contract, eight hours shall be the maximum hours of labor on any calendar day, and 40 hours shall be the maximum hours of labor during any one calendar week. Work performed by employees of contractors in excess of eight hours per day, and 40 hours during any one week, is permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. The contractor shall as a penalty forfeit \$25 for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this section.

To the extent that there is insufficient money due a contractor to cover all penalties forfeited and amounts due in accordance with this section, and in all cases where the contract does not provide for a money payment by the city to the contractor, the city shall provide notice of the violation to the director of industrial relations, division of labor standards enforcement, for commencement an enforcement action pursuant to California Labor Code, section 1775.

Out of any money withheld or recovered, pursuant to this section, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both to pay each worker in full, the money shall be prorated among all workers. At the expiration of 90 days after the completion of the contract and the formal acceptance of the project, all penalties or forfeitures withheld or recovered pursuant to this section shall be deposited in the city's general fund.

Every contractor or subcontractor, or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest who is found by the city manager to be in willful violation of the provisions of this chapter with intent to defraud

shall be ineligible to bid on or receive a contract paid out of moneys deposited in the city's treasury for a period of not more than five years from the date such determination is made by the city manager.

The specifications for any contract that requires the payment of the general prevailing rate of wages under this section shall include a statement that a copy of the current director of industrial relations prevailing wage determination will be made available to any interested party on request.

Every contract falling under the terms of this section shall contain a provision that requires the contractor to insert into every subcontract or subagreement entered into, provisions identical with the provisions set forth in the contract pursuant to this chapter regarding compliance with the requirements for wage rates, hours of labor, and requirements for the employment of apprentices. The stipulations shall fix the responsibility of compliance with sections 3.60.040 and 3.60.050 of this chapter with the prime contractor.

3.60.050 Apprentices.

- A. All public project contractors and subcontractors shall comply with Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and city policies governing the employment of apprentices. This subsection does not apply to construction contracts and subcontracts that are advertised for bid or awarded before December 25, 2014, including, contracts and subcontracts for the construction of public improvements that are to be funded in whole or part through a community facilities district.
- B. Contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices on the ground of age, ancestry, color, disability, genetic information, gender (including gender identity and gender expression), marital status, medical condition, national origin, race, religion, sex, or sexual orientation. The prime contractor is responsible for complying with these provisions for all apprenticeable occupations.
- C. If a public project contractor or subcontractor fails to comply with this section, the city may report the contractor or subcontractor to the Department of Industrial Relations and the California Apprenticeship Council for action as necessary under Section 1777.7 of the California Labor Code.
- D. All public improvements within a private development project that are constructed in compliance with this section and section 3.60.040 are eligible for public funding, including, funding through a community facilities district, so long as all other relevant requirements have been satisfied or waived in accordance with law.

3.60.060 Fee for substitution of securities for withheld funds on contracts.

If a contractor requests substitution of securities for withheld funds pursuant to section 22300 of the California Public Contract Code, the contractor shall pay any and all costs, fees, or other charges that are authorized or required.

SECTION 7.

Chapter 3.64 of the Sacramento City Code is hereby deleted.

SECTION 8.

A new Chapter 3.64 is hereby added to the Sacramento City Code to read as follows:

Chapter 3.64 Participation of Local Business Enterprises

3.64.010 Local business enterprise and local hire programs.

The city council may adopt by resolution programs to promote and provide incentives for the participation of local business enterprises (LBEs) in any city contracts. The city council may also adopt by resolution programs to promote and provide incentives for the hiring of local residents to perform work on public projects. The city manager may adopt administrative procedures to implement the provisions of these programs.

3.64.020 LBE and local hire participation levels.

- A. The specifications or request for bids or proposals for any contract may establish goals or minimum levels for participation in the contract by LBEs. No bidder or proposer on the contract is considered responsive unless the bid or proposal meets the minimum LBE participation levels established for the contract , in accordance with the administrative policies authorized by section 3.64.010.
- B. The specifications or request for bids for any public project contract may establish goals or minimum levels for hiring local residents to perform work on the project, and may require contractors to obtain referrals when hiring employees and interns for the project from apprenticeship programs, employment and training agencies, and other sources.

3.64.030 Sheltered market program.

The LBE programs and their respective administrative policies authorized by section 3.64.010 may provide for a sheltered market program that restricts bidding and awards for contracts and agreements that do not exceed the contract approval authority of the city manager in sections 3.04.010 and 3.56.080.

3.64.040 MBE/WBE/DBE bid requirements.

The LBE and local hire programs authorized in sections 3.64.010 through 3.64.030, inclusive, do not apply to any contract awarded under or funded by any federal or state program that includes minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE) participation goals. The contracts will be awarded in accordance with the applicable MBE, WBE, or DBE requirements and policies.

3.64.050 Provision of false information a misdemeanor.

- A. No person shall submit false information to the city, or to the city's representative, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a MBE, WBE, DBE, or LBE.
- B. No person shall submit false information to the city or the city's representative in connection with any bid or proposal regarding the MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or regarding efforts made by that person to meet the MBE, WBE, DBE, or LBE participation levels included in a city contract.
- C. No person shall submit false information to the city or the city's representative in connection with any local hire program, including the location where an employee resides or efforts made to meet the local hire participation levels included in a city contract.
- D. Any person who violates this section is guilty of a misdemeanor. This is in addition to any other remedies authorized by any other provisions of this code or provided for by any federal, state, or local law or regulation.

