



DEPARTMENT OF
GENERAL SERVICES

CITY OF SACRAMENTO
CALIFORNIA

5730 - 24TH STREET
BUILDING FOUR
SACRAMENTO, CA
95822-3699

OFFICE OF THE DIRECTOR

February 24, 1993

PH 916-433-6200
FAX 916-399-0263

DIVISIONS:

Law Legislation Committee
Sacramento, CA

COMMUNICATIONS
FACILITY MANAGEMENT
FLEET MANAGEMENT
PROCUREMENT SERVICES

Honorable Members in Session

SUBJECT: ORDINANCE AMENDING CHAPTER 58, SACRAMENTO CITY CODE

LOCATION AND COUNCIL DISTRICT: CITY WIDE

RECOMMENDATION:

This report recommends that the Law and Legislation Committee review and recommend approval of the attached ordinance amendments and forward them to the City Council for enactment.

CONTACT PERSON: GREGORY P. HOVIOUS, CONTRACT OFFICER, 433-6221

FOR COMMITTEE MEETING: MARCH 2, 1993

SUMMARY:

This report recommends that City Council amend Chapter 58 of the City Code relating to bidding and contracts for public projects. These amendments relate primarily to labor compliance procedures and change order procedures. These changes will bring the code into compliance with industry practices and enable Minority/Women Business Enterprises to be more competitive on City projects..

BACKGROUND:

The passage of Measure "E" in 1988 removed the monetary limitations from the City Charter for competitive bidding for commodities, goods, services and public projects. This authorized the City Council to establish the competitive bidding dollar level requirements through the City Code. With the exception of increasing the City Manager authority to \$50,000, changes to the City Code have not kept up with changing construction industry needs. This report sets forth changes to Chapter 58 consistent with current public project industry standards.

The following summarize the most significant changes to Chapter 58:

58.101 Definitions

The definition of a public project has been expanded to specifically exclude certain projects such as those by non-profit organizations. This will allow the City to have a contractor "donate" their labor for a project such as Fairytale Town Theater, while not subjecting the contractor to prevailing wage requirements. The definition requires certain threshold requirements to be met and is very limited in its application so as to eliminate abuse. The language was taken from the California Labor Code. This will have no adverse impact on City-wide employment while allowing charitable, youth, veteran, etc., organizations to accomplish their goals at minimum impact to the City.

58.501 Prevailing Wages

Existing City Code requires the payment of prevailing wages on any public project. The California Labor Code specifies prevailing wages will be paid on projects of \$1,000 or more unless the awarding agency has a labor compliance program. In that case, the limit before prevailing wage applies is \$25,000. The City of Sacramento has a provisionally certified labor compliance program. A new application has been submitted and final certification is anticipated any day. These different levels of application can prove troublesome because the City Code refers to State law to set prevailing wage. The proposed change will mirror State law and allow our labor compliance program to effectively ensure compliance.

The changes to this article have several advantages to the City. First, the exceptions to public projects mentioned in 58.101 will allow for donated projects to be "legal". Second, the City's labor compliance program will be able to enforce under the City Code what was previously only available through State law. The significant impact to the City is that penalties for violations will now flow to the City. Currently, the State collects any penalties for failure to pay prevailing wage on City projects.

Of most importance, raising the threshold to \$25,000 will allow for the participation of Minority/Women Business Enterprises on more projects. Currently, because prevailing wage requires weekly certified payrolls, monthly utilization reports and other similar paperwork, many Small, Minority and

Women Business Enterprises cannot maintain low enough overheads to complete the required paperwork and remain competitive. With prevailing wage required only on contracts in excess of \$25,000, Minority/Women Business Enterprises will be more competitive on projects of \$25,000 or less, thus enabling the City of Sacramento to contract with more Minority/Women Business Enterprises without sacrificing labor standards throughout the City.

58.502 Apprentices

Currently, there is no authority in the City Code for the employment of apprentices on City projects. Adding 58.502 will specifically authorize the use of apprentices if contractors and subcontractors chose to do so in accordance with State law. It is anticipated that the use of apprentices will encourage the hiring of more local women and minorities.

58.601 Authority of City Manager (Change Orders)

The authority of the City Manager or designated representative to issue change orders is increased under this section. These increases are consistent with modern construction principals and practices while maintaining Council control over budgetary concerns.

Currently, City Manager authority is limited to the lesser of five percent (5%) or \$50,000. This requires virtually all change orders to appear on Council agenda for Council approval. The reality of the construction industry is that the work has already been performed and Council is merely rubber stamping activity that has already transpired.

If the letter of the code were followed and all changes were approved by Council prior to the work actually being performed, it would require a minimum of three weeks extension of time per change order and a cost increase of approximately 15% to 25%. Because the additional time and costs to wait for pre-approval by Council are prohibitive, most changes border on the legal fringe of the existing Code. The changes are approved in the field to avoid the "... interruption of the work which would result in substantial increase in costs to the City." (§58.602 (4)(a)). The changes proposed by this report would eliminate the necessity for the current fringe behavior.

Approximately 85% of the change orders processed by the Council fall between the old limits and the new limits. There would not be any increase to total project costs and a savings in staff, management and Council time would be realized. Construction budgets have built-in change order contingencies. Even with this increased authority, changes which exceed the Council approved budget will still require Council action.

58.701 Fee for Substitution of Securities for Withheld Funds on Contracts

This language has been changed to refer to current State law.

-FINANCIAL CONSIDERATIONS:

Enactment of the proposed ordinance will generate cost savings to the City. The savings, while impossible to state with certainty, will be substantial. The preparation of staff reports on change orders averages approximately seven hours with all reviews and routing. Those will be reduced by approximately 85%. Additional savings will be realized through reduction of Council time, less clerical time, less paper costs and lower printing costs and other similar savings.

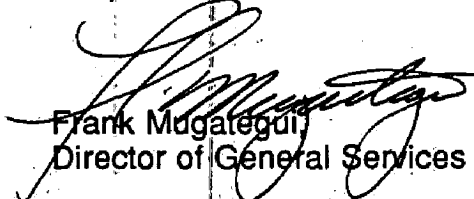
POLICY CONSIDERATIONS:

The changes to the City Code implement current practice and bring the City in line with the construction industry at large. These changes to the existing code have been reviewed and commented on by Public Works (Bob Lee, Deputy Director, John Middlebrook, Supervising Engineer and Fernando Barcena, Compliance Officer), Utilities (Don Dodge, Director, Gary Gosse, Gary Reents and Terry Paxton, Supervising Engineers), the City Attorney's Office (Diane Balter and Joe Robinson), as well as General Services (Frank Mugartegui, Director, Duane Wray, Facility Manager, Gary Szydelko, Supervising Architect, Jim Johnston, A.A.II and Aaron Chong, OMWSB Coordinator). All are in agreement that the proposed changes will codify existing practice and should be adopted as official City Policy.

