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DEPARTMENT OF
PUBLIC WORKS

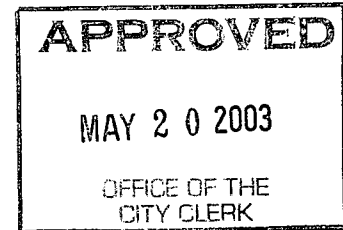
CITY OF SACRAMENTO
CALIFORNIA

PROJECT DELIVERY DIVISION

037 10th ST. STE. 100
SACRAMENTO, CA
95814-2700

PH. (916) 264-8300
FAX (916) 264-8281

April 22, 2003



City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: ORDINANCE AMENDING THE SACRAMENTO CITY CODE TO ADD SECTION 3.60.075 TO TITLE 3, CHAPTER 3.60, ARTICLE 1, RELATING TO EXEMPTION OF THE CITY OF SACRAMENTO FROM VARIOUS PROVISIONS OF THE PUBLIC CONTRACT CODE OF THE STATE OF CALIFORNIA

LOCATION AND COUNCIL DISTRICT: Citywide, All Districts.

RECOMMENDATION: This report recommends that the City Council adopt the attached ordinance adding Section 3.60.075 to the City Code to exempt the City of Sacramento from various provisions of the California Public Contract Code.

CONTACT PERSON: Craig Lymus, Contracts Officer, 264-5524

FOR COUNCIL MEETING OF: May 20, 2003

SUMMARY:

This report recommends adding Section 3.60.075 to the City Code, relating to the exemption of the City of Sacramento from various provisions of the California Public Contract Code. Explanations of the exemptions are summarized in Exhibit A.

COMMITTEE/COMMISSION ACTION:

This item was reviewed by the Law and Legislative Committee on February 6, 2003. The Committee forwarded the ordinance to the City Council with a recommendation that it be adopted.

BACKGROUND INFORMATION:

The proposed addition of Section 3.60.075 is a response to Senate Bill 974, Chapter 832 of Statutes, 2001, added Section 1100.7 to the Public Contract Code, which provides that all provisions of the Public Contract Code of the State of California apply to charter cities unless a particular city's charter or ordinances expressly exempt the city from those provisions. It is the position of the City of Sacramento that notwithstanding Chapter 832, it is exempt from a majority of the provisions of the Public Contract Code by virtue of its status as a charter city and its authority over matters which are municipal affairs, including without limitation, provisions governing the process of contracting for public works and other projects, services and supplies, irrespective of the provisions of Chapter 832. It is the further position of the City of Sacramento that the provisions of the Sacramento City Charter, including but not limited to Section 10 and Article XIV (Sections 200-205), exempt the City from compliance with the Public Contract Code, except to the extent that the City Charter or an ordinance or resolution adopted pursuant to the City Charter expressly requires compliance with particular provisions of the Public Contract Code. Nevertheless, it is the intention of the City Council in enacting this section to specifically declare itself exempt from various provisions of the Public Contract Code by ordinance. Addition of Section 3.60.075 to Title 3 will not change any other procedures or requirements of the contracting process.

FINANCIAL CONSIDERATIONS:

There are no financial impacts as a result of the recommended addition of Section 3.60.075.

ENVIRONMENTAL CONSIDERATIONS:

Adoption of the Section 3.60.075 amendment constitutes "general policy and procedure making" that is not the type of project for which environmental review is required, pursuant to Section 15378 (b)(2) of the CEQA Guidelines.

POLICY CONSIDERATIONS:

The action requested herein is consistent with the City's Strategic Plan goal of promoting and supporting economic vitality. This action is consistent with the City of Sacramento's contracting policy prior to the State of California's implementation of SB 974. The City of Sacramento is exempt from any and all provisions of the Public Contract Code except as the City expressly chooses to subject itself to specific provisions, or where a particular provision has been finally judicially declared to be a matter of statewide concern.

City Council
Ordinance Amending the Sacramento
City Code to Add Section 3.60.075
April 22, 2003

ESBD CONSIDERATIONS:

Not applicable. There are no goods or services being purchased as a direct result of this action.

