



## REPORT TO COUNCIL City of Sacramento

915 I Street, Sacramento, CA 95814-2604  
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Honorable Mayor and  
Members of the City Council

**Title: Contract: Memorial Auditorium Roof Repair Project (M17101000)**

**Location/Council District:** District 3

**Recommendation:** Adopt a **Resolution:** 1) rejecting and adopting findings of fact made by the hearing examiner in connection with a bid protest filed by Madsen Roof Company, Inc; 2) rejecting the hearing examiner's recommendation that the City waive the errors and omissions in D7 Roofing Services' bid; 3) granting Madsen's bid protest and rejecting D7's bid as non-responsive; 4) awarding the construction contract for the Memorial Auditorium Roof Repair Project (M17101000) to Madsen, the lowest responsive and responsible bidder, in an amount not to exceed \$519,883; and 5) authorizing the City Manager or the City Manager's designee to execute the contract with Madsen.

**Contact:** Rebecca Bitter, Program Manager, Convention, Culture and Leisure, 808-5047

**Presenter:** Rebecca Bitter, Program Manager

**Department:** Convention, Culture and Leisure

**Division:** Administration

### **Description/Analysis**

**Issue:** The completion of the Memorial Auditorium Roof Repair project includes various roof tile replacement and repair, gutter replacement, roof wall restoration and new coping installation. The Historic Structures Report completed in 2006 for the building identified the roof repair as critical to the integrity of the building's future stability in order to prevent water from flowing into the attic at the interior of exterior walls, to remove sources of water intrusion from the roof, parapet and eaves, and to control back-flow from gutters during heavy rainfalls.

An Invitation for Bid on the Project was issued on October 10, 2008. On October 29, 2008, four bids were received by the City. On November 14, 2008, the second lowest bidder,

Madsen Roof Company, filed a bid protest.

Based on the City's investigation, staff determined that each of the bases of the protest has merit. The bid protest was heard by a hearing examiner on January 7, 2009. In addition to the City's Response to the Bid Protest (Attachment 2), the City also submitted documentary evidence in support of its Response. This evidence is included in Attachment 3.

On February 12, 2009, the hearing examiner issued his decision, which contained three findings of fact and related recommendations (Attachment 4). Based on the findings of fact and related recommendations as described in detail in the Background (Attachment 1) staff recommends the following actions:

- adopt the hearing examiner's Findings 1 and 2 regarding Form 440, and reject Finding 3 related to ESBE participation goals
- reject the hearing examiner's recommendation to waive the errors and omissions in D7's bid
- grant Madsen's protest and reject D7's bid as non-responsive
- award the contract to Madsen, a certified SBE, as the lowest responsive and responsible bidder

**Policy Considerations:** This recommendation is consistent with the City's Emerging and Small Business Enterprise requirements and City Code section 3.60.270, that "no bidder on the contract shall be considered a responsive bidder unless its bid meets the minimum ESBE participation level required by the bid specifications". To receive credit for participation, an ESBE must perform a "commercially useful function".

**Committee/Commission Action:** N/A

**Environmental Considerations:** The City's Environmental Services Division has determined that projects undertaken in compliance with the treatment recommendations identified in the Historic Structures Report for the historically significant features of the property are exempt pursuant to the California Environmental Quality Act Guidelines, California Code of Regulations, title 14, section 15331 (Historic Resources Restoration/Rehabilitation), based upon the findings that the treatments recommended in the HSR comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

**Rationale for Recommendation:** Under the City's ESBE Program, no bidder on a contract for a public project may be considered a responsive bidder unless its bid meets the minimum SBE and/or EBE participation level(s) established for the contract. (SCC § 3.60.270.) The participation level established for this contract is 20%.

The bid submitted by D7, who is not an ESBE, included Form 440, listing SF&A, Inc. (Salinas and Farias & Associates) as an SDVE (Service Disabled Veteran Enterprise) and a "material supplier" of an estimated \$100,000 in materials.

Regarding the City's ESBE program requirements, in order for D7 to meet these requirements: 1) SF&A must be a certified ESBE, 2) SF&A must be performing a commercially useful function; and 3) SF&A's participation level must be at least 20% of D7's bid amount. In staff's view, D7 fails to meet two of these criteria.

- Performance of a Commercially Useful Function:

In staff's view, SF&A is not providing a commercially useful function. The performance of SF&A's contract with D7 requires the making of telephone calls. (Attachment 3, Exhibit L, Decl. of Bitter, ¶¶ 4, 5.) SF&A is not needed to distribute or deliver the materials as Tremco sells and distributes its materials through Tremco representatives. (Attachment 3, Exhibit C, Bid Protest, Tremco representative quote, pgs. 26-28.) As a roofing contractor, D7 could have acquired the materials directly from Tremco. The funds for the purchase of materials from Tremco will pass from D7 through SF&A to Tremco. In addition, D7 would have to convey the same information to SF&A as it would have to convey to Tremco itself, such as materials to be ordered, quantities and delivery dates. D7 would not, therefore, save any time by asking SF&A to convey information it could have conveyed itself. Staff believe SF&A is an additional, unnecessary participant used to obtain the appearance of a small business enterprise.

- 20% ESBE Participation Level:

In addition, even if the City assumed that SF&A is performing a commercially useful function, the services it will provide do not equal or exceed 20 percent of D7's bid. SF&A did not provide a total estimate for its services to D7. (Attachment 3, Exhibit G, SF&A quote.) D7 asked for line item quotes only and SF&A would provide a total estimate only after D7 was awarded the contract. (Attachment 3, Exhibit L, Decl. of Bitter, ¶ 6.) The portion of SF&A's work categorized as services (vs. materials) is assessed through a 16% service charge for SF&A's overhead and profit. (Attachment 3, Exhibit L, Decl. of Bitter, ¶ 7.) Therefore, excluding the cost of Tremco materials from SF&A's quotation, the function it is performing can be estimated at no more than 16% of the cost of materials provided by SF&A, or approximately \$14,000. This amount does not meet the City's 20% of the total bid (\$492,661) ESBE participation level.

- Last, although SF&A is a certified SBE, D7 omitted required information on Form 440 and did not timely submit SF&A's SBE certification. Madsen did not omit any information on its Form 440 and timely submitted its SBE certification. (see, Attachment 3, Exhibit B, D7's Bid, Exhibit J, Madsen's Bid.)

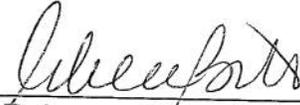
Based on its investigation, City staff determined that each of the bases of the protest has merit and the D7 bid should be rejected as non-responsive.

**Financial Considerations:** There are sufficient funds available for this project from the 2006 Community Reinvestment Capital Improvement Program (CRCIP) in M17101000

to award the construction contract to Madsen Roof Company in an amount not to exceed \$519,883.

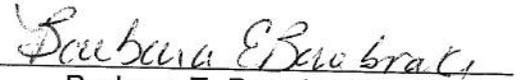
**Emerging Small Business Development (ESBD):** The second lowest bidder, Madsen Roof Company, is a certified SBE.

Respectfully Submitted by:



Rebecca Bitter, Program Manager  
Convention, Culture and Leisure Department

Approved by:



Barbara E. Bonebrake, Director  
Convention, Culture, and Leisure Department

Recommendation Approved:

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RAY KERRIDGE  
City Manager

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**Background**

**Attachment 1**

The City issued an invitation to bid on the Memorial Auditorium Roof Repair Project on October 10, 2008.

Under the City's ESBE Program, no bidder on a contract for a public project may be considered a responsive bidder unless its bid meets the minimum SBE and/or EBE participation level(s) established for the contract. (SCC § 3.60.270.) The participation level established for this contract is 20 percent.

To receive credit for participation, the SBE or EBE must perform a commercially useful function, such as the actual performance, management or supervision of the work. This is the same as the State's definition of "commercially useful function". State law also states that a subcontractor or supplier will not be considered to perform a commercially useful function if the subcontractor's or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business participation. (Gov. Code 14837, subd (d)(4)(A)(i)).

The Invitation to Bid includes the following requirements

- bidders must include copies of subcontractor SBE or EBE certifications with their sealed proposals
- bidders must complete Form 440, to identify subcontractor names and locations, whether the subcontractors are EBE's or SBE's, the work, services, or materials to be provided by the subcontractor and its dollar value, and the total bid amount.
- failure to submit the required EBE or SBE information by the close of business two days after bid opening is grounds for finding the bid non-responsive.

The Special Provisions of this contract include the purchase of roofing materials from roofing materials manufacturer Tremco, Inc., or a City approved equivalent manufacturer. Tremco is not a certified SBE. The bids for this Project were opened on October 29, 2008. Four bids were submitted to the City as follows:

<b>Bidder</b>	<b>Amount</b>
D7 Roofing Services	\$ 492,661
Madsen Roof Company	\$ 519,883
King's Roofing	\$ 558,377
Hester Roofing	\$ 613,828

On November 7, 2008, City staff sent a notice to all bidders of its preliminary recommendation to award the contract to D7. Madsen filed its bid protest on November 14, 2008. Madsen's bid protest alleges that D7's bid was non-responsive and should be rejected because D7 failed to: 1) properly complete Form 440; 2) timely submit the

Emerging Small Business Enterprise ("ESBE") certifications required by Form 440; and 3) meet the City's 20% ESBE participation goal.

The bid submitted by D7, who is not a certified ESBE, included the Form 440, listing SF&A, Inc. (Salinas and Farias & Associates) as an ESBE and a "material supplier" of an estimated \$100,000 in materials. It identified SF&A as an SDVE (Service Disabled Veteran Enterprise), not an EBE or SBE. D7 did not submit a SBE certification for SF&A with its bid. It submitted it upon request by staff, on November 17, 2008. (Attachment 3, Exhibit B, D7 Bid, pg. 12.)

In order for D7 to meet the City's ESBE program requirements: 1) SF&A must be a certified ESBE, 2) SF&A must be performing a commercially useful function; and 3) SF&A's participation level must be at least 20% of D7's bid amount.

City staff investigated the protest as follows:

1. D7 was asked to provide a written response to each of the bases of the protest. Staff also asked D7 to identify the materials to be provided by SF&A and to provide all quotes provided to D7 from SF&A prior to October 29<sup>th</sup>. Staff also asked for the names of the persons most knowledgeable ("PMK"s) from D7 and SF&A about the quote provided to D7 from SF&A.
2. City staff investigated state ESBE laws and requirements.
3. SF&A's President and CEO Paul Salinas, Jr. was interviewed.
4. A reply to D7's response was solicited and received from Madsen.
5. City staff revisited both D7's and Madsen's bid proposals.