MINORITY BUSINESS ENTERPRISES/WOMEN BUSINESS ENTERPRISES:

The changes to the prevailing wage requirements will allow more Minority Business Enterprises/Women Business Enterprise contractors to effectively compete for City projects. The apprenticeship provisions will promote more local hiring.

Respectfully submitted,


Frank Mugartegui
Director of General Services

RECOMMENDATION APPROVED:


for David R. Martinez
Deputy City Manager

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING CHAPTER 58 OF THE SACRAMENTO CITY CODE RELATING TO PUBLIC PROJECTS

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

SECTION 1

Chapter 58 of the Sacramento City Code is hereby amended to read as follows:

Article I. In General

§§ 58.1 to 58.100 Reserved

§ 58.101 DEFINITIONS

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

- (a) Public project shall mean and include the following:
- (i) A project for the erection, improvement, and remodeling of public buildings and works:
 - (ii) Work in or about streams, bays, waterfronts, embankments or other work for protection against overflow:
 - (iii) Street, sewer or water work except maintenance or repair:
 - (iv) Furnishing supplies or material for any such projects
- (b) Public project shall not include any work which meets all of the following conditions:
- (i) The work is performed entirely by volunteer labor.
 - (ii) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sport groups or associations.

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- (iii) The work will not have an adverse impact on City wide employment. The City Manager or designated representative, shall determine whether or not the work will have an adverse impact on employment within the City, through a survey of business establishments performing work of the type proposed. This survey shall be performed not more than 90 days before the start of the project.
- (iv) The work is approved by the City Manager as meeting the requirements of this section.

~~(b)~~(c) City Manager shall mean the City Manager of the City of Sacramento or an official specifically designated to act for the City Manager. Authorization not specified in this chapter shall be made in writing by the City Manager and filed with the City Clerk.

(e)(d) Maintenance: Recurrent, periodical, or scheduled work required to preserve a facility. It includes:

- (i) work required to restore components which have deteriorated from fair wear and tear, and
- (ii) other work on a facility to prevent damage or deterioration to that facility which otherwise would be more costly to restore.

~~(d)~~(e) Remodel: Alteration or conversion work on an existing facility to change its use, function, or layout.

(e)(f) Repair: 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, wear and tear which cannot be corrected through materials maintenance. Repair includes restoring or replacing components of facilities damaged by fire, storm, explosions, the elements, and other such disasters.

§ 58.102 Determination of lowest responsible bidder.

In addition to price in determining the lowest responsible bidder under the provisions of this chapter, consideration shall be given to; (i) the quality of a public project to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract; (iii) the ability of the bidder to perform the contract within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (v) the quality of bidder's performance on previous contracts with the City. (Ord. No. 3129, §1)

§ 58.103 Contract splitting prohibited.

It shall be unlawful to split or separate into smaller units any requirement for the undertaking of a public project, for the purpose of evading the provisions of this chapter.

Splitting or separating a transaction shall mean and include reducing the size of the public project to be furnished to the City under circumstances where there is a reasonable

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knowledge that the remaining work after such reduction will be additionally required within the same budgetary term, that there are funds available for that project, and the sole purpose is to knowingly avoid formally calling for bids. (Ord. No. 3129, §1)

§ 58.104 Administrative procedures.

The City Manager shall prepare, subject to approval by the City Council, administrative procedures sufficient to carry out the intent of this chapter. Such procedures shall include methods for the utilization of informal bidding procedures for those contracts to which the formal competitive bidding requirements of this chapter are inapplicable. (Ord. No. 3129, § 1)

§ 58.105 Collusion with bidder.

Any officer or employee of the City, or of any department thereof, who shall aid or assist a bidder in securing a contract for a public project at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the public project called for, or who shall knowingly accept work of a quality inferior to that called for by the contract, or to the receipt of a greater amount or different kind of work than has been actually received, shall be deemed guilty of a misdemeanor. (Ord. 3129, § 1)

§ 58.106 Unauthorized contracts: exceptions.

It shall be unlawful for any officer or employee to contract for a public project in behalf of the City, other than as herein prescribed. Any contracts or obligations to pay made contrary to the provisions of this chapter shall be null and void. (Ord. No. 3129, § 1, Ord.. No. 89-021, § 1; Ord. No. 89-061, § 2)

§ 58.107 Emergency Contracts.

~~The Director of the Department of Public Works~~ City Manager is hereby authorized, in behalf and in the name of the City of Sacramento and ~~the city manager~~, to negotiate and contract for ~~necessary equipment, materials and services~~ public projects without advertising for bids 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.

Agreements executed pursuant to the authority conferred by this section shall not individually exceed one hundred thousand dollars (\$100,000). The form of all such agreements shall have been approved by the City Attorney.

Upon award of any contract authorized by this section, ~~the director of public works~~ 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 amount of contracts let. In those emergency circumstances where the potential cost may exceed the limit established by this section, ~~the director of public works~~ City Manager shall immediately

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retain a contractor for initiation of the necessary emergency services and, at the next available Council meeting, shall present a report as outlined above and include the additional remedial actions that have been identified, and the currently estimated costs. The Council may contract for the additional emergency services or authorize the ~~director of public works~~ City Manager to negotiate and execute amendment change orders to the original contract or let additional contracts within limits then established by the City Council. (Ord. No. 89-021, § 1; Ord. No. 89-061, § 1)

§§ 58.108 to 58.199 Reserved.

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ARTICLE II. Authority of City Manager

§ 58.201 Contracts under ~~twenty-five~~ fifty thousand dollars.

Subject to the availability of funds and the procedures set forth in this chapter, the City Manager is hereby authorized to bind the City, by written contract or purchase order, involving an expenditure under ~~twenty-five~~ fifty thousand dollars (\$50,000) in any one transaction, without first advertising therefore or obtaining specific authorization by the City Council, for the undertaking of a public project required by the City. (Ord. No. 3129, § 1; Ord. No. 89-015, § 2)

§ 58.202 Contracts in ~~excess of twenty-five~~ fifty thousand dollars or more.