Respectfully submitted,



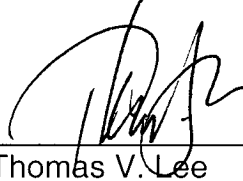
Francesca Lee Halbakken
Project Delivery Manager

RECOMMENDATION APPROVED:



ROBERT R. THOMAS
City Manager

Approved:



Thomas V. Lee
Deputy City Manager

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- 1) Exhibit A, Explanation of Contract Code Exemptions, page 4
- 2) Ordinance, page 8

P/Active/0000Misc/Ordinance Amending Section 3.60.075 to Title 3 consent

EXPLANATION OF PUBLIC CONTRACT CODE EXEMPTIONS(Annotated excerpt from proposed ordinance - ordinance text is in **bold** font)

* * *

C. Inapplicable Public Contract Code provisions. The City of Sacramento is exempt from the following provisions of the Public Contract Code:**1. Division 2, Part 1, Chapter 6, sections 6100 through 6108, inclusive;**

Reason for Exemption: By their own terms, these provisions apply only to contracts entered into by a State agency or department, and are not applicable to city contracts. These provisions are included on the City's exemption list simply to make it clear that City is not changing that. (Many of the same requirements are imposed on cities by other provisions of law.)

2. Section 7102;

Reason for Exemption: This section prohibits "no damages for delay" provisions in public works contracts. The City currently complies with this code section, because Section 7102 is incorporated in the City's standard construction contract as part of the Standard Specifications adopted by City Council Resolution No. 89-216 (pursuant to City Code Section 3.60.130). City staff does not intend to propose a change to this requirement. However, this section is included on the City's exemption list to make it clear that the City is subject to this provision because it chooses to be, per the City's Standard Specifications.

3. Section 7103;

Reason for Exemption: This section requires payment bonds for State contracts over \$5,000, and does not apply to city contracts. (The Civil Code requires payment bonds for city contracts over \$25,000.)

4. Section 7104;

Reason for Exemption: This section sets forth notice and claim provisions for excavations deeper than 4 feet. These provisions conflict with the notice/claim provisions set forth in Section 4-9 of the City's Standard Specifications.

5. Section 9203;

Reason for Exemption: This section specifies payment requirements that conflict with or duplicate various payment provisions in the City's Standard Specifications and standard contract.

6. Division 2, Part 2, sections 10100 et seq.;

Reason for Exemption: This is the State Contract Act that applies to contracting by the State, and is not applicable to City contracts.

7. Division 2, Part 3, Chapter 1, sections 20100 et seq., except as set forth in subsection D. of this section;

Reason for Exemption: This is the Local Agency Public Construction Act, which sets forth various procedures and requirements for local agency contracting, some of which (a) do not apply to cities, or (b) conflict with the City's contracting procedures and requirements. Examples of Public Contract Code sections that are included within this exemption because they conflict with the City's own procedures and requirements are:

- Section 20101: This section specifies prequalification procedures and requirements that: (1) conflict with the City's practice of prequalifying bidders after suspension of competitive bidding in the City's best interest, per City Charter section 203, and City Code section 3.60.170; and (2) are different than the "minimum qualifications" provisions of City Code section 3.60.020 B.
- Section 20104.2: This section sets forth claims procedures that conflict with the City's claims requirements set forth in Section 4-9 of the City's Standard Specifications.
- Section 20104.4: This section mandates mediation and arbitration when an action for certain construction claims is filed. The City's Standard Specifications and standard contract do not include provisions for mandatory mediation or arbitration, which allows the City to consider whether to utilize either or both of these dispute resolution mechanisms on a case-by-case basis.
- Sections 20161/20162: These sections define "public project", and require competitive bidding for public projects over \$5,000. This conflicts with the definition of "public project" and

competitive bidding requirements specified in City Charter sections 201, 203, and 204, and the provisions of chapter 3.60 of the City Code.

The provisions of the Local Agency Public Construction Act that the City remains subject to are listed in Section D of the proposed ordinance, set forth below.