In connection with its investigation, City staff interviewed Mr. Paul Salinas of SF&A, the person identified by D7 as the person most knowledgeable about SF&A's quote to D7. (Attachment 3, Exhibit G, 12/8/08 Maxim Letter; Exhibit L, Decl. of Bitter, ¶ 3.) Mr. Salinas was asked to identify the services SF&A would be providing to D7. He stated his company would be purchasing the materials from Tremco and coordinating the timing of the delivery of the materials to the job site or to the contractor (D7). He said this involves the making of telephone calls. (Attachment 3, Exhibit L, Decl. of Bitter, ¶¶ 4, 5.) D7 would direct SF&A to order particular materials from Tremco at certain quantities and arrange delivery of the supplies on the dates specified by D7. SF&A would not determine what to order, the quantities to be ordered or the delivery dates. It would not store or ship the materials. SF&A's role would require it to make telephone calls. (Attachment 3, Exhibit L, Decl. of Bitter, ¶¶ 4, 5, 10.)

In staff's view, SF&A is not providing a commercially useful function. The performance of SF&A's contract with D7 requires the making of telephone calls. Tremco sells and distributes its materials through Tremco representatives. (Attachment 3, Exhibit C, Bid

Protest, Tremco representative quote, pgs. 26-28.) SF&A is not needed to distribute or deliver the materials. The funds for the purchase of materials from Tremco will pass from D7 through SF&A to Tremco. As a roofing contractor, D7 could have acquired the materials directly from Tremco. In addition, D7 would have to convey the same information to SF&A as it would have to convey to Tremco itself, such as materials to be ordered, quantities and delivery dates. D7 would not, therefore, save any time by asking SF&A to convey information it could have conveyed itself. Staff believe SF&A is an additional, unnecessary participant used to obtain the appearance of a small business enterprise.

In addition, assuming SF&A is performing a commercially useful function, the services it will provide do not equal or exceed 20% of D7's bid. SF&A did not provide a total estimate for its services to D7. (Attachment 3, Exhibit G, SF&A quote.) Mr. Salinas was asked by City staff for a total estimate of the services he would be providing to D7. He stated D7 asked for line item quotes only and SF&A would provide a total estimate only after D7 was awarded the contract. (Attachment 3, Exhibit L, Decl. of Bitter, ¶ 6.) When asked to identify the portion of the SF&A quote that was for materials vs. services, Mr. Salinas stated that a 16% service charge covers SF&A's overhead and profit. (Attachment 3, Exhibit L, Decl. of Bitter, ¶ 7.) Therefore, excluding the cost of Tremco materials from SF&A's quotation, the function it is performing can be estimated at no more than 16% of the cost of materials provided by SF&A, or approximately \$14,000. This amount does not meet the City's 20% of the total bid (\$492,661) ESBE participation level.

Last, D7 omitted required information on Form 440 and did not timely submit SF&A's SBE certification. Madsen did not omit any information on its Form 440 and timely submitted its SBE certification. (see, Attachment 3, Exhibit B, D7's Bid, Exhibit J, Madsen's Bid.) Based on its investigation, City staff determined that each of the bases of the protest has merit and the D7 bid should be rejected as non-responsive.

The bid protest was heard by a hearing examiner on January 7, 2009. In addition to the City's Response to the Bid Protest (Attachment 2), the City also submitted documentary evidence in support of its Response. This evidence is included in Attachment 3.

On February 12, 2009, the hearing examiner issued his decision. (Attachment 4). The decision includes the following findings of fact:

Finding 1. "D7 violated the FM 440 instructions by failing to indicate, on the FM 440, D7's total bid amount, the location of the subcontractors, and whether SF&A was an EBE or SBE, instead listing SF&A as an SDVE. D7 gained no competitive advantage by its failure to properly complete the FM440. There was no showing that D7 could have gained a competitive advantage over other bidders by its failure to properly complete the FM 440."

Finding 2. "D7 violated the Invitation instructions by failing to submit the required ESBE certifications to the City within the close of two business days after the October 29 bid opening. That failure did not provide a competitive advantage to D7. D7 submitted the ESBE certifications to the City on November 17, and there

was no showing that D7 could have gained a competitive advantage over other bidders by the delay in submitting the certifications.”

Finding 3. “SF&A’s SBE certification is appropriate for the responsibility of purchasing the Tremco materials and arranging for the delivery of those materials to the job site. SF&A’s proposed work includes a commercially useful function within the meaning of the ESBE program requirements set forth in the Invitation. D7’s arrangement with SF&A entitles D7 to 100 percent credit for the \$100,000 item on D7’s FM 440. D7’s bid meets the Project’s 20 percent ESBE participation goal.” (Attachment 4, p. 17)

The hearing examiner recommended that the City waive the errors and omissions in D7’s bid proposal and deny the bid protest. (Attachment 4, p. 17-18)

Staff does not agree with Finding number 3 as SF&A is not performing a commercially useful function. Staff therefore seeks Council’s adoption of Findings 1 and 2 that failing to complete Form 440 did not convey a competitive advantage to D7, and the rejection of Finding 3. Staff recommends that the City reject the hearing examiner’s recommendation to waive the errors and omissions in D7’s bid in light of the totality of SF&A failing to meeting the commercially useful function standard established in the ESBE requirements.

Staff also recommends that Council grant Madsen’s protest and reject D7’s bid as non-responsive. Staff believes D7 did not meet the City’s 20% SBE participation requirement. Last, staff recommends that Council award the contract to Madsen as the lowest responsive and responsible bidder.

**City of Sacramento ("City")  
Response to Bid Protest  
Hearing Date: January 7, 2009  
Hearing Examiner: Vincent Pastorino**

**Contract:** Sacramento Memorial Auditorium Roof Repair Project ("Project")  
**Contract Number:** B09-17001111-001  
**Bid Date** October 29, 2008  
**City Department:** Convention, Culture and Leisure

**PARTIES:**

**Protesting Bidder:**

Madsen Roof Company, Inc.  
("Madsen")  
5960 Bradshaw Road  
Sacramento California 95829  
916-361-3327

**Attorney for Protesting Bidder:**

Deon R. Stein  
The Law Offices of Deon R. Stein  
885 University Avenue  
Sacramento, California 95825  
916-640-0102

**Protested Bidder:**

D7 Roofing Services ("D7")  
205 23<sup>rd</sup> Street  
Sacramento, California 95816  
916-447-2175

**Attorney for Protested Bidder:**

Gregory L. Maxim  
Sproul Troust, LLP  
3721 Douglas Boulevard, Suite 300  
Roseville, California 95661  
916-783-6262

**I. Introduction**

Madsen's bid protest is a protest of the City staff's recommendation to award this contract to D7, the lowest bidder. Madsen claims D7's bid was non-responsive and therefore should be rejected because D7 failed to: 1) properly complete FM 440 ("Form 440"); 2) timely submit the Emerging Small Business Enterprise ("ESBE") certifications required by Form 440; and 3) meet the City's 20% Small Business Enterprise ("SBE") participation goal.

City staff investigated the bid protest pursuant to City Code section 3.60.510. Based on this investigation, City staff have concluded that all three grounds for the protest have merit and that Madsen, as the next lowest responsive bidder, should be awarded the contract. Accordingly, City staff have, concurrent with the service of this response, issued to all bidders a notice of its intent to recommend to City Council that it award this contract to Madsen.

## II. Summary of Facts

1. The City issued an invitation to bid on the Project on October 10, 2008. (Exhibit A, Invitation to Bid.)
2. Under the City's Emerging and Small Business Development Program, bidders on the Project were required to submit bids demonstrating SBE or Emerging Business Enterprise ("EBE") participation in the performance of the contract in a total amount of not less than 20 % of the bidder's total bid amount. (Exhibit A, Invitation to Bid, pg. 4.) To receive credit for participation, the SBE or EBE must perform a commercially useful function, such as the actual performance, management or supervision of the work. Under section 3.60.270 of the Sacramento City Code, no bidder can be considered a responsive bidder unless its bid meets the minimum ESBE participation level established for the contract. The Invitation to Bid also included the requirement that bidders include copies of subcontractor SBE or EBE certifications with their sealed proposals. The Invitation to Bid also states that the failure to submit the required EBE or SBE information by the close of business two days after bid opening is grounds for finding the bid non-responsive. (Ibid.)
3. The Invitation to Bid included the requirement that bidders complete Form 440, which states, in part: "The inclusion of false information or the omission of required information will render the bid non-responsive. **READ THE ABOVE REQUIREMENT CAREFULLY.**" Bidders were required to identify subcontractor names and locations, whether the subcontractors are EBE's or SBE's, the work, services, or materials to be provided by the subcontractor and its dollar value, and the total bid amount. (Exhibit A, Invitation to Bid, 37.)
4. The Special Provisions of this contract include the purchase of roofing materials from roofing materials manufacturer Tremco, Inc., or a City approved equivalent manufacturer. (Exhibit A, Invitation to Bid, pgs. 108, 118, 119, 132.) Tremco is not a certified SBE. (Exhibit L, Decl. of Rebecca Bitter, ¶ 11.)
5. The deadline for submitting bids for this Project was 2:00 p.m., October 29, 2008. (Exhibit A, Invitation to Bid, pg. 1.) D7 and Madsen submitted their bids prior to the deadline.
6. The bids were opened on October 29, 2008. Four bids were submitted to the City. The lowest bidder was D7 (\$492,661), followed by Madsen (\$519,883) King's Roofing (\$558,377), and Hester Roofing (\$613,828.). The bid submitted by D7 included the "City of Sacramento Subcontractor and ESBE Participation Verification", Form 440, listing SF&A, Inc. (Salinas and Farias & Associates) as an ESBE and a "material supplier" of an estimated \$100,000 in materials. It identified SF&A as an SDVE (Service Disabled Veteran Enterprise), not an EBE or SBE. (Exhibit B, D7 Bid, pg. 12.)

7. D7 did not submit a SBE certification for SF&A with its bid. (Exhibit B, D7 Bid.) Rather, it submitted it upon request by staff, on November 17, 2008. (Exhibit L, Decl. of Bitter, ¶ 12.)
8. On November 7, 2008, City staff sent a notice to all bidders of its preliminary recommendation to award the contract to D7. (Exhibit C, Bid Protest, Preliminary Recommendation, pg. 8.)
9. Madsen filed its bid protest on November 14, 2008. (Exhibit C, Bid Protest.)
10. City staff investigated the protest as follows:
  - (a) D7 was asked to provide a written response to each of the bases of the protest. Staff also asked D7 to identify the materials to be provided by SF&A and to provide all quotes provided to D7 from SF&A prior to October 29<sup>th</sup>. (Exhibit D, 11/20/08 Bitter e-mail.) Staff also asked for the names of the persons most knowledgeable ("PMK"s) from D7 and SF&A about the quote provided to D7 from SF&A. (Exhibit F, 12/5/08 Casagrande Letter.)
  - (b) City staff investigated state SBE laws and requirements.
  - (c) SF&A PMK Paul Salinas, Jr. was interviewed. (Exhibit L, Bitter Decl. ¶ 3.)
  - (d) A reply to D7's response was solicited and received from Madsen. (Exhibit H, 12/10/08 Stein Letter.)
  - (e) City staff revisited both D7's and Madsen's bid proposals.
11. Based on its investigation, City staff determined that each of the bases of the protest has merit and the D7 bid should be rejected as non-responsive. In addition, staff will recommend to City Council that Madsen be awarded the contract as the lowest responsive bidder.
12. On December 23, 2008, City staff notified bidders that it intends to recommend to the City Council that it award the contract to Madsen. (Exhibit L, Bitter Decl. ¶ 14.)