Unless otherwise provided herein, all contracts for public projects involving an expenditure of ~~twenty-five~~ fifty thousand dollars (\$50,000) or more shall be awarded by the City Council. Such contracts shall be formal written agreements executed by the City Manager on behalf of the City. The signature by the City Manager shall constitute his certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract. (Ord. No. 3129, § 1; Ord. No. 89-015, § 2)

§ 58.203 Control procedures; documents required.

The City Manager shall institute control procedures for the execution of contracts and purchase orders as required herein. The City Attorney shall approve the form and legality of all formal written agreements prior to the execution thereof. (Ord. No. 3129, § 1)

§§ 58.204 to 58.299 Reserved.

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Article III. Bid Procedure

§ 58.301 When advertising required.

Where the cost of a public project required by the City exceeds ~~the sum of twenty-five~~ is fifty thousand dollars (\$50,000) or more, the City Council shall order the City Clerk to call for formal bids therefore by advertising at least once ~~in the official newspaper~~ not less than 15 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, trade journals, minority or trade oriented publications, or other media available to minority or women's business enterprises that are interested in participating in the project, of the city not less than fourteen calendar days prior to the date set for receiving such bids. The City Council, when it deems it to be advisable, may require more than one advertising of the call for bids. (Ord. No. 3129, § 1; Ord. No. 89-015, §2)

§ 58.302 Independent price determination.

No person submitting any bid or proposal in connection with the procurement of supplies or services by City of Sacramento shall:

- (a) Propose or bid prices which have not been arrived at independently without consultation, communication, or agreement with any other bidder, offeror or competitor for the purpose of restricting competition as to any matter relating to the prices bid or proposed;
- (b) unless otherwise required by law, prior to opening of the bids or proposals, knowingly disclose any price bid or proposed to any other bidder, offeror or to any competitor;
- (c) 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;
- (d) knowingly be interested in more than one bid as the principal bidder; provided, however, subcontract bids to the principal bidders are excluded from this paragraph (d).

In the case of joint venture bids, the joint venture and each and every member of the joint venture shall for purposes of the foregoing be construed to be the person submitting the bid or proposal.

Any violation of this section shall be unlawful and a misdemeanor and shall be punished by a fine not exceeding ~~five hundred one thousand~~ one thousand dollars (\$1,000) or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. Any bid received or contract awarded where there was a violation of this section shall be a nullity and the City Council

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shall dispose of the matter in the same manner as if the bidder involved had failed to enter the contract after award. (Ord. No. 3129, § 1; Ord. No. 4297, § 2)

§ 58.303 Standard specifications.

The City Council shall, from time to time, adopt standard specifications setting forth procedures and controls for public project contracts and the bidding and award thereof. Such specifications shall conform to the purposes and intent of this chapter, and shall include the following:

- (a) Bid forms and procedures governing the proper completion thereof by the bidder;
- (b) Bid security forms, procedures for the use thereof, the forfeiture of same in certain cases, and the return thereof to the unsuccessful bidder;
- (c) Faithful performance bond forms and procedures for the use thereof;
- (d) Payment bond forms and procedures for the use thereof;
- (e) Labor and material bond forms and procedures for the use thereof;
- (f) Procedures governing the time of completion of the contract, for the extension of such time in certain cases, and for the use of liquidated damages;
- (g) Procedures governing a failure of completion by the contractor, payment of the contractor for work performed in the event of such failure, and the completion of such contract in such instance. (Ord. No. 3129, § 1)

§ 58.304 Opening of bids; awards.

All bids shall be sealed, identified as bids on the envelope, and shall be submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Clerk or his designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. Within the time set forth in the specifications, the contract shall be awarded by the City Council to the lowest responsible bidder, as defined herein. The City Council may reject any and all bids and waive any informalities or minor irregularities in the bids. (Ord. No. 3129, § 1)

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§ 58.305 Alternative award upon failure of bidder to enter into contract.

If the bidder to whom the contract is awarded shall fail to enter into the contract as required, the Council may declare the award to that bidder a nullity, and award the contract to the next lowest responsible bidder, or it may readvertise for bids, or dispense with competitive bidding, as hereinafter provided. (Ord. No. 3129, § 1)

§ 58.306 Readvertisement.

In the event the City Council rejects any and all bids, or in the event the bidder to whom a contract award is made fails to enter into the contract as required and the Council does not make an award to the next lowest responsible bidder, the Council may readvertise for bids, or may dispense with competitive bidding, as hereinafter provided. (Ord. No. 3129, § 1)

§§ 58.307 to 58.399 Reserved.

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Article IV. Exceptions to Competitive Bidding

§ 58.401 Generally.

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

- (a) To any transaction where maintenance, remodel, or repair work is to be performed by City employees.
- (b) When, after advertising for bids as required herein, no valid bids are received.
- (c) When, after receiving bids, the City Council rejects any and all of such bids, or when the bidder to whom an award is made fails to enter into the contract as required and the Council does not make an award to the next lowest bidder, as provided herein.
- (d) When, upon a two-thirds vote of the City Council, it is determined that it is in the best interests of the City to suspend competitive bidding for any contract.
- (e) When any contract is entered into pursuant to or under any special assessment proceedings wherein competitive bidding procedures are specified by laws of the State of California.
- (f) When an emergency contract is entered into by the director of the department of public works pursuant to the procedures specified in Section 58.107 of the Sacramento City Code. (Ord. No. 3129, § 1; Ord. No. 86-045, § 2; Ord. No. 89-021, § 1; Ord. No. 89-061, § 3)

§§ 58.402 to 58.499 Reserved.

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Article V. Wages Paid Under Contract With City

§ 58.501 Generally Payment of Prevailing Rate of Wages; Maximum Hours of Labor; Penalties

Every contract for any public project to be performed within the state at the expense of the city, or paid out of City moneys deposited in the treasury, whether such work be done directly under contract award, or indirectly by or under subcontract, subpartnership, day labor, station work, piece work, 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 execution of such contracts, subcontracts, subpartnership, day labor, station work, piece work, or by any other arrangement shall be paid not less than the general prevailing rate of wages in private employment for similar work in the city; provided, however, ~~that the minimum wages or compensation of any such person performing such labor shall not be less than four dollars per day, and in the performance of the contract eight hours shall be the maximum hours of labor on any calendar day; and provided further, that the foregoing provisions as to payment of the general prevailing rate of wages shall not apply to contracts for any public project of \$25,000 or less or to materials for which no manufacturing plant exists in the city, or to standard materials or commodities carried in stock by dealers or manufacturers generally.~~