8. Division 2, Part 3, Chapter 1.5, sections 20930 et seq.;

Reason for Exemption: These provisions apply to water districts, and do not apply to cities.

9. Division 2, Part 3, Chapter 2, sections 22000 et seq.;

Reason for Exemption: This is the Uniform Public Construction Cost Accounting Act, that establishes alternative bidding procedures applicable to public agencies that elect by resolution to be subject to them. These procedures conflict with the bidding procedures set forth in City Charter sections 200, 201, 203, and 204 and chapter 3.60 of the City Code.

10. Division 2, Part 3, Chapter 2.5, sections 22050 et seq.;

Reason for Exemption: These sections specify procedures for emergency contracting, that are unnecessary for the City, in light of the City Charter and City Code provisions that allow the City Council to waive competitive bidding (City Charter section 203; City Code section 3.60.170.)

11. Division 2, Part 3, Chapter 3, sections 22101 et seq..

Reason for Exemption: These sections govern the acquisition of electronic data processing by a transit agency, and do not apply to cities.

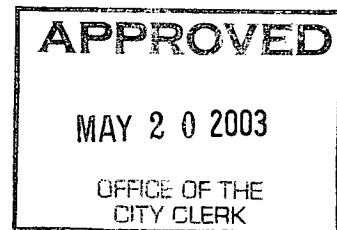
D. Applicable provisions. Notwithstanding the provisions of subsection C., the following provisions of Division 2, Part 3, Chapter 1 of the Public Contract Code of the State of California shall be applicable to the City of Sacramento:

Explanation: This section of the proposed ordinance sets forth provisions of the Local Agency Public Construction Act that the City remains subject to. The subject matter of each Public Contract Code section is provided in parentheses following each citation.

1. Section 20103.5; (Contractor licensing for federally funded contracts.)

2. **Section 20103.8;** (Bidding additive or deductive items of work.)
3. **Section 20104.50;** (Making prompt progress payments.)
4. **Section 20104.70;** (Actions filed by second lowest bidder where low bidder convicted of violation of specified Labor Code provisions or the Unemployment Insurance Code.)
5. **Article 27;** (Contracts awarded under the Improvement Act of 1911.)
6. **Article 29;** (Contracts awarded under the Improvement Act of 1913.)
7. **Article 30;** (Contracts awarded under the Street Lighting Act of 1919.)
8. **Article 31;** (Contracts awarded under the Street Lighting Act of 1931.)
9. **Article 32;** (Contracts awarded under the Municipal Lighting Maintenance District Act of 1927.)
10. **Article 54;** (Contracts awarded under the Community Facilities Law of 1911.)
11. **Article 56;** (Maintenance district contracts under the Improvement Act of 1911.)
12. **Article 57;** (Contracts awarded under the Improvement Act of 1911.)
13. **Article 58;** (Contracts awarded under the Improvement Act of 1911.)
14. **Article 59.** (Contracts awarded under the Tree Planting Act of 1931.)

* * *



ORDINANCE NO. 2003-020

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING THE SACRAMENTO CITY CODE TO ADD SECTION 3.60.075 TO TITLE 3, CHAPTER 3.60, ARTICLE 1, RELATING TO EXEMPTION OF THE CITY OF SACRAMENTO FROM VARIOUS PROVISIONS OF THE PUBLIC CONTRACT CODE OF THE STATE OF CALIFORNIA

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

SECTION 1. Section 3.60.075 is added to Title 3, Chapter 3.60, Article 1 of the Sacramento City Code, to read as follows:

3.60.075. 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 Public Contract Code, which provides that all provisions of the Public Contract Code of the State of California apply to charter cities unless a particular city's charter or ordinances expressly exempt the city from those provisions. It is the position of the City of Sacramento that notwithstanding Chapter 832, it is exempt from a majority of the provisions of the Public Contract Code by virtue of its status as a charter city and its authority over matters which are municipal affairs, including without limitation provisions governing the process of contracting for public works and other projects, services and supplies, irrespective of the provisions of Chapter 832. It is the further position of the City of Sacramento that the provisions of the Sacramento City Charter, including but not limited to Section 10 and Article XIV (Sections 200-205), exempt the City from compliance with the Public Contract Code, except to the extent that the City Charter or an ordinance or resolution adopted pursuant to the City Charter expressly requires compliance with particular provisions of the Public Contract Code. Nevertheless, it is the intention of the City Council in enacting this