### III. Response to Bid Protest

#### A. Whether D7 failed to properly complete Form 440 as required by California law and the City's bid requirements.

Section 4104 of the Public Contract Code states that any officer or department taking bids for the construction of any public work or improvement shall provide in the specifications or general conditions that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth the name and the location of the place of

business of each subcontractor who will perform work or labor or render service to the prime contractor. (Pub. Contract Code § 4104, subd. (a).)

The City's Standard Specifications, to which this contract is subject, restate the requirements set forth in section 4104. In addition, the Invitation to Bid includes the requirement that bidders complete Form 440. The directions for completing this form state, in part: "The inclusion of false information or the omission of required information will render the bid non-responsive. **READ THE ABOVE REQUIREMENT CAREFULLY.**" The information to be provided through Form 440 is: 1) subcontractor names and locations, 2) whether the subcontractors are EBE's or SBE's, 3) the work, services, or materials to be provided by the subcontractor and its dollar value, and 4) the bidder's total bid amount. (Exhibit A, Invitation to Bid, pg. 37.)

D7 listed SF&A as a subcontractor. It did not list SF&A's location. SF&A was not identified as either an EBE or an SBE. D7 did not identify the materials or services to be provided by SF&A. Last, it did not specify its total bid amount. (Exhibit B, D7 Bid, pg. 12.) In summary, D7 omitted information required under state law and City bid requirements.

The City recognizes that it has the discretion, as stated in the Invitation to Bid, to waive any error or omission in any bid proposal. (Exhibit A, Invitation to Bid, pg. 3.) In consideration of the totality of the facts underlying D7's bid, City staff will be recommending to the City Council that it not waive these errors and omissions, and that it reject D7's bid as non-responsive.

**B. Whether D7 failed to timely submit ESBE certifications required by Form 440.**

The Invitation to Bid provides: "Bidders shall include copies of their Certification as a SBE or EBE and the SBE or EBE Certifications for each subcontractor, trucker, material supplier, or other business entity listed on the forms submitted with the sealed proposal. Failure to submit the required ESBE information by the close of business two days after bid opening will be grounds for finding the bid non-responsive." (Exhibit A, Invitation to Bid, pg. 4.)

D7 did not submit a SBE certification for SF&A with its bid proposal. (Exhibit B, Bid Proposal.) Rather, it submitted it on November 17, 2008, upon the request from staff, 20 days after bids were opened. (Exhibit L, Decl. of Bitter, ¶ 12.)

**C. Whether D7 failed to meet the City's 20% SBE participation level.**

To meet City SBE requirements, D7 must show: 1) SF&A is a certified SBE, 2) SF&A is performing a commercially useful function; and 3) SF&A's participation level is at least 20% of D7's bid amount.

The Invitation to Bid states: "No bidder on the contract shall be considered a responsive bidder unless its bid meets the minimum ESBE participation level required by the bid specifications. The City has established a minimum 20% participation level for

ESBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered a responsive bidder unless its bid meets or exceeds this minimum participation level. (Exhibit A, Invitation to Bid, pg. 4.) To receive credit for participation (as an ESBE), an ESBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry its responsibility by actually performing, managing, or supervising the work. (ibid.)

SF&A is a state certified SBE. (Exhibit K, SF&A SBE Certification.) SF&A's business types, according to state records, are "service" and construction". (ibid.) D7 identified SF&A as a "materials supplier". (Exhibit B, D7 Bid, pg. 12.)

Although Madsen claims that SF&A is not a qualified SBE because it is not registered as a roofing materials supplier, the City could find no law or regulation expressly addressing this issue. However, the state application for SBE certification requires applicants to select their business type(s) from four different types, and to check all types that apply. The four types are 1) service, 2) construction, 3) manufacturer (transforms materials into new products . . .), and 4) non-manufacturer (reseller, wholesaler, distributor, or retailer of goods). (Exhibit I, SBE Cert. Appl. Form, pg. 1.) Presumably, SF&A did not check the latter two business types. Consequently, the City believes an inference can be drawn that SF&A is not a materials supplier, contrary to D7's representations. (Exhibit B, D7 Bid, pg. 12.)

Under state law, a "small business" is defined as: "an independently owned and operated business that is not dominant in its field of operation. . ." (Gov. Code § 14837, subd. (d)(1)). The City assumes that when SF&A applied for SBE certification, it did not identify its business type as a reseller, wholesaler or a distributor of goods. Consequently, it has not, and by extrapolation, D7 has not, demonstrated that SF&A is not dominant in these fields of operation. The City does not believe that certified SBE status in the service and construction businesses excludes the possibility that a company may be dominant in other types of businesses. Therefore, there is no indication that SF&A is a certified SBE in the business of reselling or distributing materials.

As stated earlier, City staff interviewed Mr. Paul Salinas of SF&A, the person identified by D7 as the person most knowledgeable about SF&A's quote to D7. (Exhibit G, 12/8/08 Maxim Letter; Exhibit L, Decl. of Bitter, ¶ 3.) Mr. Salinas was asked to identify the services SF&A would be providing to D7. He stated his company would be purchasing the materials from Tremco and coordinating the timing of the delivery of the materials to the job site or to the contractor (D7). He said this involves the making of telephone calls. (Exhibit L, Decl. of Bitter, ¶¶ 4, 5.) Last, he stated Tremco, not SF&A, would haul the materials to the job site or contractor's yard. (Id., ¶ 10.)

Regarding whether SF&A would be performing a commercially useful function, state law is instructive here. A small business performs a "commercially useful function" if it does all of the following: 1) is responsible for the execution of a distinct element of the work of the contract, 2) carries out its obligation by actually performing, managing, or supervising the work involved, and 3) performs work that is normal for its business

services and functions. (Gov. Code § 14837, subd. (d)(4)(A)(i).) (emphasis added.) A subcontractor or supplier will not be considered to perform a commercially useful function if the subcontractor's or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business participation. (*Id.*, subd. (d)(4)(B).)

The purchasing and scheduling of materials delivery by SF&A is arguably a distinct element of the work. The only work involving SF&A is the procurement of Tremco materials and the scheduling and arrangement of deliveries. SF&A is not a manufacturer, distributor or reseller. It will not manage or supervise the procurement or delivery of materials. Rather, D7 will tell SF&A the quantity and type of materials needed for the Project and when and where the materials should be delivered. (Decl. of Bitter, ¶ 4.) (Gov. Code § 14837, subd. (d)(4)(A)(i).) Last, SF&A would presumably be performing functions it normally performs.

Regarding the test set forth in section 14837, subdivision (d)(4)(B), the answer to the question of whether D7 identified SF&A as a subcontractor on this Project to obtain the appearance of small business participation, short of an admission, can be answered, assuming D7 exercised sound business judgment, through an analysis of whether the benefit to D7 in retaining SF&A outweighs the cost. In identifying SF&A as a certified ESBE supplying \$100,000 in materials, D7 enjoys the benefit of meeting City SBE requirements it would not otherwise meet, and the benefit of a contract award it would not otherwise receive, and the profits flowing therefrom. Although D7 claims SF&A is supplying \$100,000 in materials, D7 would incur the cost of Tremco materials, regardless of whether it retained SF&A. Therefore, the added cost in retaining SF&A is only 16% of its total materials costs, or \$16,000 which is 3.24% of D7's total bid of \$492,661.<sup>i</sup>

In the City's view, SF&A is not providing a commercially useful function. The performance of SF&A's contract with D7 requires the making of telephone calls. Tremco sells and distributes its materials through Tremco representatives. (Exhibit C, Bid Protest, Tremco representative quote, pgs. 26-28.) SF&A is not needed to distribute or deliver the materials. The funds for the purchase of materials from Tremco will pass from D7 through SF&A to Tremco. As a roofing contractor, D7 could have acquired the materials directly from Tremco, and avoided the 16% service charge imposed by SF&A. The City believes SF&A is an additional, unnecessary participant used to obtain the appearance of a small business enterprise.

Assuming SF&A is performing a commercially useful function, the services it will provide do not equal or exceed 20% of D7's bid. SF&A did not provide a total estimate for its services to D7. (Exhibit G, SF&A quote.) Mr. Salinas was asked by City staff for a total estimate the services he would be providing to D7. He stated D7 asked for line item quotes only and SF&A would provide a total estimate only after D7 was awarded the contract. (Exhibit L, Decl. of Bitter, ¶ 6.) When asked to identify the portion of the SF&A quote that was for materials vs. services, Mr. Salinas stated the 16% service charge covers SF&A's overhead and profit. (Exhibit L, Decl. of Bitter, ¶ 7.) Therefore, excluding the cost of Tremco materials from SF&A's quotation, the function it is

performing can be estimated at no more than 16% of the \$100,000 listed by D7 in its Form 440, or \$16,000. This amount does not meet the City's 20% of the total bid SBE participation level.

#### **IV. Conclusion**

D7 did not provide all of the information required on Form 440. It failed to timely provide its SBE certification to the City. Last, D7 has not met the City's 20% SBE participation level because SF&A is not supplying materials, it is not performing a commercially useful function, and any useful function it may be performing does not meet the 20% SBE participation level.

City staff have, concurrent with this response, served upon all bidders a notice of its intent to recommend to City Council that it award this contract to Madsen. In addition, in support of this recommendation, City staff will provide the factual bases for its recommendation to Council that it reject D7's bid as non-responsive.

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<sup>1</sup> This calculation assumes the estimate by D7 of \$100,000 in material costs is accurate. After interviewing Mr. Salinas, the City does not believe that the reasonable cost of the services to be provided by SF&A should be as high as \$16,000.

1 EILEEN M. TEICHERT, City Attorney (SBN 167027)  
 2 **ANGELA M. CASAGRANDA, Senior Deputy City Attorney (SBN 215775)**  
 3 CITY OF SACRAMENTO  
 4 Mailing: P.O. Box 1948, Sacramento, CA 95812-1948  
 5 Office: 915 I Street, 4th Floor, Sacramento, CA 95814  
 6 Telephone: (916) 808-5346  
 7 Telecopier: (916) 808-7455

8 Attorneys for the CITY OF SACRAMENTO

9 In the Matter of:

10 Bid Protest Hearing Relating to Sacramento  
 11 Memorial Auditorium Roof Repair

Case No.