The general prevailing rate of wages required in contracts for public projects 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 Labor Code Section 1773. ~~Every contract referred to in this section 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 during the life of for any contract awarded as a result of such notice. The If the City determines that 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 and subcontractors shall be jointly and severally liable and shall forfeit as a penalty to the city ten dollars for each laborer, workman or mechanic not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the general prevailing rate of wages set forth in the contracts for any work done under or by virtue of, or made necessary by the contract, by him or by any subcontractor under him, as determined by the Director of the Department of Industrial Relations, for the work or crafts 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. Every contractor willfully violating the terms or provisions of any contract or subcontract shall be deemed not to be a responsible bidder upon all future contracts for public projects to be performed for the city, and it shall be the duty of the officer, board, commission or council awarding the contract or authorizing the payment for work performed thereunder, when certifying to the treasurer any sums for payment, to~~

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~~deduct any and all amounts forfeited by the contractor or subcontractor and it shall be the duty of the treasurer to withhold the payment of any amounts forfeited.~~

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 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay. The contractor shall, as a penalty forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 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 officer, board, commission or council authorized to let any contract for any public project to be performed for the city shall include in the specifications setting forth the terms of performance of the contract a detailed statement of such prevailing rate of wages which the successful contractor shall be required to pay, including holiday and overtime work that a copy of the current Director of Industrial Relations prevailing wage determination is on file in the City Clerk's office, and will be made available to any interested party on request.

Every contract falling under the terms of this section shall contain a provision that the contractor shall requires the contractor to insert in into every subcontract or sub agreement entered into, provisions regarding rates of wages and hours of labor identical with the provisions set forth in the contract which he has been awarded. (ord. No. 3129, §1; Ord. No. 3781, §2 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

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for the employment of apprentices. The stipulations shall fix the responsibility of compliance with sections 501 and 502 with the prime contractor.

§ 58.502 Apprentices

Nothing in this chapter shall prevent the employment of properly registered apprentices upon public projects whether such work be done directly under contract award, or indirectly by or under subcontract, partnership, day labor, station work, piece work, or by any other arrangement whatsoever. Every such apprentice shall be paid the applicable apprentice prevailing per diem wage rate according to an apprentice wage progression schedule available from Department of Apprenticeship Standards (DAS). Apprentices employed can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Only apprentices who are in training under apprenticeship standards and who have written apprentice agreements may be employed on public projects in apprenticeable occupations.

All contractors or subcontractors who choose to employ apprentices shall comply with Section 1777.5 et seq. of the California Labor Code. Contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices on the ground of sex, race, religion, national origin, sexual preference, physical condition, martial status, age, ancestry, or color. The prime contractor shall be responsible for complying with these provisions for all apprenticeable occupations.

In the event that a contractor or subcontractor who chooses to employ apprentices fails to comply with the provisions of this section the City may report the contractor or subcontractor to the Director of Industrial Relations and the California Apprenticeship Council for action as necessary under Section 1777.7 of the California Labor Code.

§§ 58.503 to 58.599 Reserved.

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Article VI. Change Orders

§ 58.601 Authority of City Manager.

The City Manager is authorized to issue change orders ~~and to negotiate supplemental agreements within the limits set forth below.~~ The City Manager, in executing the authority specified in this section, shall not be required to obtain further City Council approval for the transfer of sufficient funds from the established project contingency.

(1) For contracts originally awarded for a price of less than ~~\$100,000.00, \$250,000.~~ \$250,000, the City Manager ~~may shall have the authority to~~ shall have the authority to issue change orders ~~and to negotiate supplemental agreements not to exceed for an increase in contract price of \$5,000.00 up to \$25,000; for any single change order, supplemental agreement, or the sum of all such change orders and supplemental agreements provided that the sum of all such change orders and supplemental agreements for any single contract shall not exceed \$25,000.~~

(2) For contracts originally awarded for a price of ~~exceeding \$100,000.00, \$250,000~~ exceeding \$250,000 but less than \$500,000.00, \$1,000,000 the City Manager shall have authority to issue change orders ~~and to negotiate supplemental agreements not to exceed an increase in contract price of \$10,000.00 for any single change order or supplemental agreement; provided however, notwithstanding the foregoing, that the sum of all such change orders and supplemental agreements for any single contract shall not exceed five percent (5%) ten percent (10%) of the original contract price. or \$25,000.00, whichever is less.~~

(3) For contracts originally awarded for a price of ~~exceeding \$500,000.00, \$1,000,000, but less than \$10,000,000,~~ exceeding \$1,000,000, but less than \$10,000,000, the City Manager shall have authority to issue change orders ~~and to negotiate supplemental agreements; not to exceed an increase in contract price of \$10,000.00 for any single change order or supplemental agreement; provided, however, notwithstanding the foregoing, that the sum of all such change orders and supplemental agreements for any single contract shall not exceed five percent (5%) of the original contract price or \$50,000.00, whichever is less. eight percent (8%) of the original contract price.~~

(4) For contracts originally awarded for a price of \$10,000,000 or more, the City Manager shall have the authority to issue change orders, provided, that the sum of all such change orders for any single contract shall not exceed six percent (6%) of the original contract price.

~~(4)(5)~~ Notwithstanding the foregoing, in the event that it becomes necessary in the discretion of the City Manager to issue change orders ~~and to negotiate supplemental agreement~~ in order to:

(a) Prevent interruption of the work which would result in a substantial increase in cost to the City; or,

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(b) Protect the work or equipment or materials to be used in the work, or human safety or the environment at or near the site of the work, from substantial and immediate danger of injury; or,

(c) Protect, where damage or injury has occurred, the work, or equipment or materials to be used in the work, or human safety or the environment at or near the site of the work from further or additional damage or injury or deterioration caused by man, nature or other source;

Then, the City Manager shall have authority to issue change orders ~~or to negotiate supplemental agreements~~ in such sums as may reasonable be necessary for such purposes; provided, however, in the event any such action exceeds the specific authority set forth in the foregoing, the City Manager shall report to the City Council regarding any such action as soon as reasonably possible but in no event more than thirty (30) days.

~~(5)(6)~~ The authority of the City Manager to issue additional change orders ~~and to negotiate supplemental agreements~~ to an accumulative total as specified above shall be restored to the extent that prior change orders ~~and supplemental agreements~~ issued and negotiated pursuant to the authority of the City Manager shall have been specifically subsequently ratified and authorized by the City Council. (Ord. No. 446, §1)

§58.603 Limitation

Notwithstanding anything to the contrary in the foregoing, the authority of the City Manager to issue change orders ~~and to negotiate supplemental agreements~~ shall be limited to the scope of the original contract unless in the judgment of the City Manager change orders exceeding the scope of the original contract are necessary ~~or to protect the safety of human life and the environment at or near the site of the work.~~ (Ord. No. 4446, § 1)

§ 58.604 Assessment Districts.