3.64.060 Information to be provided under penalty of perjury.

- A. Whenever any bid or proposal to be submitted to the city calls for the bidder or proposer to submit information about the MBE, WBE, DBE, or LBE status of any business entity, including a sole proprietorship, or about the efforts made by the bidder or proposer to meet the MBE, WBE, DBE, or LBE participation goals included in a city contract or agreement, the bidder or proposer shall submit the information under penalty of perjury.
- B. Whenever any bid to be submitted to the city calls for the bidder to submit information about the bidder's local hire plan or about the efforts to be undertaken by the bidder to meet the local hire participation goals included in a city contract, the bidder shall submit the information under penalty of perjury.

SECTION 9.

Chapter 3.80 of the City Code is hereby amended to read as follows:

Chapter 3.80 DISPOSITION OF SURPLUS PERSONAL PROPERTY

3.80.010 Generally.

Surplus personal property, defined as personal property belonging to the city that is no longer fit or necessary for use by the city, including any lost or unclaimed property, must be disposed of according to the provisions of this chapter.

3.80.020 Surplus personal property list approval.

Any city department or office may create a list of all surplus personal property held by such city department or office. This list should include photos and descriptions of the property, the contact information for the personnel managing the department or office, and the address at which the property is kept. If approved by the head of the department or office, the property listed shall be known as surplus personal property.

Departments or offices may only dispose of surplus personal property as provided in this chapter.

3.80.030 Methods of disposition.

A. City departments and offices may only dispose of surplus personal property through one of the following methods:

1. Interdepartmental transfer. Departments or offices may transfer any surplus personal property to any city department or office for use by that department or office. If more than one department or office requests any particular item of surplus personal property, the city manager will decide which department or office will receive the property.
2. Sale at public auction to the highest bidder.
 - a. The procurement division may contract for qualified auction services to dispose of surplus personal property. The service will dispose of the property through a live public auction either in-person or online, or a combination of the two methods.
 - b. A notice must be placed on the city's public website instructing interested members of the public to visit the contracted auctioneer service's website for details about future auctions.

- c. The city is under no obligation to publish a list of the surplus personal property in advance of an auction.
 - d. The city reserves the right to reject any and all bids received for any property.
- 3. Sealed proposal. The city manager may adopt policies for the disposal of surplus personal property through sealed proposals. Any policies must provide that the city reserves the right to reject any and all sealed proposals.
- 4. Incidental sale. Surplus personal property may be sold through an incidental sale, as provided in section 3.80.040 of this chapter.
- 5. Consignment. The city council may, by resolution, determine to dispose of surplus personal property by putting such property out to sale on consignment if the council finds that such method of sale is likely to bring the highest price to the city. The resolution must set forth the minimum price at which such property may be sold and call for bids for consignees to sell such property. At the same time council determines to sell such property on consignment, or later, the council may, by a resolution adopted by a two-thirds vote, determine to waive competitive bidding on the consignment contract if it determines that waiver is in the best interest of the city.
- 6. Sale to another public agency. Surplus personal property may be sold to any other public agency, provided that the price is determined to be fair and reasonable. Such determination shall be made by the head of the department or office for a sale for under \$250,000, and by the city council for a sale of \$250,000 or more.
- 7. Donation. By resolution of the city council, surplus personal property may be donated to any other public agency or charitable organization exempt under section 501(c)(3) of the Internal Revenue Code.
- 8. Disposal. If the head of a department or office, in consultation with the procurement division, determines that an item has little or no resale value, or that the item is broken and irreparable, the department or office may dispose of the item without further action.

B. All dispositions pursuant to subsections A.1 through A.7 must be pursuant to a written document approved as to form by the city attorney or designee.

3.80.040 Incidental sale of certain items.

- A. A department or office may sell any item of surplus personal property by incidental sale when it determines that the item:
 - 1. Is scrap or salvage material, including, discarded fire hose, a tire casing, a dead storage battery, or worn-out or wrecked automobile or machine body or part;
 - 2. Is perishable; or
 - 3. Has been offered for public sale and no offer to purchase has been received.
- B. For the purpose of this section, the term "incidental sale" means the sale of any item defined in subsection A of this section at a price, and at a time and place to be determined by the head of the department or office in possession of the surplus personal property, to any buyer who is willing to pay the price requested, without first advertising such sale or calling for bids.
- C. Nothing in this section limits the ability of the city to sell, as it may deem proper, any item as defined in subsection A by sale at public auction or by sealed proposal as provided in Section 3.80.030 of this chapter.

Adopted by the City of Sacramento City Council on May 14, 2024, by the following vote:

Ayes: Members Guerra, Jennings, Kaplan, Maple, Thao, Valenzuela, Vang, and Mayor Steinberg

Noes: None

Abstain: None

Absent: Member Talamantes

Attest:  07/23/2024
Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.

Passed for Publication: April 30, 2024

Published: May 3, 2024

Effective: June 13, 2024