**CITY OF SACRAMENTO'S  
 TABLE OF EXHIBITS**

12 Date: January 7, 2009  
 13 Place: 3455 Fifth Avenue, 2<sup>nd</sup> Floor  
 Sacramento, CA 95817  
 14 Time: 9:30 a.m.  
 Hearing Examiner: Vincent Pastorino

15  
 16 The City of Sacramento hereby identifies the following documents that may be  
 17 introduced into evidence at the hearing in the above-referenced matter.

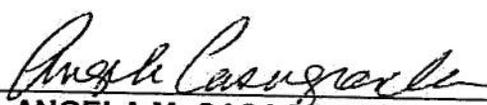
18  
 19 **TABLE OF EXHIBITS**

20 <b><u>Exhibit</u></b>	<b><u>Description</u></b>
21 Exhibit A	Invitation to Bid and Related Documents
22 Exhibit B	D-7 Roofing Services' Bid
23 Exhibit C	Madsen Roof Company's Bid Protest
24 Exhibit D	Rebecca Bitter's Email to Marty Jenkins Dated 11/20/08
25 Exhibit E	Gregory Maxim's Letter to Rebecca Bitter Dated December 4, 2008
26 Exhibit F	Angela Casagranda's Letter to Gregory Maxim Dated 12/5/08
27 Exhibit G	Gregory Maxim's Letter to Angela Casagranda Dated 12/8/08
28 Exhibit H	Deon R. Stein's Letter to Angela Casagranda Dated 12/10/08

- 1 Exhibit I Small Business and DVBE Certification Application Form
- 2 Exhibit J Madsen Roof Company Bid Proposal
- 3 Exhibit K SF & A SBE Certification
- 4 Exhibit L Declaration of Rebecca Bitter in Support of City of Sacramento's
- 5 Response to Madsen's Bid Protest

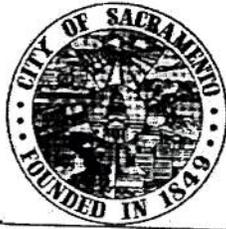
6 DATED: December 23, 2008

7  
8 EILEEN M. TEICHERT,  
City Attorney

9  
10  
11 By:   
12 **ANGELA M. CASAGRANDA**  
Sr. Deputy City Attorney

13  
14 Attorneys for the  
CITY OF SACRAMENTO

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DEPARTMENT OF  
STREET CONVENTION, CULTURE  
AND LEISURE

BARBARA E. BONEBRAKE  
DIRECTOR

CITY OF SACRAMENTO  
CALIFORNIA

1030 15<sup>TH</sup>  
SUITE 250

SACRAMENTO, CA  
95814-4009  
PH: 916-808-8225  
FAX: 916-808-7279

**CONTRACT & TECHNICAL SPECIFICATIONS  
FOR  
SACRAMENTO MEMORIAL AUDITORIUM ROOF REPAIR (B09-17001111-001)**

Mandatory Pre-Bid Meeting:  
9:00AM, Tuesday, October 21, 2008  
1515 J Street, Auditorium front steps  
For Pre-Bid Information Call:  
Melanie Medina, Staff Aide  
(916) 808-7048

Bids to be received before  
2:00PM  
Wednesday, October 29, 2008  
Historic City Hall  
915 I Street, Clerk's Office  
Sacramento, CA 95814

**NEW PROGRAM REQUIREMENTS**

To meet the City of Sacramento's Small Business Enterprise (SBE) and Emerging Business Enterprise (EBE) project goals, the bidder is recommended to attend an Emerging and Small Business Development (ESBD) program meeting within 90 days prior to the bid opening date listed above. The meetings are presented:

1<sup>st</sup> Tuesday at 10:00 AM at Procurement Services Division, 915 I Street, 2<sup>nd</sup> Floor

Estimated Construction Cost: \$400,000

Construction Time: 60 Calendar Days

EXHIBIT A

## CONTENTS OF PROJECT MANUAL

	Pages
Invitation to Bid	1 only
ESBE Requirements	1 – 3
Apprenticeship Standards	1 – 6
Claim Appeal Provision Form	1 – 2
Non-Discrimination in Employee Benefits Code	1 – 2
Declaration of Compliance – Attachment A	1 – 4
Non-Discrimination in Employee Benefits – Attachment B	1 – 2
Non-Discrimination in Employee Benefits – Attachment C	1 only
Bid Proposal Form	1 – 3
Bid Proposal Guarantee	1 only
Minimum Qualifications Questionnaire	1 – 6
Drug Free Work Place	1 only
Subcontractor Form	1 only
Green Contracting Survey	1 – 3
Contract	1 – 12
Performance Bond	1 only
Payment Bond	1 only
Certificate of Insurance	1 only
Worker's Compensation Certification	1 only
Pay Request Application	1 only
Schedule of Values	1 only
Guarantee	1 only
General Conditions	
Article 1	1-1 – 1-3
Article 2	2-1 – 2-7
Article 3	3-1 – 3-3
Article 4	4-1 – 4-3
Article 5	5-1 – 5-4
Article 6	6-1 – 6-4
Article 7	7-1 – 7-8
Article 8	8-1 – 8-4
General Requirements	1 - 7
Special Provisions	1 - 15

Sealed Proposals will be received by the City Clerk of the City of Sacramento at the office of the City Clerk, 1<sup>st</sup> Floor, Historic City Hall, 915 I Street, up to the hour of 2:00 PM on **Wednesday, October 15, 2008** and will be opened as soon thereafter as business allows, at Historic City Hall 915 I Street, 2nd Floor Hearing Room, for:

**SACRAMENTO MEMORIAL AUDITORIUM ROOF REPAIR  
(B09-17001111-001)**

as set forth in the Contract Documents.

Proposals received and work performed thereunder shall comply with the requirements of Title 3 of the Sacramento City Code. Each Bid Proposal shall be accompanied by bid security of at least 10% of the sum of the Bid Proposal, which conforms to the requirements of Section 7.0 of the Instructions to Bidders. The right to reject Proposals or to waive any error or omission in any Bid Proposal received is reserved by the City. Signed proposals shall be submitted on the printed forms contained in the Project Manual and enclosed in an envelope marked: Sealed Bid Proposal for:

**SACRAMENTO MEMORIAL AUDITORIUM ROOF REPAIR  
(B09-17001111-001)**

Subcontractors shall comply with the rates of wages currently established by the Director of Industrial Relations under provisions of Sections 1773 of the Labor Code of the State of California, a copy of which is on file in the office of the City Clerk. In accordance with Sacramento City Code Section 3.60.180 and Section 1771.5 of the California Labor Code, the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime is not required for any Public Construction project of \$25,000 or less, or Public Maintenance project of \$15,000 or less. The City of Sacramento has an approved Labor Compliance Program. All questions regarding this Labor Compliance Program should be directed to the Labor Compliance Section at (916) 808-1923.

Pursuant to Sacramento City Code Section 3.60.250, any Agreement awarded pursuant to this Invitation to Bid shall contain a provision permitting the substitution of securities for any monies withheld to ensure performance under the Agreement. The City shall according to the requirements and the form require the terms of such provisions.

Bid protests must be filed and maintained in accordance with the provisions of Sections 3.60.460 through 3.60.560 of the Sacramento City Code. Bid protests that do not comply with Sections 3.60.460 through 3.60.560 of the Sacramento City Code shall be invalid and shall not be considered. A bid protest fee of \$750.00 is required at the time of filing to be considered valid in accordance with City of Sacramento Resolution No. 2003-231 dated April 29, 2003. As used herein, the term "bid protest" includes any bid protest that (1) claims that one or more bidders on this contract should be disqualified or rejected for any reason, or (2) contests a City staff recommendation to award this contract to a particular bidder, or (3) contests a City staff recommendation to disqualify or reject one or more bidders on this contract. A copy of Sections 3.60.460 through 3.60.560 of the Sacramento City Code may be obtained from the Project Manager, or from the City Clerk, located at 915 I Street, 1<sup>st</sup> Floor, Sacramento, CA 95814.

**ESBE REQUIREMENTS**  
(City Contracts no Federal Funds Used)

**I. ESBE PROGRAM REQUIREMENTS**

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development (ESBD) program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. The ESBD program establishes an annual emerging and small business enterprise (ESBE) participation goal for the City's contracts, and authorizes City departments to require minimum ESBE participation levels in individual contracts so that the annual ESBE participation goal can be met. Under City Code Section 3.60.270, when the bid specifications for a City contract establishes a minimum participation level for ESBEs, **no bidder on the contract shall be considered a responsive bidder unless its bid meets the minimum ESBE participation level required by the bid specifications.**

The City has established a minimum 20% participation level for ESBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered a responsive bidder unless its bid meets or exceeds this minimum participation level.

Bidders shall include copies of their Certification as a SBE or EBE and the SBE or EBE Certifications for each subcontractor, trucker, material supplier, or other business entity listed on the forms submitted with the sealed proposal. **Failure to submit the required ESBE information by the close of business two days after bid opening will be grounds for finding the bid non-responsive.**

**II. ESBE CERTIFICATION**

- A. An SBE designated in the bid must be certified as such by the State of California or by the City, as defined herein, prior to the time bids are received.
- B. An EBE designated in the bid must be certified as such by the City, as defined herein, prior to the time bids are received.

**III. DETERMINATION OF ESBE PARTICIPATION LEVEL**

- A. The percent of ESBE participation shall be determined based on the dollar amount of the work to be performed by a certified ESBEs as that dollar amount is specifically stated on the **SUBCONTRACTOR and ESBE PARTICIPATION VERIFICATION FORM (FM 440)** in the bid package, relative to the total dollar amount of the bid, except as provided other wise below.
- B. To receive credit for participation, a ESBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry its responsibility by actually performing, managing, or supervising the work.
- C. **Suppliers:** Credit for supplies by ESBEs will be 100 percent.
- D. **Truckers:** Credit for trucking by ESBEs will be 100 percent.

**IV. ESBE REQUIREMENTS OF SUCCESSFUL BID/PROPOSAL**

- A. **ESBE RECORDS** - The Contractor shall maintain records of all subcontracts with certified ESBE subcontractors and records of materials purchased from certified ESBE vendors/suppliers for one (1) year after receiving final payment from the City. Such records shall show the name and business address of each ESBE subcontractor or vendor/supplier and the total dollar amount actually paid each ESBE subcontractor or vendor/supplier.

Upon completion of the contract, a summary of these records shall be prepared, certified correct by the Contractor's authorized representative and furnished to the City. The Contractor shall provide such other information, records, reports, certifications, or other documents as may be required by City, to determine compliance with any provision of the ESBD program or these specifications.

- B. **REPORTING REQUIREMENTS AND SANCTIONS** - Failure to provide specific information, records, reports, certifications, or any other documents required for compliance with these specifications shall be considered noncompliance with the contract. If the Contractor fails to correct a deficiency within fifteen (15) days after notification, a deduction may be made from the contract amount. The deduction shall be ten (10) percent of the estimated value of the work done during the month, not to be less than \$1,000 nor exceed \$10,000 and shall be deducted from the next progress payment.