Notwithstanding anything to the contrary in the foregoing, the authority of the City Manager to issue change orders for assessment district proceedings shall be governed by the provisions of any statute, ordinance or other law authorizing such proceeding. ~~will be controlled by the Improvement Act of 1911 (Streets and Highways Code, Division 7, Chapter 8.5, Sections 5230.)~~ (Ord. No. 4446, § 1)

§ 58.605 Variance.

Notwithstanding any other provision of this article, the City Council may by resolution increase the above limitations of authority to issue change orders ~~or to negotiate supplemental agreements~~ where the circumstances surrounding a public works project are such that a variance is appropriate. (Ord. No. 4446, § 1)

§§ 58.605 to 58.699 Reserved.

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Article VII.

§ 58.701 Fee for substitution of securities for withheld funds on contracts.

In any case where a contractor requests substitution of securities for withheld funds pursuant to ~~Government Code Section 4590, Section 22300 of the Public Contract Code~~ any and all costs, fees or other charges which are authorized or required shall be paid by the contractor. ~~a fee established by resolution of the council shall be charged.~~ (Ord. No. 81-118, § 1)

§§ 58.702 to 58.799 Reserved.

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**Article VIII. Participation of Minority Business Enterprises and Women's
Business Enterprises**

§ 58.801 Application.

This article shall apply to all contracts let by the City of Sacramento, including without limitation purchases and contracts for supplies and nonprofessional services (Chapter 57), contracts for public projects (Chapter 58), and contracts for professional services (Chapter 59). (Ord. No. 88-059, § 1)

§ 58.802 Definitions.

For purposes of this article, the following definitions shall apply:

- (a) **Minority Business Enterprise (MBE):** An independent business entity, including a sole proprietorship, which is at least 51% owned by a person or persons who are Black, Asian or Pacific Islander, Hispanic, or American Indian or Alaskan Native who also control and operate it.
- (b) **Women's Business Enterprise (WBE):** An independent business entity, including a sole proprietorship, which is at least 51% owned by a woman or women who also control and operate it.
- (c) **Control:** Exercising the power to make policy decisions.
- (d) **Operate:** Being actively involved in the day-to-day management of the business. (Ord. No. 88-059, B 1)

§ 58.803 MBE/WBE efforts required of responsible bidder.

The specifications or request for proposal for any contract to be let by the City may set goals relating to participation in the contract by subcontractors who are minority business enterprises or women's business enterprises. No bidder on said contract shall be considered a responsible bidder unless the bidder either meets the goals and requirements established for the contract or made a good faith effort prior to the time bids are opened to meet the goals and requirements by performing the following actions:

- (1) The bidder attended any pre solicitation or prebid meetings that were scheduled by the City to inform all bidders of the minority and women's business enterprise program requirements for the project for which the contract will be awarded.

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- (2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women's business enterprises to provide an opportunity for participation by those enterprises.
- (3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the City for minority or women's business enterprises that are interested in participating in the project. This paragraph applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.
- (4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women's business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of the bids.
- (5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.
- (6) The bidder provided interested minority and women's business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.
- (7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women's business enterprises, if any are available.
- (8) The bidder negotiated in good faith with the minority or women's business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women's business enterprises.
- (9) Where applicable, the bidder advised and made efforts to assist interested minority and women's business enterprises in obtaining bonds, lines of credit, or insurance required by the City or the contractor.
- (10) The bidder's efforts to obtain minority and women's business enterprise participation could reasonably be expected to produce a level of participation sufficient to meet the goals and requirements. (Ord. No. 88-059, § 1)

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§ 58.804 Provision of false information a misdemeanor.

- (a) No person shall submit false information to the City, or to the City's agent, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a minority business enterprise or a women's business enterprise.
- (b) No person submitting any bid or proposal to the City of Sacramento shall provide false information regarding the MBE/WBE status of any business entity, including a sole proprietorship, or shall provide false information regarding efforts made by said person to meet the MBE/WBE participation goals set by the City.
- (c) Any violation of this section is a misdemeanor punished by a fine not exceeding one thousand dollars or imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

§ 58.805 Information to be provided under penalty of perjury.

- (a) Whenever any business entity, including a sole proprietorship, submits information to the City, or to an agent of the City, for the purpose of establishing such entity's status as a minority business enterprises or a women's business enterprise, such information shall be submitted under penalty of perjury.
- (b) Whenever any bid or proposal to be submitted to the City calls for the bidder or proposer to submit information about the MBE/WBE status of any business entity, including a sole proprietorship, or about the efforts made by the bidder or proposer to meet the MBE/WBE participation goals set by the City, such information shall be submitted under penalty of perjury. (Ord. No. 88-059, § 1)

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Article IX. Sanctions for Provision of False Information

§ 58.901 Application.

This article shall apply to all contracts let by the City of Sacramento, including without limitation purchases and contracts for supplies and nonprofessional services (Chapter 57), contracts for public projects (Chapter 58), and contracts for professional services (Chapter 59). (Ord. No. 88-059, § 2)

**§ 58.902 Disqualification for provision of false information;
termination of contract.**

Any person or entity who submits a bid or a proposal containing information which said person or entity knows to be false shall be disqualified from bidding on future City contracts for a period of up to five (5) years, as determined by the City Manager. The City may terminate any contract which was awarded pursuant to a bid or proposal which contained false information. (Ord. No. 88-059, § 2)

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ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING CHAPTER 58 OF THE SACRAMENTO CITY CODE RELATING TO PUBLIC PROJECTS

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

SECTION 1

Chapter 58 of the Sacramento City Code is hereby amended to read as follows:

Article I. In General

§§ 58.1 to 58.100 Reserved

§ 58.101 DEFINITIONS

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

- (a) Public project shall mean and include the following:
- (i) A project for the erection, improvement, and remodeling of public buildings and works:
 - (ii) Work in or about streams, bays, waterfronts, embankments or other work for protection against overflow:
 - (iii) Street, sewer or water work except maintenance or repair:
 - (iv) Furnishing supplies or material for any such projects
- (b) Public project shall not include any work which meets all of the following conditions:
- (i) The work is performed entirely by volunteer labor.
 - (ii) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sport groups or associations.

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- (iii) The work will not have an adverse impact on City wide employment. The City Manager or designated representative, shall determine whether or not the work will have an adverse impact on employment within the City, through a survey of business establishments performing work of the type proposed. This survey shall be performed not more than 90 days before the start of the project.
- (iv) The work is approved by the City Manager as meeting the requirements of this section.