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DATE ADOPTED: _____

section to specifically declare itself exempt from various provisions of the Public Contract Code by ordinance. Although subsection C. of this section contains a list of specific inapplicable provisions, the list is not intended to be comprehensive or exclusive; rather, the City is exempt from any and all provisions of the Public Contract Code except as the City expressly chooses to subject itself to specific provisions as specified in this section, or where a particular provision has been finally judicially declared to be a matter of statewide concern.

B. Declaration of exemption. The City of Sacramento declares that it is exempt from all provisions of the Public Contract Code of the State of California including but not limited to those provisions specified in subsection C. of this section, except for:

1. those 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 of this section;
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. Inapplicable Public Contract Code provisions. The City of Sacramento is exempt from the following provisions of the 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;

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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 of this section;
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. Notwithstanding the provisions of subsection C., the following provisions of Division 2, Part 3, Chapter 1 of the Public Contract Code of the State of California shall be applicable to the City of Sacramento:

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;

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DATE ADOPTED: _____

13. Article 58;

14. Article 59.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

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ORDINANCE NO. _____

DATE ADOPTED: _____

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3.7

DEPARTMENT OF
PUBLIC WORKS

CITY OF SACRAMENTO
CALIFORNIA

927 10th STREET, STE. 100
SACRAMENTO, CA
95814-2700

PROJECT DELIVERY DIVISION

PH. (916) 264-8300
FAX (916) 264-8281

April 22, 2003

City Council
Sacramento, California

PASSED FOR
PUBLICATION
& CONTINUED
TO 5/20/03

Honorable Members in Session:

SUBJECT: ORDINANCE AMENDING THE SACRAMENTO CITY CODE TO ADD SECTION 3.60.075 TO TITLE 3, CHAPTER 3.60, ARTICLE 1, RELATING TO EXEMPTION OF THE CITY OF SACRAMENTO FROM VARIOUS PROVISIONS OF THE PUBLIC CONTRACT CODE OF THE STATE OF CALIFORNIA

LOCATION AND COUNCIL DISTRICT: Citywide, All Districts

RECOMMENDATION: This report recommends that the item be Passed for Publication and continued to May 20, 2003.

CONTACT PERSON: Craig Lymus, Contracts Officer, 264-5524

FOR COUNCIL MEETING OF: May 13, 2003

SUMMARY: This item is presented at this time for approval of publication pursuant to City Charter, Section 32.

BACKGROUND INFORMATION: Prior to publication of an item in a local paper to meet legal advertising requirements, City Council must first pass the item for publication. The City Clerk then transmits the title of the item to the paper for advertisement of the Council meeting date.

Respectfully submitted,

Francesca Lee Halbakken

Francesca Lee Halbakken
Project Delivery Manager

Approved:

Thomas V. Lee

Thomas V. Lee
Deputy City Manager

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1) Ordinance, page 2

RECOMMENDATION APPROVED:

Robert R. Thomas

ROBERT R. THOMAS
City Manager

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

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 10. Division 2, Part 3, Chapter 2.5, sections 22050 et seq.;
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 2. Section 20103.8;
 3. Section 20104.50;
 4. Section 20104.70;
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 8. Article 31;
 9. Article 32;
 10. Article 54;
 11. Article 56;
 12. Article 57;

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13. Article 58;

14. Article 59.

- E Applicability to the Sacramento Housing and Redevelopment Agency.
Nothing in this section is intended to affect the applicability of Division 2, Part 3, Chapter 1, Article 43.1, sections 20688.1 et seq. to contracts awarded by the Sacramento Housing and Redevelopment Agency.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

ATTEST:

MAYOR

CITY CLERK

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