- C. **PERFORMANCE OF ESBE SUBCONTRACTORS AND SUPPLIERS** - The ESBEs listed by the Contractor shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization from the City to perform the work with other forces or to obtain the material from other sources. Reasons for requesting such authorization would include:

1. The listed ESBE fails to execute a written contract based upon the general terms, conditions, plans, and specifications for the project.
2. The listed ESBE becomes bankrupt or insolvent.
3. The listed ESBE subcontractor fails to meet the bond requirements of the Contractor.
4. The work performed by the listed subcontractor is unsatisfactory and/or is not in accordance with the plans and specifications, or the subcontractor fails to perform his/her obligations under the subcontractor contract.
5. It would be in the best interest of the City. The Contractor shall not be entitled to any payment for such work or materials unless it is performed or supplied by the listed SBE or EBE or other forces (including those of the Contractor) authorized in writing, by the City.

- D. **SUBCONTRACTOR SUBSTITUTION** - No substitution of an ESBE subcontractor shall be made at any time without compliance with the Subcontracting Listing Law and the written consent of the City. If a ESBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original ESBE subcontractor with another certified ESBE subcontractor. The new ESBE subcontractor must be certified at the time of substitution.

V. DEFINITIONS

A. Emerging Business Enterprise (EBE)

The City shall certify EBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources, that were in effect on December 1, 1998, provided that the size standard, industry by industry, shall be set at 50% of the State small business certification criteria and standards that were in effect on December 1, 1998.

B. Small Business Enterprise (SBE)

The City shall certify SBEs utilizing the small business certification criteria and standards of the State of California, General Services Department, Office of Small Business Certification and Resources. The City will also accept State certified SBEs.

C. CONTRACTOR

The individual, partnership, corporation, joint venture or other legal entity entering into a contract with the City of Sacramento.

D. SUBCONTRACTOR

The individual, partnership, corporation, or other legal entity entering into a contract with the prime contractor to perform a portion of the work.

STATE OF CALIFORNIA - DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION  
OF APPRENTICESHIP STANDARDS  
EXCERPTS FROM THE CALIFORNIA LABOR CODE RELATING TO  
APPRENTICES ON PUBLIC WORKS  
CHAPTER 1 OF DIVISION 2  
APPRENTICES ON PUBLIC WORKS  
(NOTE: **BOLDFACE TYPE DENOTES KEY POINTS.**)

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1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards. (Added by Stats. 1978, Ch. 1249)

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- (b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request

was made. The public shall not be given access to the records at the principal office of the contractor.

- (c) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.
- (d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated.
- (e) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice or a change of location and address.
- (f) In the event of noncompliance with the requirements of this section, the contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with the section. Should noncompliance will be evident after the 10-day period, the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- (g) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. These stipulations shall fix the responsibility for compliance with this section on the prime contractor.
- (h) The director shall adopt rules consistent with the California Public Records Act (Ch. 3.5 (commencing with Sec. 6250), of Div. 7, Title 1, Gov. C.) and the Information Practices Act of 1977, (Title 1.8 (commencing with Sec. 1798) Pt. 4, Div. 3, Civ. C.) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(Amended 1983 Ch. 681)

- 1777.5. Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed on public works. The employment and training for each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship.

The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities.

Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in any case shall the ratio be less than one hour of apprentices work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is

not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

The contractor or subcontractor, if he or she is covered by this section, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or 20 working days. Any work performed by a journeymen in excess of eight hours per day or 40 hours per week, shall not be used to calculate the hourly ratio required by this section.

"Apprenticeable craft or trade" as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
- (b) The number of apprentices in training in such area exceeds a ratio of 1 to 5.
- (c) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis, or on a local basis.
- (d) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for

approval to local joint apprenticeship committees, if they are already approved by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him or her, who, in performing any of the work under the contract, employees journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are able to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

All decisions of the joint apprenticeship committee under this section are subject to Section 3081.

(Amended by Stats. 1989, Ch. 1224)

1777.6. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, excepted as provided in Section 3077, of such employee. (Amended by Stats. 1976, Ch. 1179)

1777.7. (a) In the event a contractor or subcontractor willfully fails to comply with Section 1777.5, the Director of Industrial Relations shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes and order of the California Apprenticeship Council.

(b) A contractor or subcontractor who violates Section 1777.5 shall forfeit as a civil penalty the sum of fifty dollars (\$50) for each calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body

shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

- (c) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first time violation and with the concurrence of the joint apprenticeship committee, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of non-compliance.
- (d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.
- (e) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

(Amended by Stats. 1989, Ch. 1224)

JG3-01.A

Appeal of Claim Decision to Claim Appeals Committee

The following new Section 4-12 is added to Section 4 of the Standard Specifications and is incorporated into the Contract, to read as follows:

4-12 APPEAL OF CLAIM DECISION TO CLAIM APPEALS COMMITTEE

This section sets forth procedures for the Contractor to appeal any claim decision issued by the Engineering Division Manager pursuant to Section 4-10 of the Standard Specifications. If the Contractor does not appeal the Engineering Division Manager's decision in strict compliance with the requirements set forth in this Section 4-12, this shall constitute an acceptance of the decision by the Contractor, and the Contractor thereafter shall have no right to additional compensation for any of the claim(s) to which the decision applies, beyond any amount(s) determined to be due the Contractor by the Engineering Division Manager's decision.

Appeals of the Engineering Division Manager's decision shall be heard by the City's Claim Appeal Committee, that consists of the City's Chief Building Official, the Engineering Services Division Manager of the City's Department of Transportation, the Director of the City's Department of General Services, and the Engineering Services Manager for the City's Department of Utilities. In order for the Committee to hear and decide an appeal as provided in this section, at least two members of the Committee must be present, provided that the Committee member from the Department administering the contract that the claim arose from shall not participate as a Committee member in the Committee's hearing, deliberation or decision on the claim appeal. The Claim Appeal Committee may reject, affirm or modify the Engineering Division Manager's decision on the claim

To appeal the Engineering Division Manager's decision, the Contractor shall file a written notice of appeal with the Engineering Division Manager not later than fourteen calendar (14) days after the Contractor receives the Engineering Division Manager's decision. The notice of appeal shall briefly describe the Engineering Division Manager's determination or determinations that are being appealed and the Contractor's reason(s) for appealing the determination(s), and shall provide the Contractor's mailing address.

Not later than ten (10) calendar days after receiving a timely and complete notice of appeal, the Engineering Division Manager shall forward the notice of appeal, with copies of the Contractor's original claim, the Engineering Division Manager's decision on the claim and any additional related materials to the Claim Appeal Committee, which shall set the matter for a hearing at the earliest practical date. Notice of the date, time and location of the hearing shall be mailed to the Contractor at the address specified in the notice of appeal not less than ten calendar (10) days prior to the date of the hearing.

The hearing shall be conducted in an informal manner, and no record shall be made of the proceedings. The scope of the hearing shall be limited to issues raised in the Contractor's original claim and/or addressed in the Engineering Division Manager's

decision on the claim. At the hearing, representatives of the Department administering the Contract and the Contractor shall be provided a reasonable opportunity to present their positions and any additional evidence relevant to the scope of the hearing. The Contractor may be represented by any person(s) of the Contractor's choice.

As soon as practical after the hearing, the Claim Appeal Committee shall issue a written decision on the appeal, and copies of the decision shall be (i) mailed to the Contractor at the address specified in the notice of appeal, and (ii) provided to the Department administering the Contract. The Claim Appeal Committee's decision shall be the City's final administrative determination of the matter.

As used in this Section 4-12 and in Section 4-10 of the Standard Specifications, the "Engineering Division Manager" shall mean the City employee who supervises the engineering services division of the City Department administering the Contract.

## **REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE**

### **INTRODUCTION**

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

### **APPLICATION**

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

### **DEFINITIONS**

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

### **CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION**

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

### **EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS**

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form (attachment "A"), signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as attachment "B."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as attachment "C."

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address

The above named contractor ("Contractor") hereby declares and agrees as follows:

1. I have read and understand the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") provided to me by the City of Sacramento ("City") in connection with the City's request for proposals or other solicitations for the performance of services, or for the provision of commodities, under a City contract or agreement ("Contract").
2. As a condition of receiving the City Contract, I agree to fully comply with the Requirements, as well as any additional requirements that may be specified in the City's Non-Discrimination in Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. I understand, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance, are any of the following:
  - a. Bereavement Leave
  - b. Disability, life, and other types of insurance
  - c. Family medical leave
  - d. Health benefits
  - e. Membership or membership discounts
  - f. Moving expenses
  - g. Pension and retirement benefits
  - h. Vacation
  - i. Travel benefits
  - j. Any other benefit offered to employees

I agree that should I offer any of the above listed employee benefits, that I will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. I understand that I will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:

**DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

- a. In the event that the actual cost of providing a benefit to a domestic partner or spouse, exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, I will not be required to provide the benefit, nor shall it be deemed discriminatory, if I require the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
- b. In the event I am unable to provide a certain benefit, despite taking reasonable measures to do so, if I provide the employee with a cash equivalent, I will not be deemed to be discriminating in the application of that benefit.
- c. If I provide employee benefits neither to employee's spouses nor to employee's domestic partners.
- d. If I provide employee benefits to employees on a basis unrelated to marital or domestic partner status.
- e. If I submit, to the Program Coordinator, written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies which are to be enacted before the first effective date after the first open enrollment process following the date the Contract is executed with the City.

I understand that any delay in the implementation of such policies may not exceed one (1) year from the date the Contract is executed with the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate, in the infrastructure, nondiscrimination in employee benefits  
  
The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date the Contract is executed with the City.
- g. Until the expiration of a current collective bargaining agreement(s) where, in fact, employee benefits are governed by a collective bargaining agreement(s).
- h. I take all reasonable measures to end discrimination in employee benefits by either requesting the union(s) involved agree to reopen the agreement(s) in order for me to take whatever steps are necessary to end discrimination in employee benefits or by my ending discrimination in employee benefits without reopening the collective bargaining agreement(s).

**DECLARATION OF COMPLIANCE**  
**Equal Benefits Ordinance**

- i. In the event I cannot end discrimination in employee benefits despite taking all reasonable measures to do so, I provide a cash equivalent to eligible employees for whom employee benefits (as listed previously), are not available.

Unless otherwise authorized in writing by the City Manager, I understand this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or no longer than three (3) months from the date the Contract is executed with the City.

5. I understand that failure to comply with the provisions of Section 4. (a) through 4. (i), above, will subject me to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full; deemed ineligible for future contracts for up to two (2) years; the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. I understand and do hereby agree to provide each current employee and, within ten (10) days of hire, each new employee, of their rights under the Ordinance. I further agree to maintain a copy of each such letter provided, in an appropriate file for possible inspection by an authorized representative of the City. I also agree to prominently display a poster informing each employee of these rights.
7. I understand that I have the right to request an exemption to the benefit provisions of the Ordinance when such a request is submitted to the Procurement Services Division, in writing with sufficient justification for resolution, prior to contract award.