(c) City Manager shall mean the City Manager of the City of Sacramento or an official specifically designated to act for the City Manager. Authorization not specified in this chapter shall be made in writing by the City Manager and filed with the City Clerk.

((d) Maintenance: Recurrent, periodical, or scheduled work required to preserve a facility. It includes:

- (i) work required to restore components which have deteriorated from wear and tear, and
- (ii) other work on a facility to prevent damage or deterioration to that facility which otherwise would be more costly to restore.

(e) Remodel: Alteration or conversion work on an existing facility to change its use, function, or layout.

((f) Repair: 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, wear and tear which cannot be corrected through maintenance. Repair includes restoring or replacing components of facilities damaged by fire, storm, explosions, the elements, and other such disasters.

§ 58.102 Determination of lowest responsible bidder.

In addition to price in determining the lowest responsible bidder under the provisions of this chapter, consideration shall be given to; (i) the quality of a public project to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the contract; (iii) the ability of the bidder to perform the contract within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; and (v) the quality of bidder's performance on previous contracts with the City. (Ord. No. 3129, §1)

§ 58.103 Contract splitting prohibited.

It shall be unlawful to split or separate into smaller units any requirement for the undertaking of a public project, for the purpose of evading the provisions of this chapter.

Splitting or separating a transaction shall mean and include reducing the size of the public project to be furnished to the City under circumstances where there is a reasonable

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knowledge that the remaining work after such reduction will be additionally required within the same budgetary term, that there are funds available for that project, and the sole purpose is to knowingly avoid formally calling for bids. (Ord. No. 3129, §1)

§ 58.104 Administrative procedures.

The City Manager shall prepare, subject to approval by the City Council, administrative procedures sufficient to carry out the intent of this chapter. Such procedures shall include methods for the utilization of informal bidding procedures for those contracts to which the formal competitive bidding requirements of this chapter are inapplicable. (Ord. No. 3129, § 1)

§ 58.105 Collusion with bidder.

Any officer or employee of the City, or of any department thereof, who shall aid or assist a bidder in securing a contract for a public project at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the public project called for, or who shall knowingly accept work of a quality inferior to that called for by the contract, or to the receipt of a greater amount or different kind of work than has been actually received, shall be deemed guilty of a misdemeanor. (Ord. 3129, § 1)

§ 58.106 Unauthorized contracts: exceptions.

It shall be unlawful for any officer or employee to contract for a public project in behalf of the City, other than as herein prescribed. Any contracts or obligations to pay made contrary to the provisions of this chapter shall be null and void. (Ord. No. 3129, § 1, Ord.. No. 89-021, § 1; Ord. No. 89-061, § 2)

§ 58.107 Emergency Contracts.

The City Manager is hereby authorized, in behalf and in the name of the City of Sacramento , to negotiate and contract for public projects without advertising for bids 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.

Agreements executed pursuant to the authority conferred by this section shall not individually exceed one hundred thousand dollars (\$100,000). The form of all such agreements shall have been approved by the City Attorney.

Upon award of any contract 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 amount of contracts let. In those emergency circumstances where the potential cost may exceed the limit established by this section, the City Manager shall immediately retain a contractor for initiation of the necessary emergency services and, at the next available Council meeting, shall present a report as

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outlined above and include the additional remedial actions that have been identified, and the currently 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 let additional contracts within limits then established by the City Council. (Ord. No. 89-021, § 1; Ord. No. 89-061, § 1) .

§§ 58.108 to 58.199 Reserved.

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ARTICLE II. Authority of City Manager

§ 58.201 Contracts under fifty thousand dollars.

Subject to the availability of funds and the procedures set forth in this chapter, the City Manager is hereby authorized to bind the City, by written contract or purchase order, involving an expenditure under fifty thousand dollars (\$50,000) in any one transaction, without first advertising therefore or obtaining specific authorization by the City Council, for the undertaking of a public project required by the City. (Ord. No. 3129, § 1; Ord. No. 89-015, § 2)

§ 58.202 Contracts of fifty thousand dollars or more.

Unless otherwise provided herein, all contracts for public projects involving an expenditure of fifty thousand dollars (\$50,000) or more shall be awarded by the City Council. Such contracts shall be formal written agreements executed by the City Manager on behalf of the City. The signature by the City Manager shall constitute his certification that there remains unexpended and unapplied balances of the appropriations or funds applicable thereto sufficient to pay the estimated expense of executing such contract. (Ord. No. 3129, § 1; Ord. No. 89-015, B 2)

§ 58.203 Control procedures; documents required.

The City Manager shall institute control procedures for the execution of contracts and purchase orders as required herein. The City Attorney shall approve the form and legality of all formal written agreements prior to the execution thereof. (Ord. No. 3129, § 1)

§§ 58.204 to 58.299 Reserved.

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Article III. Bid Procedure

§ 58.301 When advertising required.

Where the cost of a public project required by the City is fifty thousand dollars (\$50,000) or more, the City Council shall order the City Clerk to call for formal bids therefore by advertising at least once not less than 15 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, trade journals, minority or trade oriented publications, or other media available to minority or women's business enterprises that are interested in participating in the project. . The City Council, when it deems it to be advisable, may require more than one advertising of the call for bids. (Ord. No. 3129, § 1; Ord. No. 89-015, §2)

§ 58.302 Independent price determination.

No person submitting any bid or proposal in connection with the procurement of supplies or services by City of Sacramento shall:

- (a) Propose or bid prices which have not been arrived at independently without consultation, communication, or agreement with any other bidder, offeror or competitor for the purpose of restricting competition as to any matter relating to the prices bid or proposed;
- (b) unless otherwise required by law, prior to opening of the bids or proposals, knowingly disclose any price bid or proposed to any other bidder, offeror or to any competitor;
- (c) 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;
- (d) knowingly be interested in more than one bid as the principal bidder; provided, however, subcontract bids to the principal bidders are excluded from this paragraph (d).

In the case of joint venture bids, the joint venture and each and every member of the joint venture shall for purposes of the foregoing be construed to be the person submitting the bid or proposal.

Any violation of this section shall be unlawful and a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. Any bid received or contract awarded where there was a violation of this section shall be a nullity and the City Council shall dispose of the matter in the same manner as if the bidder involved had failed to enter the contract after award. (Ord. No. 3129, § 1; Ord. No. 4297, § 2)

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§ 58.303 Standard specifications.

The City Council shall, from time to time, adopt standard specifications setting forth procedures and controls for public project contracts and the bidding and award thereof. Such specifications shall conform to the purposes and intent of this chapter, and shall include the following:

- (a) Bid forms and procedures governing the proper completion thereof by the bidder;
- (b) Bid security forms, procedures for the use thereof, the forfeiture of same in certain cases, and the return thereof to the unsuccessful bidder;
- (c) Faithful performance bond forms and procedures for the use thereof;
- (d) Payment bond forms and procedures for the use thereof;
- (e) Labor and material bond forms and procedures for the use thereof;
- (f) Procedures governing the time of completion of the contract, for the extension of such time in certain cases, and for the use of liquidated damages;
- (g) Procedures governing a failure of completion by the contractor, payment of the contractor for work performed in the event of such failure, and the completion of such contract in such instance. (Ord. No. 3129, § 1)

§ 58.304 Opening of bids; awards.

All bids shall be sealed, identified as bids on the envelope, and shall be submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Clerk or designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. Within the time set forth in the specifications, the contract shall be awarded by the City Council to the lowest responsible bidder, as defined herein. The City Council may reject any and all bids and waive any informalities or minor irregularities in the bids. (Ord. No. 3129, § 1)

§ 58.305 Alternative award upon failure of bidder to enter into contract.

If the bidder to whom the contract is awarded shall fail to enter into the contract as required, the Council may declare the award to that bidder a nullity, and award the contract to the next lowest responsible bidder, or it may readvertise for bids, or dispense with competitive bidding, as hereinafter provided. (Ord. No. 3129, § 1)

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§ 58.306 Readvertisement.

In the event the City Council rejects any and all bids, or in the event the bidder to whom a contract award is made fails to enter into the contract as required and the Council does not make an award to the next lowest responsible bidder, the Council may readvertise for bids, or may dispense with competitive bidding, as hereinafter provided. (Ord. No. 3129, § 1)

§§ 58.307 to 58.399 Reserved.

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Article IV. Exceptions to Competitive Bidding

§ 58.401 Generally.

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

- (a) To any transaction where maintenance, remodel, or repair work is to be performed by City employees.
- (b) When, after advertising for bids as required herein, no valid bids are received.
- (c) When, after receiving bids, the City Council rejects any and all of such bids, or when the bidder to whom an award is made fails to enter into the contract as required and the Council does not make an award to the next lowest bidder, as provided herein.
- (d) When, upon a two-thirds vote of the City Council, it is determined that it is in the best interests of the City to suspend competitive bidding for any contract.
- (e) When any contract is entered into pursuant to or under any special assessment proceedings wherein competitive bidding procedures are specified by laws of the State of California.
- (f) When an emergency contract is entered into by the director of the department of public works pursuant to the procedures specified in Section 58.107 of the Sacramento City Code. (Ord. No. 3129, § 1; Ord. No. 86-045, § 2; Ord. No. 89-021, § 1; Ord. No. 89-061, § 3)

§§ 58.402 to 58.499 Reserved.

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Article V. Wages Paid Under Contract With City

**§ 58.501 Payment of Prevailing Rate of Wages; Maximum
Hours of Labor; Penalties**

Every contract for any public project 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, subpartnership, day labor, station work, piece work, 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 execution of such contracts, subcontracts, subpartnership, day labor, station work, piece work, or by any other arrangement shall be paid not less than the general prevailing rate of wages in private employment for similar work in the city; provided, however, that the foregoing provisions as to payment of the general prevailing rate of wages shall not apply to contracts for any public project of \$25,000 or less or to materials for which no manufacturing plant exists in the city, or to standard materials or commodities carried in stock by dealers or manufacturers generally.

The general prevailing rate of wages required in contracts for public projects 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 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 for any contract awarded as a result of such notice. If the City determines that 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 fifty dollars (\$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 crafts 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 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay. The contractor shall, as a penalty forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this section.

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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 officer, board, commission or council authorized to let any contract for any public project to be performed for the city shall include in the specifications setting forth the terms of performance of the contract a statement that a copy of the current Director of Industrial Relations prevailing wage determination is on file in the City Clerk's office, and 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 i into every subcontract or sub agreement 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 501 and 502 with the prime contractor.

§ 58.502 Apprentices

Nothing in this chapter shall prevent the employment of properly registered apprentices upon public projects whether such work be done directly under contract award, or indirectly by or under subcontract, partnership, day labor, station work, piece work, or by any other arrangement whatsoever. Every such apprentice shall be paid the applicable apprentice prevailing per diem wage rate according to an apprentice wage progression schedule available from Department of Apprenticeship Standards (DAS). Apprentices employed, can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Only apprentices who are in training under apprenticeship standards and who have written apprentice agreements may be employed on public projects in apprenticeable occupations.

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All contractors or subcontractors who choose to employ apprentices shall comply with Section 1777.5 et seq. of the California Labor Code. Contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices on the ground of sex, race, religion, national origin, sexual preference, physical condition, marital status, age, ancestry, or color. The prime contractor shall be responsible for complying with these provisions for all apprenticeable occupations.

In the event that a contractor or subcontractor who chooses to employ apprentices fails to comply with the provisions of this section the City may report the contractor or subcontractor to the Director of Industrial Relations and the California Apprenticeship Council for action as necessary under Section 1777.7 of the California Labor Code.

§§ 58.503 to 58.599 Reserved.

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Article VI. Change Orders

§ 58.601 Authority of City Manager.

The City Manager is authorized to issue change orders within the limits set forth below. The City Manager, in executing the authority specified in this section, shall not be required to obtain further City Council approval for the transfer of sufficient funds from the established project contingency.

(1) For contracts originally awarded for a price of less than , \$250,000, the City Manager shall have the authority to issue change orders for an increase in contract price of up to \$25,000; provided that the sum of all such change orders for any single contract shall not exceed \$25,000.

(2) For contracts originally awarded for a price of , \$250,000 but less than , \$1,000,000 the City Manager shall have authority to issue change orders provided that the sum of all such change orders for any single contract shall not exceed ten percent (10%) of the original contract price. .

(3) For contracts originally awarded for a price of , \$1,000,000, but less than \$10,000,000, the City Manager shall have authority to issue change orders provided, that the sum of all such change orders for any single contract shall not exceed eight percent (8%) of the original contract price.

(4) For contracts originally awarded for a price of \$10,000,000 or more, the City Manager shall have the authority to issue change orders, provided, that the sum of all such change orders for any single contract shall not exceed six percent (6%) of the original contract price.