I further understand that the City may request a waiver or exemption to the provisions or requirements of the Ordinance, when only one contractor is available to enter into a contract or agreement to occupy and use City property on terms and conditions established by the City; when sole source conditions exist for goods, services, public project or improvements and related construction services; when there are no responsive bidders to the Ordinance requirements and the contract is for essential goods or services; when emergency conditions with public health and safety implications exist; or when the contract is for specialized legal services if in the best interest of the City.

8. In consideration of the foregoing, I shall defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by me.

**DECLARATION OF COMPLIANCE  
Equal Benefits Ordinance**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind the Contractor to the provisions of this Declaration.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S  
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS  
ORDINANCE**

On ..... (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for ..... (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits By City Contractors Ordinance (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

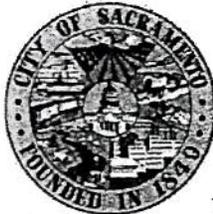
**You May . . .**

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento  
Contract Services Unit  
915 I St., 2nd Floor  
Sacramento, CA 95814

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:

- Reinstatement, injunctive relief, compensatory damages and punitive damages
- Reasonable attorney's fees and costs



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S  
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS  
ORDINANCE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

**You May . . .**

- o Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:  
  
City of Sacramento  
Contract Services Unit  
915 I St., 2nd Floor  
Sacramento, CA 95814
- o Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

**Discrimination and Retaliation Prohibited.**

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

**You May Also . . .**

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.

**BID PROPOSAL FORMS**

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**PLEASE REMOVE AND**  
**COMPLETE**  
**THE FOLLOWING DOCUMENTS**  
**AND**  
**SUBMIT AS**  
**THE BID PROPOSAL**  
**PACKAGE**

**CONTRACTOR NAME:** \_\_\_\_\_

TO THE HONORABLE CITY COUNCIL  
SACRAMENTO, CALIFORNIA:

In compliance with the Contract Documents, the undersigned hereby proposes to furnish all required labor, materials, supervision, transportation, equipment, services, taxes and incidentals required for:

**SACRAMENTO MEMORIAL AUDITORIUM ROOF REPAIR  
(B09-17001111-001)**

in the City and County of Sacramento, California.

The Work is to be done in strict conformity with the Contract Documents now on file in the Office of the City Clerk, for the following sum:

Item No.	Item	Estimated Quantity	Unit	Unit Price	Total
1.	Roof Repair	1	LS	\$	\$

CONTRACTOR NAME: \_\_\_\_\_ **TOTAL \$** \_\_\_\_\_

If awarded the Agreement, the undersigned agrees to sign said Agreement and furnish the necessary surety bonds and insurance certificates within ten (10) days after receipt of the notice of award of Agreement, and to begin work within fifteen (15) days after receipt of the Notice to Proceed by the City.

It is understood that this Bid Proposal is based upon completion of the Work within a period of **SIXTY (60) CALENDAR DAYS**. The Contractor shall coordinate activities with the Convention Center staff prior to start of work. It may be necessary for the Contractor to schedule elements of the work around existing booked events in the Auditorium. A schedule of booked events is located in Section A of the Specifications.

**The City's order of preference will be as follows: base bid first, followed by additive alternates in chronological order, based on funds available.**

In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication, and division that appear obvious on the face of the Proposal. When such a mathematical error appears on the face of the Proposal, the City shall have the right to correct such error and to compute the total amount bid by said bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Proposal, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the Engineer's estimate of the quantity of work to be performed for said item, the item price shall

prevail over the sum set forth as the total for the item unless, in the sole discretion of the City, such a procedure would be inconsistent with the policy of the bidding procedure. The total paid for each such item of work shall be based upon the item price and not the total price. Should the Proposal contain only total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by the Engineer's estimate of the estimated quantities of work to be performed as items of work.

If the Proposal contains neither the item price nor the total price for the item, then it shall be deemed incomplete and the Proposal shall be disregarded.

The undersigned has examined the location of the proposed Work, the local conditions at the place where the Work is to be done, is familiar with the Contract Documents and is familiar and expressly agrees to the liquidated damages provision of the Contract Documents. The undersigned has checked carefully all of the foregoing figures and understands that the City of Sacramento will not be responsible for any errors or omissions on the part of the undersigned in making up this Bid Proposal.

Enclosed is Bid Proposal Guarantee, as required, consisting of a bidder's bond or other acceptable security for not less than ten percent (10%) of the amount Bid Proposal.

The undersigned agrees that all addenda received and acknowledged herein shall become a part of and be included in this Bid Proposal. This Bid Proposal includes the following addenda:

Add. #	_____	DATE	_____
Add. #	_____	DATE	_____
Add. #	_____	DATE	_____

NOTE: State whether your concern is a corporation, a co-partnership, private individual, or individuals doing business under a firm name.

If the Bidder is a corporation, the Bid Proposal must be executed in the name of the corporation and must be signed by a duly authorized officer of the corporation.

If the Bidder is a partnership, the Bid Proposal must be executed in the name of the partnership and one of the partners must subscribe their signature thereto as the authorized representative of the partnership.

AMOUNT OF BID PROPOSAL GUARANTEE ENCLOSED:

(\$ \_\_\_\_\_) not less than ten percent (10%) of amount Bid Proposal

\_\_\_\_\_ CERTIFIED CHECK  
 \_\_\_\_\_ CASHIER'S CHECK  
 \_\_\_\_\_ BID BOND  
 \_\_\_\_\_ MONEY ORDER  
 \_\_\_\_\_ OTHER SECURITY

CONTRACTOR:  
 By \_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
(Print or Type)  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Fax No. \_\_\_\_\_  
**EMAIL ADDRESS** \_\_\_\_\_  
Date \_\_\_\_\_

Contractor's License No. \_\_\_\_\_ Type \_\_\_\_\_  
Expiration Date \_\_\_\_\_  
Tax I.D. Nos.- Fed. \_\_\_\_\_ State \_\_\_\_\_  
City of Sacramento Business Operation Tax Certificate No. \_\_\_\_\_  
(City will not award contract if Certificate Number is missing.)

**KNOW ALL MEN BY THESE PRESENTS,**

That we,) \_\_\_\_\_

as Principal, and \_\_\_\_\_

a corporation duly organized under the laws of the State of \_\_\_\_\_ and duly licensed to become sole surety on bonds required or authorized by the State of California, as Surety, are held and firmly bound unto the City of Sacramento, hereinafter called the City, in the penal sum of ten percent (10%) of the (BASE OR LUMP SUM) Proposal of the Principal above named, or other amount as set forth in the Invitation to Bidders, submitted by said Principal to the City for the Work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH**

That whereas the Principal has submitted the above-mentioned Proposal to the City, for which Proposals are to be opened on the 2nd floor of Historic City Hall, 915 I Street, Sacramento, California, on May 30, 2007 for the Work specifically described as follows:

**SACRAMENTO MEMORIAL AUDITORIUM ROOF REPAIR (B09-17001111-001)**

**NOW, THEREFORE,** if the aforesaid Principal is awarded the Contract and within the time and manner required under the Contract Documents, enters into a written Contract, in the prescribed form, in accordance with the Proposal, and files two (2) bonds with the City, one to guarantee faithful performance and the other to guarantee payment for labor and materials, and files the required insurance policies with the City, all as required by the Contract Documents or by law, then the obligation shall be null and void; otherwise it shall be and remain in full force and effect.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court, which sums shall be additional to the principal amount of this bond.

IN WITNESS THEREOF We have hereunto set our hands and seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
NOTARY

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
Address

\_\_\_\_\_

\_\_\_\_\_  
NOTARY

## MINIMUM QUALIFICATIONS QUESTIONNAIRE

Sacramento City Code section 3.60.020 authorizes the Sacramento City Council to adopt standard minimum qualifications for bidders on competitively bid public works construction projects, and requires, among other provisions, that a bidder meet such minimum qualifications at the time of bid opening to be considered responsible. On June 8, 2004, the City Council adopted Resolution No. 2004-433 establishing these standard minimum qualifications. Pursuant to City Code section 3.60.020, a bidder failing to meet these minimum qualifications at the time of bid opening shall not be considered a responsible bidder.

All bidders must demonstrate compliance with the minimum qualifications established by Resolution No. 2004-433 by completing all of the questions contained in this questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed questionnaire, or submits false information, this will result in a determination that the minimum qualifications are not met, and the bidder shall not be considered a responsible bidder for purposes of bidding on this contract. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet these minimum qualifications for the Joint Venture to be considered a responsible bidder.

The City of Sacramento ("City") shall make its determination on the basis of the submitted questionnaire, as well as any relevant information that is obtained from others or as a result of investigation by the City. While it is the intent of this questionnaire to assist the City in determining whether bidders possess the minimum qualifications necessary to submit bids on the City's competitively bid public works construction contracts, the fact that a bidder submits a questionnaire demonstrating that it meets these minimum qualifications shall not in any way limit or affect the City's ability to: (1) review other information contained in the bid submitted by the bidder, and additional relevant information, and determine whether the contractor is a responsive and/or responsible bidder; or (2) establish pre-qualification requirements for a specific contract or contracts.

By submitting this questionnaire, the bidder consents to the disclosure of its questionnaire answers: (i) to third parties for purposes of verification and investigation; (ii) in connection with any protest, challenge or appeal of any action taken by the City; and (iii) as required by any law or regulation, including without limitation the California Public Records Act (Calif. Gov't Code sections 6250 et seq.). Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the bidder submitting the questionnaire. If any information provided by a bidder becomes inaccurate, the bidder shall immediately notify the City and provide updated accurate information in writing, under penalty of perjury.

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FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

**QUESTIONNAIRE**

**NOTICE:** All of the following questions regarding "your firm" refer to the firm (corporation, partnership or sole proprietor) submitting this questionnaire, as well as any firm(s) with which any of your firm's owners, officers, or partners are or have been associated as an owner, officer, partner or similar position within the last five years.

The firm submitting this questionnaire shall not be considered a responsible bidder if the answer to any of these questions is "yes", or if the firm submits a questionnaire that is not fully completed or contains false information.

1. **Classification & Expiration Date(s) of California Contractor's License Number(s) held by firm:**

\_\_\_\_\_

2. Has a contractor's license held by your firm and/or any owner, officer or partner of your firm been revoked at anytime in the last five years?

Yes                       No

3. Within the last five years, has a surety firm completed a contract on your firm's behalf, or paid for completion of a contract to which your firm was a party, because your firm was considered to be in default or was terminated for cause by the project owner?