(5) Notwithstanding the foregoing, in the event that it becomes necessary in the discretion of the City Manager to issue change orders in order to:

(a) Prevent interruption of the work which would result in a substantial increase in cost to the City; or,

(b) Protect the work or equipment or materials to be used in the work, or human safety or the environment at or near the site of the work, from substantial and immediate danger of injury; or,

(c) Protect, where damage or injury has occurred, the work, or equipment or materials to be used in the work, or human safety or the environment at or near the site of the work from further or additional damage or injury or deterioration caused by man, nature or other source;

Then, the City Manager shall have authority to issue change orders in such sums as may reasonable be necessary for such purposes; provided, however, in the event any such action exceeds the specific authority set forth in the foregoing, the City Manager shall report to the

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City Council regarding any such action as soon as reasonably possible but in no event more than thirty (30) days.

((6) The authority of the City Manager to issue additional change orders to an accumulative total as specified above shall be restored to the extent that prior change orders issued and negotiated pursuant to the authority of the City Manager shall have been specifically subsequently ratified and authorized by the City Council. (Ord. No. 446, §1)

§58.603 Limitation

Notwithstanding anything to the contrary in the foregoing, the authority of the City Manager to issue change orders shall be limited to the scope of the original contract unless in the judgment of the City Manager change orders exceeding the scope of the original contract are necessary to protect the safety of human life and the environment at or near the site of the work. (Ord. No. 4446, § 1)

§ 58.604 Assessment Districts.

Notwithstanding anything to the contrary in the foregoing, the authority of the City Manager to issue change orders for assessment district proceedings shall be governed by the provisions of any statute, ordinance or other law authorizing such proceeding. will§ 58.605
Variance.

Notwithstanding any other provision of this article, the City Council may by resolution increase the above limitations of authority to issue change orders where the circumstances surrounding a public project are such that a variance is appropriate. (Ord. No. 4446, § 1)

§§ 58.605 to 58.699 Reserved.

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Article VII:

§ 58.701 Fee for substitution of securities for withheld funds on contracts.

In any case where a contractor requests substitution of securities for withheld funds pursuant to , Section 22300 of the Public Contract Code any and all costs, fees or other charges which are authorized or required shall be paid by the contractor. a (Ord. No. 81-118, § 1)

§§ 58.702 to 58.799 Reserved.

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**Article VIII. Participation of Minority Business Enterprises and Women's
Business Enterprises**

§ 58.801 Application.

This article shall apply to all contracts let by the City of Sacramento, including without limitation purchases and contracts for supplies and nonprofessional services (Chapter 57), contracts for public projects (Chapter 58), and contracts for professional services (Chapter 59). (Ord. No. 88-059, § 1)

§ 58.802 Definitions.

For purposes of this article, the following definitions shall apply:

- (a) **Minority Business Enterprise (MBE):** An independent business entity, including a sole proprietorship, which is at least 51% owned by a person or persons who are Black, Asian or Pacific Islander, Hispanic, or American Indian or Alaskan Native who also control and operate it.
- (b) **Women's Business Enterprise (WBE):** An independent business entity, including a sole proprietorship, which is at least 51% owned by a woman or women who also control and operate it.
- (c) **Control:** Exercising the power to make policy decisions.
- (d) **Operate:** Being actively involved in the day-to-day management of the business. (Ord. No. 88-059, § 1)

§ 58.803 MBE/WBE efforts required of responsible bidder.

The specifications or request for proposal for any contract to be let by the City may set goals relating to participation in the contract by subcontractors who are minority business enterprises or women's business enterprises. No bidder on said contract shall be considered a responsible bidder unless the bidder either meets the goals and requirements established for the contract or made a good faith effort prior to the time bids are opened to meet the goals and requirements by performing the following actions:

- (1) The bidder attended any pre solicitation or prebid meetings that were scheduled by the City to inform all bidders of the minority and women's business enterprise program requirements for the project for which the contract will be awarded.

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- (2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women's business enterprises to provide an opportunity for participation by those enterprises.
- (3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the City for minority or women's business enterprises that are interested in participating in the project. This paragraph applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.
- (4) The bidder provided written notice of his or her interest in bidding on the contract to the number of minority or women's business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of the bids.
- (5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.
- (6) The bidder provided interested minority and women's business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.
- (7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women's business enterprises, if any are available.
- (8) The bidder negotiated in good faith with the minority or women's business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women's business enterprises.
- (9) Where applicable, the bidder advised and made efforts to assist interested minority and women's business enterprises in obtaining bonds, lines of credit, or insurance required by the City or the contractor.
- (10) The bidder's efforts to obtain minority and women's business enterprise participation could reasonably be expected to produce a level of participation sufficient to meet the goals and requirements. (Ord. No. 88-059, § 1)

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§ 58.804 Provision of false information a misdemeanor.

- (a) No person shall submit false information to the City, or to the City's agent, for the purpose of establishing the status of any business entity, including a sole proprietorship, as a minority business enterprise or a women's business enterprise.
- (b) No person submitting any bid or proposal to the City of Sacramento shall provide false information regarding the MBE/WBE status of any business entity, including a sole proprietorship, or shall provide false information regarding efforts made by said person to meet the MBE/WBE participation goals set by the City.
- (c) Any violation of this section is a misdemeanor punished by a fine not exceeding one thousand dollars or imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

§ 58.805 Information to be provided under penalty of perjury.

- (a) Whenever any business entity, including a sole proprietorship, submits information to the City, or to an agent of the City, for the purpose of establishing such entity's status as a minority business enterprises or a women's business enterprise, such information shall be submitted under penalty of perjury.
- (b) Whenever any bid or proposal to be submitted to the City calls for the bidder or proposer to submit information about the MBE/WBE status of any business entity, including a sole proprietorship, or about the efforts made by the bidder or proposer to meet the MBE/WBE participation goals set by the City, such information shall be submitted under penalty of perjury. (Ord. No. 88-059, § 1)

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Article IX. Sanctions for Provision of False Information

§ 58.901 Application.

This article shall apply to all contracts let by the City of Sacramento, including without limitation purchases and contracts for supplies and nonprofessional services (Chapter 57), contracts for public projects (Chapter 58), and contracts for professional services (Chapter 59). (Ord. No. 88-059, § 2)

**§ 58.902 Disqualification for provision of false information;
termination of contract.**

Any person or entity who submits a bid or a proposal containing information which said person or entity knows to be false shall be disqualified from bidding on future City contracts for a period of up to five (5) years, as determined by the City Manager. The City may terminate any contract which was awarded pursuant to a bid or proposal which contained false information. (Ord. No. 88-059, § 2)

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