Yes                       No

4. At the time of submitting this minimum qualifications questionnaire, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either California Labor Code section 1777.1 (prevailing wage violations) or Labor Code section 1777.7 (apprenticeship violations)?

Yes                       No

5. At any time during the last five years, has your firm, or any of its owners, officers or partners been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?

Yes                       No

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

6. Answer either subsection A or B, as applicable:

A. Your firm has completed three or more government construction contracts in Sacramento County within the last five years: Within those five years, has your firm been assessed liquidated damages on three or more government construction contracts in Sacramento County for failure to complete contract work on time?

**NOTE:** If there is a pending administrative or court action challenging the assessment of liquidated damages on a government contract within the last five years, you need not include that contract in responding to this question.

Yes                       No                       Not applicable

**OR**

B. Your firm has not completed at least three government construction contracts in Sacramento County within the last five years: Within the last three years, has your firm been assessed liquidated damages on three or more government construction contracts for failure to complete contract work on time?

**NOTE:** If there is a pending administrative or court action challenging an assessment of liquidated damages on a government contract within the last three years, you need not include that contract in responding to this question.

Yes                       No                       Not applicable

7. In the last three years has your firm been debarred from bidding on, or completing, any government agency or public works construction contract for any reason?

**NOTE:** If there is a pending administrative or court action challenging a debarment, you need not include that debarment in responding to this question.

Yes                       No

8. Has CAL OSHA assessed a total of three or more penalties against your firm for any "serious" or "willful" violation occurring on construction projects performed in Sacramento County at any time within the last three years?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes                       No

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

9. Answer either subsection A or B, as preferred:

A. In the last three years has your firm had a three year average Workers' Compensation experience modification rate exceeding 1.1?

Yes  No

**OR**

B. In the last three years has your firm had a three-year average incident rate for total lost workday cases exceeding 10?

**NOTE:** Incident rates represent the number of lost workday cases per 100 full-time workers and is to be calculated as:  $(N/EH) \times 200,000$ , where

N = number of lost workday cases (as defined by the U.S. Dept. of Labor, Bureau of Labor Statistics)  
EH = total hours worked by all employees during the calendar year  
200,000 = base for 100 equivalent full-time working (working 40 hours per week, 50 weeks per year)

Yes  No

10. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed penalties three or more times, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was a contractor?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

11. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed a single penalty of \$100,000 or more, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was the contractor?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

12. In the past three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

13. In the past three years, has a public agency in California withheld contract payments or assessed penalties against your firm for violation of public works prevailing wage requirements, three or more times?

**NOTE:** If there is a pending administrative or court action appealing a withholding or penalty assessment, you need not include that withholding or penalty assessment in responding to this question.

Yes  No

14. Has your firm been assessed penalties for violation of public works prevailing wage requirements in California, in an aggregate amount for the past three years of \$50,000 or more?

**NOTE:** If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

Yes  No

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FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

**VERIFICATION AND SIGNATURE**

I, the undersigned, certify and declare that I have read all the foregoing answers to this Minimum Qualifications Questionnaire, and know their contents. The matters stated in these Questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at \_\_\_\_\_, on \_\_\_\_\_.  
(Location) (Date)

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

NOTE: If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must submit a separate Minimum Qualifications Questionnaire.

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**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: 2004-433

DATE ADOPTED: June 8, 2004

**DRUG-FREE WORKPLACE POLICY AND AFFIDAVIT**

**BID PROPOSAL MAY BE DECLARED NONRESPONSIVE IF THIS FORM (COMPLETED) IS NOT ATTACHED.**  
*Pursuant to City Council Resolution CC90-498 dated 6/26/90 the following is required.*

The undersigned contractor certifies that it and all subcontractors performing under this Agreement will provide a drug-free workplace by:

1. Publishing a "Drug-Free Workplace" statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Establishing a Drug-Free Awareness Program to inform employees about:
  - a. The dangers of drug abuse in the workplace.
  - b. The contractor's policy of maintaining a drug-free workplace.
  - c. Any available drug counseling, rehabilitation, and employee assistance program.
  - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Notify employees that as a condition of employment under this Agreement, employees will be expected to:
  - a. Abide by the terms of the statement.
  - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace.
4. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy on the "Drug-Free Workplace" statement.
5. Taking one of the following appropriate actions, within thirty (30) days of receiving notice from an employee or otherwise receiving such notice, that said employee has received a drug conviction for a violation occurring in the workplace:
  - a. Taking appropriate disciplinary action against such an employee, up to and including termination; or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement or other appropriate agency.

\* I certify that no person employed by this company, corporation, or business has been convicted of any criminal drug statute violation on any job site or project where this company, corporation or business was performing was within three years of the date of my signature below.

**EXCEPTION:**

Date	Violation Type	Place of Occurrence

If additional space is required use back of this form.

\* The above statement will also be incorporated as a part of each subcontract agreement for any and all subcontractors selected for performance on this project.

**IN THE EVENT THIS COMPANY, CORPORATION, OR BUSINESS IS AWARDED THIS CONSTRUCTION AGREEMENT, AS A RESULT OF THIS BID; THE CONTRACTOR WITH HIS/HER SIGNATURE REPRESENTS TO THE CITY THAT THE INFORMATION DISCLOSED IN THIS DOCUMENT IS COMPLETE AND ACCURATE. IT IS UNDERSTOOD AND AGREED THAT FALSE CERTIFICATION IS SUBJECT TO IMMEDIATE TERMINATION BY THE CITY.**

The Representations Made Herein On This Document Are Made Under Penalty Of Perjury.

CONTRACTOR'S NAME: \_\_\_\_\_

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature Title

Effects of violations: a. Suspension of payments under the Agreement. b. Suspension or termination of the Agreement. c. Suspension or debarment of the contractor from receiving any Agreement from the City of Sacramento for a period not to exceed five years.



## **Green Contracting Survey (Voluntary)**

The City of Sacramento and the Sacramento Metropolitan Air Quality District (SMAQMD) are conducting a joint pilot project to help meet Federal Clean Air Standards for the Sacramento region.

Attached is a Green Contracting Fleet Inventory Form. Please complete the form, remove it from the bid package and return it to SMAQMD in the postage paid envelope provided with the bid package. Please do not return the Green Contracting Fleet Inventory Form to the City of Sacramento with the bid documents or otherwise.

A limited amount of funds and other financial incentives may be available to qualified contractors participating in this joint project to assist qualified contractors with upgrading and/or replacing equipment and/or trucks.

**Completing and returning the Green Contracting Fleet Inventory Form is strictly voluntary.**





**FOLLOWING FORMS TO BE FILLED OUT**

**AND SIGNED**

**ONLY**

**IF AWARDED CONTRACT**

**AGREEMENT**  
(Construction Contract Over \$25,000)

THIS AGREEMENT, dated for identification \_\_\_\_\_, 20\_\_\_, is made and entered into between the CITY OF SACRAMENTO, a municipal corporation ("City"), and \_\_\_\_\_ ("Contractor").

The City and Contractor hereby mutually agree as follows:

1. **CONTRACT DOCUMENTS**

The Contract Documents, sometimes also referred to as the "Contract," consist of the following items, which are hereby incorporated by reference as if set forth in full in this Agreement:

- The Notice to Contractors
- The Proposal Form submitted by the Contractor
- The Instructions to Bidders
- The Emerging and Small Business Enterprise (ESBE) Requirements
- The Requirements for the Non-Discrimination in Employee Benefits by City Contractors Ordinance and the Declaration of Compliance
- The City's Reference Guide for Construction Contracts
- The Addenda, if any
- This Agreement
- The Standard Specifications
- The Special Provisions
- The Plans and Technical Specifications
- The drawings and other data and all developments thereof prepared by City pursuant to the Contract
- Any modifications of any of the foregoing made or approved by City, including but not limited to duly authorized change orders.

Unless specifically noted otherwise, references to the "Standard Specifications" shall mean and refer to the Standard Specifications for Public Construction of the City of Sacramento approved by the Sacramento City Council on June 4, 2007 (Resolution No. 2007-350), and any subsequent amendments thereto approved by the Sacramento City Council or the Sacramento City Manager. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents. The table of contents, titles and headings contained in the Contract Documents are provided solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.

2. **DEFINITIONS**

Unless otherwise specifically provided herein, all words and phrases defined in the Standard Specifications shall have the same meaning and intent in this Agreement.

3. **AGREEMENT CONTROLS**

In the event of a conflict between any of the terms and conditions set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth

in this Agreement shall prevail, except that the provisions of any duly authorized change order shall prevail over any conflicting provisions of this Agreement.

4. SCOPE OF CONTRACT

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, material and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of City, all the Work called for in the Contract Documents entitled:

\_\_\_\_\_ (PN: )

including the Work called for in the following alternative bid items described in the Proposal Form:

Contractor agrees to perform such Work in the manner designated in and in strict conformity with the Contract Documents.

5. CONTRACT AMOUNT AND PAYMENTS

City agrees to pay and Contractor agrees to accept, as complete payment for the above Work, in accordance with the schedule and procedures set forth in the Contract Documents and subject to deductions, withholdings and additions as specified in the Contract Documents, a total sum that shall not exceed the total bid amount set forth in Contractor's Proposal Form. In addition, subject to deductions, withholdings and additions as specified in the Contract Documents, payment for individual items of the Work shall be computed as follows:

(A) For items of the Work for which a lump sum price is specified in Contractor's Proposal Form, Contractor shall be paid the lump sum price(s) specified in Contractor's Proposal Form; and

(B) For items of the Work for which a unit price is specified in Contractor's Proposal Form, Contractor shall be paid the sum computed at such unit price, or computed at a different price if such different price is determined by City in accordance with the Standard Specifications, based on the actual amount of each such item performed and/or furnished and incorporated in the Work; provided that in no event shall the total sum for a unit price item exceed the total bid amount set forth for such item in the Contractor's Proposal Form, unless authorized by Change Order.

6. PROGRESS PAYMENTS

Subject to the terms and conditions of the Contract, City shall cause payments to be made upon demand of Contractor as follows:

(A) On or about the first of the month, the Engineer shall present to the Contractor a statement showing the amount of labor and materials incorporated in the Work through the twentieth (20) calendar day of the preceding month. After both Contractor and Engineer approve the statement in writing, and the City's labor compliance officer provides written approval, the City shall issue a certificate for ninety (90) percent of the amount it shall find to be due, subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations.

(B) No inaccuracy or error in said monthly estimates shall operate to release Contractor from damages arising from such Work or from enforcement of each and every provision of the Contract Documents, and City shall have the right subsequently to correct any error made in any estimate for payment.

(C) Contractor shall not be paid for any defective or improper Work.

(D) The remaining ten (10) percent of the value of the Work performed under the Contract, if unencumbered and subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, shall be due and payable beginning thirty-five (35) days after completion and final acceptance of the Work by City; provided that the City may determine, in its sole discretion, to release up to fifty (50) % of such retention, in whole or in part, at any time. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against the City arising under the Contract Documents, except for disputed claims in stated amounts that the Contractor specifically reserves in writing, but only to the extent that the Contractor has complied with all procedures and requirements applicable to the presentation and processing of such claim(s) under the Contract Documents. Contractor shall be entitled to substitute securities for retention or to direct that payments of retention be made into escrow, as provided in Public Contract Code Section 22300, upon execution of the City's Escrow Agreement for Security Deposits in Lieu of Retention.

(E) The parties agree that, for purposes of the timely progress payment requirements specified in Public Contract Code Section 20104.50, the date that the City receives a statement jointly approved by the Contractor and the Engineer as provided above shall be deemed to constitute the date that City receives an undisputed and properly submitted payment request from the Contractor. Progress payments not made within 30 days after this date may be subject to payment of interest as provided in Section 20104.50.

#### 7. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under the provisions of this Contract or any applicable Laws or Regulations, City is authorized or required to withhold, deduct or charge any sum of money against Contractor, City may deduct and retain the amount of such charge from the amount of the next succeeding progress estimate(s), or from any other moneys due or that may become due Contractor from City. If, on completion or termination of the Contract, sums due Contractor are insufficient to pay City's charges, City shall have the right to recover the balance from Contractor or its Sureties.

#### 8. COMMENCEMENT AND PROSECUTION OF WORK

Contractor shall commence the Work not later than fifteen (15) working days after the date of the written Notice to Proceed from City to Contractor and shall diligently prosecute the Work to final completion. The phrase "commence the Work" means to engage in a continuous program on-site including, but not limited to, site clearance, grading, dredging, land filling and the fabrications, erection, or installation of the Work. The Notice to Proceed shall be issued within fifteen (15) calendar days following execution of the Agreement by the City and the filing by Contractor of the required Bonds and proof of insurance, provided that the Engineer may delay issuance of the Notice to Proceed if the Engineer determines in the Engineer's sole discretion that conditions on

the site of the Work are unsuitable for commencement of the Work. After the Notice to Proceed is issued, the continuous prosecution of Work by Contractor shall be subject only to Excusable Delays as defined in this Agreement.

9. TIME OF COMPLETION

The entire Work shall be brought to completion in the manner provided for in the Contract Documents on or before \_\_\_\_\_ days from the date of the Notice to Proceed (hereinafter called the "Completion Date") unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete the entire Work by the Completion Date and in the manner provided for in the Contract Documents shall subject Contractor to liquidated damages as provided in this Agreement. Time is and shall be of the essence in the performance of the Contract and the Work.

10. PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK

The payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way reduce the liability of Contractor to replace unsatisfactory work or material, whether or not the unsatisfactory character of such work or material was apparent or detected at the time such payment was made.

11. ACCEPTANCE NOT RELEASE

Contractor shall correct immediately any defective or imperfect work or materials that may be discovered before final acceptance of the entire Work, whether or not such defect or imperfection was previously noticed or identified by the City. The inspection of the Work, or any part thereof, shall not relieve Contractor of any of its obligations to perform satisfactory work as herein specified.

Failure or neglect on the part of City or any of its officers, employees or authorized agents to discover, identify, condemn or reject defective or imperfect work or materials shall not be construed to imply an acceptance of such work or materials, if such defect or imperfection becomes evident at any time prior to final acceptance of the entire Work, nor shall such failure or neglect be construed as barring City from enforcing Contractor's warranty(ies) or otherwise recovering damages or such a sum of money as may be required to repair or rebuild the defective or imperfect work or materials whenever City may discover the same, subject only to any statutes of limitation that may apply to any such claim.

12. CITY'S RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART

The City shall have the right at any time to enter upon the Work and perform work not covered by this Contract, or to occupy and use a portion of the Work, prior to the date of the final acceptance of the Work as a whole, without in any way relieving Contractor of any obligations under this Contract.

13. NO WAIVER OF REMEDIES

Neither the inspection by City, its officers, employees or agents, nor any certificate or other approval for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by City, nor any extensions of time, nor any position taken by City, its officers,

employees or its agents shall operate as a waiver of any provision of the Contract Documents nor of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach. All remedies provided in the Contract Documents shall be taken and construed as cumulative; in addition to each and every other remedy herein provided, the City shall have any and all equitable and legal remedies that it would in any case have.

#### 14. WARRANTY

Except as otherwise expressly provided in the Contract Documents, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect by City, Contractor warrants and guarantees all Work executed and all supplies, materials and devices of whatsoever nature incorporated in or attached to the Work, or otherwise provided as a part of the Work pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire Work by the City. Contractor shall repair or replace all work or material, together with any other work or material that may be displaced or damaged in so doing, that may prove defective in workmanship or material within this one year warranty period without expense or charge of any nature whatsoever to City.

In the event that Contractor shall fail to comply with the conditions of the foregoing warranty within ten (10) days after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair, or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing warranty results in a condition that constitutes an immediate hazard to public health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include both temporary and permanent repairs that may be required as determined in the sole discretion and judgment of City.

In addition to the above, the Contractor shall make a written assignment of all manufacturer's and other product warranties to the City, prior to completion and final acceptance of the Work by City.

The Contractor's Performance Bond shall secure the performance of the Contractor's obligations under this Section 14, and the Contractor and its Surety shall be jointly and severally liable for these obligations.

#### 15. LIQUIDATED DAMAGES IF WORK NOT COMPLETED ON TIME

(A) The actual fact of the occurrence of damages and the actual amount of the damages that City would suffer if the entire Work, and/or any specified portion thereof, were not completed within the time(s) specified herein are dependent upon many circumstances and conditions that could prevail in various combinations, and for this reason, it is impracticable and extremely difficult to fix the actual damages. Damages that City would suffer in the event of such delay include: loss of the use of the project; expenses of prolonged assignment to the project of an architectural and/or engineering staff; prolonged costs of administration, inspection, and supervision; increased operational expenses and/or impaired operation of other facilities

dependent upon completion of the project; and the loss and inconvenience suffered by the public within the City of Sacramento by reason of the delay in the completion of the project or portion thereof. Accordingly, the parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the amount(s) set forth herein as liquidated damages reflect the parties' best efforts at the time of entering into the Contract to estimate the damages that may be incurred by City and the public due to the Contractor's delay in completion of the Work and/or any specified portion thereof, and shall be presumed to be the amount of damages sustained by the failure of Contractor to complete the entire Work and/or any specified portion thereof within the time(s) specified herein.

(B) Contractor shall pay liquidated damages to City for failure to complete the entire Work by the Completion Date (as extended in accordance with the Contract Documents, if applicable) in the amount of \_\_\_\_\_ for each calendar day after the Completion Date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which the entire Work is completed. Such amount is the actual cash value agreed upon by the City and Contractor as the loss to City and the public resulting from Contractor's default.

The parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the foregoing provisions provide for the imposition of liquidated damages from the Completion Date (as extended in accordance with the Contract Documents, if applicable) until the date of completion of the entire Work as determined by the Engineer in accordance with Section 8-4 of the Standard Specifications, whether or not the Work or any portion thereof is claimed or determined to be substantially complete prior to such date of completion.

**THE FOLLOWING ADDITIONAL LIQUIDATED DAMAGES PROVISION(S) APPLY IF CHECKED:**

In addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City for failure to complete the portion of the Work specified below by the milestone date specified below (as such milestone date may be extended in accordance with the Contract Documents, if applicable). The amount of such additional liquidated damages shall be either *[check one]*:

a lump sum amount of \_\_\_\_\_, OR

the daily amount of \_\_\_\_\_ for each calendar day after such milestone date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which such portion of the Work is completed.

Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

Portion of the Work

Milestone Date

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CONTRACTOR'S ACKNOWLEDGMENT:** \_\_\_\_\_

In addition to the potential damages described above, failure to complete the entire Work within the time(s) specified herein may expose the City to penalties or fines and/or may negatively affect the availability of project funding. In recognition of these potential damages, in addition to the liquidated damages specified above, Contractor shall pay additional liquidated damages to City in the lump sum amount of \_\_\_\_\_ if the entire Work is not completed by \_\_\_\_\_. Such amount is the actual cash value agreed upon by the City and Contractor as the additional loss to City and the public resulting from Contractor's default.

**CONTRACTOR'S ACKNOWLEDGMENT: \_\_\_\_\_**

(C) In the event Contractor shall become liable for liquidated damages, City, in addition to all other remedies provided by law, shall have the right to withhold any and all payments that otherwise would be or become due Contractor until the liability of Contractor under this section is finally determined. City shall have the right to use and apply such payments, in whole or in part, to reimburse City for all liquidated damages due or to become due to City. Any remaining balance of such payments shall be paid to Contractor only after discharge in full of all liability incurred by Contractor under this section or otherwise under any provision of the Contract Documents or any applicable Law or Regulation. If the sum so retained by City is not sufficient to discharge all such liabilities of Contractor, Contractor shall continue to remain liable to City until all such liabilities are satisfied in full. No failure by City to withhold any payment as specified above shall in any manner be construed to constitute a release of any such liabilities nor a waiver of the City's right to withhold payment for such liabilities.

**16. INDEMNITY AND HOLD HARMLESS**

(A) Contractor shall defend, hold harmless and indemnify the City, its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the Work, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, City, its agents, servants, or independent contractors who are directly responsible to City, or (ii) the active negligence of City.

(B) The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 16, nor shall the limits of such insurance limit the liability of Contractor hereunder. The provisions of this Section 16 shall survive any expiration or termination of the Contract.

17. CONTRACTOR SHALL ASSUME RISKS

Until the completion and final acceptance by City of all Work under this Contract, the Work shall be under Contractor's responsible care and charge, and Contractor, at no cost to City, shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work.

18. GENERAL LIABILITY OF CONTRACTOR

Except as otherwise herein expressly stipulated, Contractor shall perform all the Work and furnish all the labor, materials, tools, equipment, apparatus, facilities, transportation, power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner and within the time herein specified. The mention of any specific duty or liability of Contractor shall not be construed as a limitation or restriction of any general liability or duty of Contractor, and any reference to any specific duty or liability shall be construed to be solely for the purpose of explanation.

19. INSURANCE

During the entire term of this Contract and until completion and final acceptance of the Work as provided in the Contract Documents, Contractor shall maintain in full force and effect the insurance coverage described in this section.

Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Contract. No additional compensation will be provided for Contractor's insurance premiums.

It is understood and agreed by the Contractor that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required of or carried by the Contractor.

(A) Minimum Scope and Limits of Insurance Coverage

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.

(B) Additional Insured Coverage

(1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Contractor, products and completed operations of Contractor, and premises owned, leased or used by Contractor. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

(C) Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

(1) Contractor's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.

(3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

(D) Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 19 must be declared to and approved by the City Risk Management Division in writing prior to execution of this Agreement.

(E) Verification of Coverage

(1) Contractor shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded