City of Stockton

Charter Review Commission

Staff Report

PUBLIC CONTRACTS AND SUPPLIES

Recommended Sections for Review: Article XII, Section 1201
                                        Article XX, Sections 2000, 2001 & 2002

Current Charter Language:

*Article XII, Section 1201*

“The City Manager may make and execute contracts and authorize expenditures of less than twenty thousand ($20,000) dollars, or in such amounts as are established pursuant to SECTION 2002 of this Charter, on behalf of the City;”

*Article XX*

*Section 2000*

“The City Council by ordinance shall provide for a competitive method of awarding contracts for public works, services, and the purchase of materials and supplies.

Except as otherwise provided for in this article, contracts which equal or exceed the amount of twenty thousand ($20,000.00) dollars shall be let by a process of competitive bidding to the lowest and best responsible bidder.”

*Section 2001*

“The ordinance shall permit the award of contracts without competitive bidding in cases where the City Council has approved findings which support and justify exceptions to the competitive bidding process. Those circumstances may include, but are not limited to:

a) Cases of emergencies;

b) Negotiated contracts following solicitation of competitive proposals instead of sealed bids;

c) Sole source vendors.

Except in emergencies, no contract shall be awarded pursuant to the exceptions provided in Section 2001 hereunder unless findings to support and justify such exception have
been approved by the City Council before any request for proposal is issued."

Section 2002

“Commencing in 1993, the twenty thousand ($20,000.00) dollar limitation provided for in this Charter with regard to the requirement for competitive bidding and the ability of the City Manager to make and execute contracts may be increased by resolution of the City Council in an amount not to exceed the percentage increase in the Oakland/San Francisco Bay Area Consumer Price Index, “All Urban Consumers” on a year-to-year basis.

In the event that the United States Department of Labor, Bureau of Labor Statistics is discontinued or revised, such government index or computation with which it is replaced shall be used.”

Recommended Charter Language:

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"Commencing in 1993, the twenty thousand ($20,000.00) dollar limitation provided for in this Charter with regard to the requirement for competitive bidding and the ability of the City Manager to make and execute contracts may be increased by resolution of the City Council in an amount not to exceed the percentage increase in the Oakland/San Francisco Bay Area Consumer Price Index, “All Urban Consumers” on a year-to-year basis.

In the event that the United States Department of Labor, Bureau of Labor Statistics is discontinued or revised, such government index or computation with which it is replaced shall be used."

“The City Manager shall recommend and the City Council shall consider and adopt by ordinance the administrative spending authority of the City Manager.”

Problem Statement
The contracting and purchasing process for the City of Stockton is overly cumbersome and limits the ability of Council and staff to procure necessary goods and services in an efficient and timely manner. These inefficiencies result in unproductive use of staff and Council time and effort. They also unnecessarily lengthen the procurement process causing long time frames to begin projects and contracts. In addition, establishing contracting practices by Charter limits the ability of the City to remain flexible and respond to market conditions and best practices. Purchasing guidelines can be developed by Municipal Code that allow for greater efficiency and responsiveness without impacting transparency and accountability.

Background
The Charter for the City of Stockton includes a number of detailed sections prescribing the purchasing process. First, there is a defined dollar amount designating the administrative spending authority of the City Manager. Second, a requirement that all contracts above that defined dollar amount be competitively bid. Third, a requirement that Council approve an exception to the competitive bidding requirements before a Request for Proposals is issued. Request for Proposals processes are a competitive process where qualifications, professional expertise, price and other factors are taken into account when awarding contracts. A competitive bidding process relies only on price to award contracts. Fourth, there is an allowance for an annual inflation of the administrative spending authority of the City Manager based on a regional Consumer Price Index. Each of these sections are overly prescriptive and in staff analysis of charters from over 20 cities, it is uncommon to include this level of detail within the City Charter. Instead, the vast majority of Charters provide policy level statements and reference that details will be adopted by Ordinance.

Administrative Spending Authority
The City of Stockton is the only local agency that establishes by City Charter the administrative spending limit. This language is better suited in the Municipal Code and supported by the City policies and directives. The City surveyed twenty-nine (29) agencies to determine best practices on spending authority limits used and how they are established. The results showed that only 3 other cities have a defined limit established by Charter. In general, the amount is established either in the Municipal Code, Council Policy or even Administrative Directives (Table 1.1 on following page). A
The complete list of the agencies is provided as Attachment A. The survey results also indicated that the average spending limit for management is considerably higher than the City’s current amount of $32,123.

### Survey Summary Results (Table 1.1)

<table>
<thead>
<tr>
<th>Agency Type</th>
<th>Number Surveyed</th>
<th>Average Limit</th>
<th>Limit Set by Charter</th>
<th>Limit Set by Muni Code</th>
<th>Limit Set by Council</th>
<th>Limit Set by Admin Dir.</th>
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<tr>
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<td>1</td>
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<td>4</td>
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</table>

The purpose of charter language is to establish the overarching principles and policies by which a City is governed. It is more appropriate to provide details, definitions and processes in the Municipal Code that outline how the Charter policies will be applied. Establishing the administrative spending authority by Charter has resulted in an inefficient system of procurement and a lack of clarity in carrying out and applying the Charter language.

Setting the limit in the Charter has created an inefficient system of bidding and procurement that has limited staff’s effectiveness. As noted in Table 1.1 above, the administrative spending authority of the City ($31,123) is well below the average for comparable jurisdictions ($79,000). It is common for municipalities to regularly update procurement policies and spending authority to reflect evolving best practices and changing economic conditions. However, establishing these policies by City Charter limits the ability for Council and staff to consider timely revisions. The time and resources necessary to revise the City Charter are prohibitive of making regular updates to maintain relevant and modern purchasing policies. The City of Stockton has a lower spending limit in large part due to the difficulty in updating the limit by revising the Charter. The end result is that it creates additional work for City staff and can create certain situations that undermine the intent of the Charter. One such situation is the past practice of contract splitting. Staff has on occasions created multiple contracts with amounts lower than the administrative spending limit as a work around, instead of taking one full contract to Council. Management does not condone any activity that undermines the Charter and is vigilant in adhering to our policies. However, the existence of these types of work-arounds demonstrates how inefficient the procurement process is under our current Charter.

In addition, the Stockton Charter language related to purchasing lacks clarity and has led to confusion and doubt. An audit report issued in March 2012 stated as one of the findings that “Council threshold has been interpreted and applied inconsistently”. This points out the fact that the current language in the Charter is insufficient on its own and requires clarification through the Municipal Code and other policy documents. Staff was unable to interpret whether the spending limit is per contract, per vendor, per year, or in some other way. The lack of clarity in the language creates a failure in the system that Council and staff are unable to address.

One example of the inconsistent application of the Charter is the use of blanket purchase orders. These are normally issued for small item purchases made by multiple departments from a specific vendor. However, the audit found examples where when looking through cumulative purchases from
the same vendor, the City had in instances exceeded the spending limit in a single year with a single vendor.

Another example that speaks to the term of the contracts can be best described by the annual fuel contract. In 1989, the then City Council, by means of a resolution, gave authority to staff to annually bid for and award contracts for the purchase of fuel for the City. The audit found this to be in contradiction to the intent of the Charter. Clarifying the language in the Charter and codifying the intent would ensure that future practice is based on clearly defined rules and provide management with clear direction.

As noted above, the purpose of charter language is to establish the overarching principles and policies by which a City is governed. By prescribing purchasing rules by Charter, it has limited the ability of staff and Council to regularly provide clarifying language to policies and procedures in support of the principles outlined in the City Charter. As a result, the City has an inefficient system of procurement and a there is a current lack of clarity in carrying out and applying the Charter language.

**Competitive Bidding**

It is not uncommon for municipalities to establish a requirement to make purchases through competitive bidding. This section of the Charter also appropriately refers to establishing by ordinance the method for carrying out the award of contracts.

**Approval of Exception to Competitive Bidding Before Issuing a Request for Proposal**

It is also a common practice to allow by policy that exceptions can be made to the requirement to competitively bid contracts. This section of the Charter also appropriately refers to establishing these exceptions by ordinance based on guiding principles contained in the Charter.

However, there is one element of the Stockton Charter that is unique in comparison to the municipalities surveyed in Attachment A. When a Request for Proposal is the most appropriate procurement method, staff must seek City Council approval prior to issuing the request. This solicitation of proposals doesn’t commit the organization to anything, yet it can’t be done without prior approval from the City Council. Stockton is the only municipality that establishes by Charter a requirement to receive Council approval to issue a Request for Proposals in lieu of awarding a contract through competitive bidding.

This requirement is problematic in that it requires a significant amount of additional work for City staff. All contracts that require Council approval will come before the council at the time of contract award. By requiring Council approval prior to issuance of a Request for Proposal, each item must come before the Council twice. This is an inefficient use of staff resources to develop two distinct staff reports. Additional details are provided below as to the amount of staff work that is required to develop a staff report. At times the City elects not to award a contract following the Request for Proposals and staff time has already been invested in acquiring Council approval simply to issue the request.

In addition, this requirement delays projects significantly. It takes approximately 4 to 6 weeks to develop a staff report and follow it through the process to Council approval. This has proved to be problematic at times because it already takes several months to issue, review and select a vendor.
through the Request for Proposal process. There are examples of Requests for Proposal that have taken more than 6 months to complete because of the additional time required on the front end to obtain Council approval. In addition, there have been several instances where the City has been rushed to complete the Council approval and Request for Proposals process in order to spend grant awards within limited time frames.

It is very common for municipalities to solicit certain services by Request for Proposal because the qualifications, approach and strategic fit of the vendors is as important as the contract price. This is becoming more and more relevant given the level of complexity in the projects and initiatives faced by municipalities. The Request for Proposals process is considered a common purchasing practice and it is overly cumbersome to have a requirement to obtain Council approval before issuance of the proposal. It is more appropriate to provide Council direction and approval at the time that the City commits resources to a contract.

**Annual Inflation of the Administrative Spending Authority**

The Stockton Charter also provides that the administrative spending limit may be “increased by resolution of the City Council in an amount not to exceed the percentage increase in the Oakland/San Francisco Bay Area Consumer Price Index, “All Urban Consumers” on a year-to-year basis.” While this Charter language demonstrates foresight into the need to increase the administrative spending authority over time, it is problematic because it provides for one specific method within the Charter itself and lacks details clarifying its application.

Consistent with the information provided above, it is challenging to prescribe certain details within the City Charter. It is common among municipalities to regularly increase the administrative spending authority of management. Spending authority is typically tied to several factors including economic conditions, general inflation and best management practices. As noted in Table 1.1, the administrative spending authority of the City of Stockton is well below the average for comparable municipalities. This suggests that the specific inflator established by Charter has been insufficient to maintain a relevant spending authority. This is likely the case because it took into consideration only one factor, general inflation. In addition, it is unclear if the Charter specified inflator is for a specific month, average for the year, or based on fiscal or calendar year. The kind of detail required for executing this rule is more suited in policy documents than being a part of the City’s Charter. Both of these factors demonstrate that it is more efficient to establish policy through the City Charter and provide additional details through Municipal Code and supporting materials.

Establishing the administrative spending authority in the Charter has also made the City Council responsible for all contracts exceeding the set dollar limit but not provided them with the authority to manage and revise this based on changing economic conditions and best management practices. Adjusting the spending authority requires a charter revision, which is prohibitive based on the time and resources necessary to carry it out.

**Recommendation**

Staff recommends that the City Charter be revised as outlined above to include governing policy statements and establish the more detailed application of the Charter by ordinance in the Municipal Code. It is more appropriate to provide the supporting details, definitions and processes in the Municipal Code. This allows for timely revisions as needed to help clarify uncertainty and maintain
consistency in the application of Charter policy. This also allows the City to maintain relevant and modern purchasing practices. A revised copy of Section 3.68 of the Stockton Municipal Code is attached as a recommended approach for establishing details in support of the City Charter (Attachment B). These recommended revisions clarify and provide direction on the intent of the Charter as well as to establish the spending limit. It is also important to note that there is a definite need for guidance in the form of Administrative Directives and procedural documents. Agencies with effective purchasing controls have codified the spending limitation or created clarifying policy and administrative documents that places the responsibility in the hands of City Council and Staff to manage their fiscal affairs.

Staff further recommends that the revised Municipal Code establish the administrative spending authority of the City Manager at $75,000. As noted in Table 1.1, the administrative spending authority of the City ($32,123) is well below the average of comparable municipalities ($79,000). The recommended spending authority realigns the City’s purchasing standards with relevant economic factors and best management practices. In addition, this realignment of the spending authority will avoid inconsistent interpretation of the Charter and an inefficient work load for both Council and staff.

It takes approximately 20 hours of department staff time on average to prepare each staff report before it is submitted to be included in the Council Meeting Agenda. A further 6 hour review is then done by legal, Finance and Management before the item is approved for the meeting. This does not include the Council time to review, hear and rule on the item. During the fiscal year 2012-2013, 250 staff reports were presented to City Council for action, out of which 123 reports were of a financial nature. The chart below (Chart 1.1) shows that the number of reports by month split into financial and non-financial reports.

(Chart 1.1)

FY 2012-13 Staff Reports to Council by Month
Analyses of the data related to these reports revealed that 92% of the reports brought to Council that contained financial actions were for contracts and expenditures exceeding the spending limit of $32,123. The remaining 8% of the reports that had financial impact were for amounts that were less than the Council threshold. This 8% of staff reports were related to contract amendments, partnership contracts or Memorandums of Understanding with other agencies that necessitated another type of Council approval.

The chart below (Chart 1.2) shows a break down of the same data for fiscal year 2012-2013 staff reports by dollar amounts. As shown in the green bars, the majority of the staff reports (72%) are for amounts higher than $75,000. If the spending limit was increased to $75,000, Council would see a reduction of approximately 15-20% reports. The time and resource savings that would be generated through this reduction are outlined in the information that follows.

The chart on the following page (Chart 1.3), outlines the process the City has in place to produce staff reports for City Council meetings and approval. Each staff report is carefully drafted and reviewed by management, finance, and legal before being placed on the Agenda for Council. The process typically takes between 4 to 6 weeks. By reducing the number of reports presented to Council by 15-25%, the City will save an average of 26 hours per report of staff time that can be applied for other critical tasks.
Increasing the administrative spending authority to $75,000 will realign the City’s purchasing standards with relevant economic factors and best management practices. It will also help create an efficient procurement system where departments can focus on providing better service to the citizens while reducing bureaucratic barriers. However, it also maintains accountability and transparency for the majority of contracts that will still remain above the administrative spending authority. In addition, by establishing the limit by Municipal Code, it provides the City with the ability to regularly revise standards, processes, and internal controls that will help to manage the purchasing function. It is also important for continued transparency in the system that proper internal controls are created and managed.

The City is currently working with Moss Adams, our contracted City Auditor, to implement a plan to mitigate risk in the organization and develop an internal control framework. A key component of this plan is a redesign of the purchasing and contract management functions. The outcome of this work will result in revisions to the Municipal Code, establishment of internal policies and procedures related to purchasing and internal controls that safeguard the purchasing process. It will be critical to maintain the ability to include these updates to our purchasing standards without being limited by revisions to the City Charter.

It is also worth noting that the proposed revision to Section 3.68 of the Municipal Code provides clarifying language for considering increases to the spending authority in the future. It is recommended that on an annual basis City staff review the administrative spending authority based on general inflation, economic and financial conditions and benchmark assessments with comparable

<table>
<thead>
<tr>
<th><strong>Chart 1.3</strong></th>
<th></th>
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<tbody>
<tr>
<td>Department Drafts Staff Report</td>
<td>12 hours per report</td>
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<td>City Manager’s Office Review</td>
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<tr>
<td>Final Financial Review</td>
<td>10 - 15 minutes per report</td>
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<td>10 - 15 minutes per report</td>
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<tr>
<td>Agenda finalized &amp; distributed *</td>
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*This step occurs regardless of the number of items on the agenda. There may be some savings based on reduced number of items to Council.*

Staff time provided is average hours. Time varies based on complexity of the report.
municipalities and best management practices. If staff deems it necessary to increase the spending authority, it would come before the City Council for consideration. This will allow the City the ability to maintain relevant purchasing standards while maintaining accountability and transparency with the community.

Background Materials

Attachment A - Cities Surveyed
Attachment B - Stockton Municipal Code Chapter 3 - red line version
## Administrative Spending Authority Agencies Surveyed

<table>
<thead>
<tr>
<th>Location</th>
<th>Agency</th>
<th>Population</th>
<th>Form of Government</th>
<th>General Law/ Charter City</th>
<th>Spending Limit</th>
<th>Legislation (Charter, Code, Reso)</th>
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Stockton Municipal Code Chapter 3 – red line version

Chapter 3.68 BIDDING, CONTRACTING AND PURCHASING PROCEDURES

Article I. General Provisions

3.68.010 Title.
This chapter shall be known as the “City of Stockton Bidding, Contracting, and Purchasing Ordinance.” (Prior code § 3-100)

3.68.020 Purpose.
1. The purpose of this chapter is to establish procedures for the purchase of supplies, equipment and services; to secure for the City supplies, equipment and services at the lowest possible cost commensurate with quality needed; to exercise positive financial control over purchases and contracts; and to define clearly authority for the purchasing and contracting function. (Prior code § 3-101)

3.68.030 Definitions.
“City” means the City Manager or, with respect to their respective departments, other Council appointees or officers specifically designated to act for such officials.
“Emergency” means an unforeseen circumstance or combination of circumstances calling for immediate action to procure materials, supplies, equipment or services in order to make repairs, safeguard lives or property, or maintain public health or welfare, as a result of extraordinary conditions created by war, disease, weather, fire, or other catastrophe or unforeseen occurrence or imminent or actual failure of any plant, equipment, structure, street or public work.
“Purchase” means and includes rental or lease of supplies, as well as purchase.
“Services” means and includes labor, professional services, consulting services, or a combination of services and supplies.
“Supplies” means and includes supplies, materials, commodities, and equipment. (Prior code § 3-102)

3.68.040 Contracts of twenty Seventy five thousand dollars or more.
Except as otherwise provided in this chapter, all contracts for supplies or services involving an expenditure of $20,000.00 $75,000 or more shall be awarded by the
City Council and shall be let to the lowest and best regular responsible bidder. The $20,000.00 limitation provided for in this chapter conditions and benchmark comparisons with comparable municipalities may be increased by resolution of the City Council in an amount not to exceed the percentage increase in the Oakland/San Francisco Bay Area Consumer Price Index, All Urban Consumers on a year-to-year basis.

In the event that the United States Department of Labor, Bureau of Labor Statistics is discontinued or revised, such government index or computation with which it is replaced shall be used. (Prior code § 3-103)

The $75,000.00 limitation provided for in this chapter shall be reviewed on an annual basis. When deemed appropriate by staff, a recommendation to increase this spending limitation will be made to the City Council by Ordinance. This recommendation shall be based on general inflation, economic and financial conditions and benchmark assessments with comparable municipalities and best management practices.

(Prior code § 3-103)

#### 3.68.050 Stockton City Utilities—Public vote.

A. Any action by the Stockton City Council to sell, transfer, lease, or otherwise encumber any part of or any interest in City utilities, or to authorize or enter into any agreement in excess of $5,000,000.00 that assigns any aspect of the operation and maintenance of, or the collection of revenue for, City utilities to any private or for-profit entity, or any combination of those actions, shall be without force and effect unless and until it is approved by a majority of voters of the City either: at the next general municipal election occurring at least 45 days after the action by the Council, or at a special election to be held not less than 60 days after that action by the Council.

B. As used in this section, “City utilities” means every component and facility of the water storage, treatment, and delivery system and the wastewater and stormwater collection, storage, treatment, and discharge systems of the City. (Prior code § 3-103.1)

#### 3.68.060 Contracts under twenty Seventy five thousand dollars.

Subject to the availability of funds and the procedures set forth in this chapter, the City may be bound by written contract, purchase order or other action consistent with written policies of the City, by the appropriate officials for expenditures not amounting to $20,000.00 $75,000.00 in any one transaction without advertising or previous specific action by the City Council for the purchase of supplies or payment for services, or a combination thereof. (Prior code § 3-104)

#### 3.68.070 Exceptions to competitive bidding requirement for contracts over twenty Seventy five thousand dollars.

A. Contracts for $20,000.00 $75,000.00 or more may be awarded without competitive bidding in cases where the
City Council has approved findings which support and justify exceptions to the competitive bidding process. These circumstances may include, but are not to be limited to, the following:
1. Cases of emergencies;
2. Public works construction contracts for design-build projects;
3. Negotiated contracts following solicitation of competitive proposals;
4. Sole source vendors;
5. Cooperative purchasing agreements authorized by the City Council for the purchase of supplies or services through other governmental jurisdictions or public agencies;
6. When, after advertising for bids as required herein, no valid bids are received.

B. Except in circumstances set forth in subsections (A)(1), (5) and (6) of this section, no contract shall be awarded pursuant to such exceptions unless findings to support and justify such exceptions have been approved by the City Council before any request for proposal is issued. In cases of emergencies, a written report, including the findings upon which the emergency was based, shall be provided to the City Council no later than its next regularly scheduled Council meeting. (Prior code § 3-105)

3.68.080 Unauthorized purchases.
It is unlawful for any officer or employee to purchase or contract for supplies or services for the City other than as herein prescribed, excepting purchases made from petty cash. Any purchases, contracts or obligations incurred contrary to the provisions of this chapter shall be voidable. (Prior code § 3-106)

3.68.090 Local business preference.
Preference shall be given to the purchase of supplies, materials, equipment and contractual services from local merchants, quality and price being equal. Local merchants who have a physical business location within the boundaries of San Joaquin County, and who have applied for and paid a business license tax and registration fee pursuant to Stockton Municipal Code Chapter 5.08 shall be granted a three (3) percent bid preference. The three (3) percent preference shall be based on the amount of that portion of the bid which is subject to sales tax. This is intended to provide preference in the award of certain City contracts in order to encourage businesses to move into the City. (Prior code § 3-106.1)

3.68.095 Local employment—Public works contractors.
A. Findings. The City Council of the City of Stockton hereby finds that:
1. Unemployment rates in Stockton have been consistently higher than in California as a whole. Statistics indicate that the higher unemployment level in Stockton correlates to a higher number of families living in poverty and to a higher crime rate.
2. Due to the lack of local jobs, much of the work force residing in Stockton is forced to commute long distances to find work, causing increased traffic on state highways, increased pollution, increased use of gas and other fuels and other serious environmental impacts.
3. Because of the shortage of local jobs, many residents of Stockton must leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the hours between school and the parents return from work outside the area.

4. Absentee parents and unsupervised youth can result in increased problems for families, communities and the City as a whole, including, but not limited to, increased crime, more frequent and more serious injuries, poor homework accomplishments, failing grades and increased high school drop out rates.

5. The City Council of the City of Stockton has concluded that the City needs an expanding employment base and that a policy that encourages contractors who receive City contracts or subsidies to hire residents of Stockton will benefit the City as a whole.

6. Such policy will provide job opportunities to Stockton residents, expand the City’s employment base, lessen the drain on public assistance resources and reduce the impacts on the environment caused by high unemployment and long commuting times to jobs outside the area.

B. Declaration of Policy and Purpose.

1. It is the policy of the City of Stockton to ensure full and equitable opportunities for Stockton residents to participate in the employment opportunities that arise from public works contracts.

2. It is also the policy of the City of Stockton to increase the number of employed persons living in the City of Stockton in an attempt to counteract the grave economic and social ills associated with the higher unemployment levels that exist within the City.

3. In furtherance of this policy the City of Stockton has established a local hiring program to encourage the hiring and retention of Stockton residents for the work to be performed under public works contracts.

C. Scope and Goals.

1. Unless such a provision would conflict with a State or Federal law or regulation applicable to a particular contract for public works or improvements, all City contracts for public works or improvements of estimated value or City subsidy of $100,000.00 or more shall contain provisions pursuant to which the contractor promises to make a good faith effort, with the assistance of local labor union hiring halls or community organizations designated by the City to employ qualified individuals who are, and have been for one year prior to the effective date of the contract, residents of Stockton in sufficient numbers so that no less than 50 percent of the contractor’s total construction work force, including any subcontractor work force, measured in labor work hours, is comprised of Stockton residents.

2. Unless such provision would conflict with a State or Federal law or regulation applicable to a particular contract for a public works project, all City contracts for a public works project referenced in subsection (1) shall contain provisions pursuant to which each contractor or subcontractor shall make a good faith effort to employ apprentices who are enrolled in and participating in a viable apprenticeship program serving the San Joaquin Valley and approved by the State Department of Apprenticeship Standards. This apprenticeship requirement shall apply for each apprenticable craft or trade in which the contractor employs workers in performing any of the work under the contract.
(3) If, in response to a written request made at least 48 hours (excluding Saturday, Sunday and holidays) before the date on which one (1) or more apprentices are required, an apprenticeship program(s) does not dispatch any apprentice or dispatches fewer apprentices than requested to a contractor (that has agreed to employ and train apprentices in accordance with California Labor Code Section 1777.5) within 72 hours of such request (excluding Saturday, Sunday and holidays), that contractor shall be considered in compliance with the apprentice employment requirement for that trade or craft for a 90-day period from the request date, provided the contractor employs those apprentices who are dispatched. Where there is more than one (1) viable apprenticeship program for that trade or craft serving the San Joaquin Valley, a contractor, that is not a participant in or an affiliate of an apprenticeship program and receives fewer apprentices dispatched than requested, shall not be considered in compliance with the apprentice employment requirement unless the contractor has made a written request for the dispatch of apprentices from at least two (2) viable apprenticeship programs. A contractor, that is a participant in or an affiliate of an apprenticeship program, shall make dispatch requests to the program in which it is affiliated or participating.

4. In the event that no viable apprenticeship program exists for a particular craft or trade, the contractor shall be exempt from the requirements of this section with regard to that craft or trade.

5. A contractor employing apprentices pursuant to this section shall employ apprentices in a ratio of not less than one (1) apprentice for each five (5) journeymen in the apprenticeship craft or trade classification that are employed on the public work contract unless to do so would result in apprentice employment in ratios below the minimum ratios prescribed by California Labor Code Section 1777.5 in which case apprentice employment shall be at least in the ratios prescribed by California Labor Code Section 1777.5.

6. This section shall not be construed so as to exempt a contractor from any otherwise applicable requirement imposed upon the contractor by the California Labor Code.

D. Good Faith Effort. A bidder or contractor who fails to meet the goal of having 50 percent of its work force be residents of Stockton shall, nevertheless, be deemed to have made a “good faith effort” to hire sufficient numbers of residents of Stockton if, prior to execution of the contract with the City, six (6) or more of the following employee recruitment activities have been undertaken and documented:

1. Placing a valid job order for existing and projected position vacancies with the local office of the State Employment Development Department, for no less than 10 consecutive calendar days;

2. Placing a valid job order for existing and projected position vacancies with Worknet of San Joaquin County, for no less than 10 consecutive calendar days;

3. Advertising existing and projected position vacancies, job informational meetings, job application workshops, job application centers and job interviews by posting notices which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process, in conspicuous local
authorized public places, including but not limited to the City Hall, schools, post offices, libraries, and senior citizens’ centers;
4. Conducting a job informational meeting to inform the community of employment opportunities of the contractor, to be held at a City or other public facility (may be combined with other contractors);
5. Providing ongoing assistance to Stockton residents in completing job application forms;
6. Conducting a job application workshop to assist the community in applying and interviewing for jobs in the contracting industry, to be held at a City or other public facility (may be combined with other contractors);
7. Establishing a job application center located in the City of Stockton, where job applications may be obtained, delivered to and collected;
8. Conducting job interviews within 10 miles of the location designated for contract performance;
9. Advertising valid existing and projected position vacancies through the local media, such as community television network, local newspapers of general circulation, and trade papers or minority focus newspapers;
10. Telephone solicitation of known potential local subcontractors or employees;
11. Any other means of obtaining employees who are residents of Stockton that are reasonably calculated to comply with the goals of this section.
E. Required Documentation.
1. The contractor shall keep, and provide to the City, on standardized forms acceptable to the City, an accurate record showing the name, place of residence, hours employed and per diem wages and benefits of each person employed by the contractor, and the contractor’s subcontractors, on the specific public works project, including full-time, part-time, permanent and temporary employees.
2. The contractor shall keep, and provide to the City, on forms acceptable to the City, an accurate record documenting the contractor’s good faith efforts to comply with the local resident employment and apprentice employment provisions of this section. Said records shall include: a listing by name and address of all local recruitment sources contacted by the contractor; the date of the local recruitment contact and the identity of the person contacted; the trade and classification and number of employment referrals requested; the number of local residents employed as a result of the contact; and the identity and address of the person(s) employed pursuant to the contact.
F. Forms Submitted Under Penalty of Perjury. All forms required under this section shall attest to the veracity of the information set forth therein and shall be submitted under penalty of perjury.
G. Irresponsible Bidder Declaration. Should any contractor or subcontractor fail to abide by the good faith local resident employment and apprentice employment provisions of this section, the contractor or subcontractor may be declared by the City to be an irresponsible bidder on future projects pursuant to Section 3.72.010 of this code.
H. Binding on Subcontractors. The good faith local resident employment and apprentice employment provisions of this section shall bind the contractor both with respect to persons employed directly by the contractor and to all persons employed by the contractor’s subcontractors. The contractor shall be responsible for assuring
that all subcontractors document said compliance by submitting, and making available to the City, the forms required by this section.

I. Definitions. As used in this section, the following terms shall have the following definitions:

“Contract for public works or improvement” means any contract with the City for construction, alteration, demolition or repair work. “Qualified individual” means an individual who is in a certified State or Federally approved apprenticeship program in an applicable trade or has become a journeyperson in his or her applicable trade.

“Resident of Stockton” means an individual who has been domiciled, as defined by Section 200(b) of the California Elections Code, within the boundaries of Stockton for at least one (1) year immediately preceding the date of the award of contract by the City and who can verify his or her domicile upon request of the contractor or City by producing documentation such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid California driver’s license or identification card, and/or any other similar, reliable evidence that verifies that the individual is domiciled within Stockton. For the purposes of this section, the following Zip Code areas are considered to be within Stockton: 95202, 95203, 95204, 95205, 95206, 95207, 95209, 95210, 95212, 95215 and 95219.

“Viable apprenticeship program” means an apprenticeship program approved by the California Department of Apprenticeship Standards that has graduated apprentices annually for at least the past five (5) years. Any apprenticeship program that has been approved for less than 10 years shall be deemed a viable apprenticeship program provided that, following the fifth anniversary of its approval by the California Department of Apprenticeship Standards, it graduates apprentices each subsequent year.

J. Contracts – Bid Documents – Subcontracts.

1. Contracts and bid documents shall incorporate this section by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract.

2. All subcontracts shall expressly acknowledge the City’s status as a third party beneficiary to that subcontract and further expressly acknowledge that the City, as a third party beneficiary, shall have the right to enforce the provisions of this section with regard to that subcontract or seek remedies available under this section should a party to the subcontract fail to comply with any of the provisions of this section that apply to the subcontract.

3. Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with this section.

K. Exceptions. The provisions of this section shall not apply:

1. Where the City determines that the contract is necessary to respond to a declared emergency which endangers the public health, welfare or safety and there is no time to apply the provisions of this section.

2. To City construction contracts or portions thereof, wherein the work is of a highly specialized nature as determined by the City Council when the contract specifications are approved. (Ord. 011-09 § 1, eff. 10-01-09)
Article II. Competitive Bidding Procedures

3.68.100 When advertising required.
Except as otherwise provided in this chapter, where the cost of services or supplies required by the City equals or exceeds $20,000.00 $75,000.00, the City Clerk shall call for bids by advertising at least once in a newspaper of general circulation within the City not less than 10 calendar days prior to the date set for receiving said bids. (Prior code § 3-107)

3.68.110 Bid security.
When the City deems it to be advisable, each bidder shall be required to submit as security with the bid, a bid bond, cash or other acceptable financial instrument in favor of and payable at sight to the City, in an amount determined by the City, but not to exceed 10 percent of the aggregate amount of the bid. If the bidder to whom the contract is awarded shall, for 30 days after receipt of such award, fail or neglect to enter into the contract and file any required performance bond and/or labor and material bond, the bid security shall be forfeited and the City Finance Director shall draw the money due on such bid security and pay the same, or any cash deposited, into the City Treasury. The bid security shall not be returned to the defaulting bidder in such case unless the City Council approves the return thereof in whole or in part. Upon good cause being shown, the City may extend the time for the bidder to enter the contract for a period not to exceed an additional 60 calendar days. (Prior code § 3-108)

3.68.120 Multiple bids.
No person, firm, or corporation shall be allowed to make or file or be interested in more than one (1) bid for the same supplies, services or both; provided, however, that subcontract bids to the principal bidders are excluded from the requirements of this section. (Prior code § 3-109)

3.68.130 Form of bids.
All bids shall be made upon forms prepared by the City and furnished upon application. All bids shall be clearly and distinctly written and if any erasure or interlineation occurs therein, said erasure or interlineation must be initialed by the person authorized to prepare and execute the bid before the bid is filed with the City Clerk. (Prior code § 3-110)

3.68.140 Withdrawal of bids.
Any bid may be withdrawn at any time prior to the time fixed in the public notice for opening of bids by written request for withdrawal of the bid filed with the City Clerk. The request shall be executed by the bidder or a duly authorized representative. The withdrawal of bid does not prejudice the right of the bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for the opening of bids, a bid will not be received after that time, nor may any bid be withdrawn after the time fixed in the notice for the opening of bids. (Prior code § 3-111)
3.68.150 Collusion.
A. Each bid shall contain an affidavit of the bidder that such bid is genuine and not a sham or collusive, and that the bidder has not directly or indirectly induced or solicited any other bidder to put in a sham bid or to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure to itself an advantage over any other bidder. Any bid made without such affidavit and any contract let thereunder shall be void unless a correct affidavit is received after the bid deadline, and accepted by approval of the City Council.
B. If at any time it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the contract so awarded may at the City’s election be declared null and void and the contractor and surety shall be liable to the City for all loss or damage which the City may suffer thereby. (Prior code § 3-112)

3.68.160 Opening of bids—Awards—Rejection of bids.
A. All bids shall be sealed, identified as bids on the outside envelope, and submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Clerk or a designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened.
B. Within the time set forth in the specifications, the City Council shall award a contract to the lowest and best regular responsible bidder, or reject all bids. (Prior code § 3-113)

3.68.170 Disposition of bid security.
All bid securities or bid bonds shall be returned to the unsuccessful bidders after award of the contract to the successful bidder. The bid security or bid bond of the successful bidder shall be returned after execution of the contract and deposit of any required performance bond and/or labor and materials bond. (Prior code § 3-114)

Article III. Contract Provisions

3.68.180 Time of completion.
The contract shall specify the time within which the supplies or services shall be furnished to the City and may provide for liquidated damages for failure to comply. The City may extend such time for acts of the City of, acts of God, weather, strikes, or other circumstances over which the contractor has no control. (Prior code § 3-115)

3.68.190 Bonds.
Whenever the City deems it advisable, a performance bond and/or labor and materials bond may be required on any contract in an amount up to 100 percent of the contract price for each bond. Such bonds shall be approved by the City Finance Director. (Prior code § 3-116)
3.68.200 Failure of completion.
In case of the failure on the part of the contractor to complete the contract within the
time specified in the contract or within any extension of such time as herein
provided, the contract may be terminated and the contractor shall not be paid or
allowed any further compensation for any work done under such contract. The City
may proceed to complete such contract either by reletting or otherwise, and the
contractor and the surety, if any, shall be jointly and severally liable to the City for all
loss or damage which the City may suffer on account of the failure to complete the
contract on time. (Prior code § 3-117)
Recommendation

Approve proposed language as recommended by the Charter Review Advisory Commission and forward to the full Council for approval to place on the November 4, 2014 ballot.

At the September 25, 2013 meeting of the Charter Review Advisory Commission, City staff presented recommended language for consideration by the Commission (Attachment A). After deliberation, the Charter Review Advisory Commission amended staff's recommendation and approved forwarding those amendments to the Ad-Hoc Committee for approval (Attachments B, C, and D).
THE ORIGINAL STAFF REPORT RELATED TO THIS CHARTER AMENDMENT IS
ALREADY INCLUDED AT THE BEGINNING OF THIS ATTACHMENT. IT HAS NOT
BEEN INCLUDED AGAIN AS AN ATTACHMENT TO THE CRAC AGENDA TO AVOID
REDUNDANCY.
ARTICLE XII THE CITY MANAGER

SECTION 1201. CHIEF ADMINISTRATIVE OFFICER.

The City Manager shall be the chief administrative officer of the City. He or she shall be responsible to the Council for the efficient administration of all the affairs of the City placed in his or her charge by or under this Charter. Without limiting the foregoing general grant of powers, responsibilities and duties, the City Manager shall have the following powers and duties:

(a) Except as otherwise provided elsewhere in this Charter, the City Manager shall appoint all officers and employees of the City; and, when he or she deems it necessary for the good of the service, the City Manager may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any City officer or employee whom under this Charter is appointed by the City Manager; provided, however, that the City Manager shall not appoint to any position any business associate or any person related to him or her or to any member of the City Council by blood or marriage within the third degree, except that the foregoing prohibition against nepotism may be waived by a vote of at least two-thirds (2/3) of the members of the City Council if the City Council finds that the proposed appointment is in the interest of the City;

(b) Except as otherwise provided elsewhere by this Charter, the City Manager shall direct and supervise the administration of all departments, offices and agencies of the City;

(c) The City Manager shall attend all regular and special meetings of the Council, other than closed executive sessions where the City Manager or another Council appointee is the subject of discussion, and to take part in its discussions, but not to vote. If the City Manager is unable to attend any regular or special meeting of the Council, he or she shall notify the Council
in writing of such inability and set forth his or her reasons for non-attendance;

(d) The City Manager shall be responsible for the faithful execution of all laws, provisions of this Charter, and acts of the Council which are subject to enforcement by the City Manager or by officers who are under the City Manager's direction and supervision;

(e) The City Manager shall prepare and submit the annual budget to the Council in accordance with the provisions of Article XIX of this Charter;

(f) The City Manager shall recommend to the Council for adoption such measures and ordinances as the City Manager may deem necessary or expedient;

(g) The City Manager may make and execute contracts and authorize expenditures of less than twenty thousand ($20,000.00) seventy five thousand ($75,000.00) dollars, or in such amounts as are established pursuant to SECTION 2002 of this Charter, on behalf of the City; a quarterly report will be provided to the City Council for all contracts that are executed which are less than $75,000;

(h) The City Manager shall submit an annual report on the finances and administrative activities of the City as of the end of the preceding fiscal year to the Council at a public meeting to be held within thirty days following receipt of the Annual Financial Statement. The annual report, which shall be personally certified by the City Manager to be accurate and complete, shall contain a statement indicating:

1. Whether the revenues budgeted for the preceding fiscal year were actually received, and an explanation concerning any material differences between the total revenues budgeted and the revenues actually received;
(2) The extent to which expenditures budgeted actually were incurred, and an explanation for any material variance between budgeted expenditures and actual expenditures;

(3) The amount of the financial reserves of the city;

(4) All other information which, in the opinion of the City Manager, is necessary to provide an accurate and complete picture of the fiscal status and condition of the city. The report shall be in a form which is susceptible to confirmation by audit. It shall be made available to the public in the Office of the City Clerk.

(i) The City Manager shall make such other reports as the Council from time to time may request concerning the operations of City departments, offices and agencies subject to his or her direction and supervision; shall keep the Council fully advised as to the financial condition and future needs of the City; and make such recommendations to the Council concerning the affairs of the City as he or she deems desirable or as requested by Council;

(j) The City Manager shall appoint such advisory boards and committees as may be necessary or desirable to advise and assist in the work of the City Manager; provided, however, that the members of such boards shall not receive any compensation.

(k) The City Manager shall exercise such other powers, and shall perform such other duties, as are specified in this Charter or as authorized or required by the Council.

(Repealed and Amended Election 03/07/2000, Effective 01/01/2001; Amended Election 11/8/94 effective 5/22/95; Amended Election 6/5/84 effective 6/26/84; Amended Election 10/12/71 effective 12/6/71; Amended Election 10/14/47 effective 3/3/48)

Historical Note:
Section 3**: Repealed Election 10/9/51 effective 3/6/52.
This section number refers to a numbering system that was in place prior to the Election of 11/8/94.
ARTICLE XX PUBLIC CONTRACTS AND SUPPLIES

SECTION 2000. LETTING OF CERTAIN CONTRACTS.

The City Council by ordinance shall provide for a competitive method of awarding contracts for public works, services, and the purchase of materials and supplies.

Except as otherwise provided for in this article, contracts which equal or exceed the amount of twenty thousand ($20,000.00) seventy five thousand ($75,000.00) dollars shall be let by a process of competitive bidding to the lowest and best responsible bidder. A quarterly report will be provided to the City Council for all contracts that are executed which are less than $75,000.

SECTION 2001. AWARDING OF CONTRACTS WITHOUT BIDDING.

The ordinance shall permit the award of contracts without competitive bidding in cases where the City Council has approved findings which support and justify exceptions to the competitive bidding process. Those circumstances may include, but are not limited to:

(a) Cases of emergencies;

(b) Negotiated contracts following solicitation of competitive proposals instead of sealed bids;

(c) Sole source vendors.

* See Historical Note at end of Article.

Except in emergencies, no contract shall be awarded pursuant to the exceptions provided in Section 2001 hereunder unless findings to support and justify such exception have been approved by the City Council before any request for proposal is issued.

SECTION 2002. INCREASE OF $20,000.00 - $75,000 LIMITATION.
Commencing in 1993, the twenty thousand ($20,000.00) seventy five thousand ($75,000.00) dollar limitation provided for in this Charter with regard to the requirement for competitive bidding and the ability of the City Manager to make and execute contracts may be increased by resolution of the City Council in an amount not to exceed the percentage increase in the Oakland/San Francisco Bay Area Consumer Price Index, “All Urban Consumers” on a year-to-year basis.

In the event that the United States Department of Labor, Bureau of Labor Statistics is discontinued or revised, such government index or computation with which it is replaced shall be used.

Historical Note:
Prior to the Election of 11/8/94, this Article was numbered XXIII. Article XXIII was repealed and added Election 6/2/92 effective 12/2/92. Prior history includes Election 10/12/26; Election 10/9/45 effective 1/14/46; Election 10/14/47 effective 3/3/48; Election 10/11/49 effective 12/19/49; Election 10/10/61 effective 2/13/62; Election 10/12/71 effective 12/6/71; Election 10/11/77 effective 11/2/77; Election 11/4/80 effective 12/3/80; Election 6/5/84 effective 6/26/84
Article XI The City Manager. Section 1201. Increase of $20,000 Limitation to $75,000.

CURRENT CHARTER PROVISION:

ARTICLE XII THE CITY MANAGER
SECTION 1201. Chief Administrative Officer.
   (g) The City Manager may make and execute contracts and authorize expenditures of less than twenty thousand ($20,000) dollars, or in such amounts as are established pursuant to SECTION 2002 of this Charter, on behalf of the City;

PROPOSED AMENDMENT:

Section 1201(g). The City Manager may make and execute contracts and authorize expenditures of less than seventy five thousand ($75,000) dollars, or in such amounts as are established pursuant to Section 2002 of this Charter, on behalf of the City; a quarterly report will be provided to the City Council for all contracts that are executed which are less than $75,000.

ARGUMENT IN FAVOR:

The administrative spending authority of the City ($32,123) is well below the average of comparable municipalities ($79,000). Increasing the administrative spending authority to $75,000 realigns the City’s purchasing standards with relevant economic factors and best management practices. The realignment of the spending authority will avoid an inefficient work load for both Council and Staff and, instead, will create an efficient procurement system where departments can focus on providing better service to the citizens while reducing bureaucratic barriers.
3.3 14-0355 AMENDED CHARTER LANGUAGE ARTICLE XII SECTION 1201
PUBLIC CONTRACTS AND SUPPLIES: CHIEF ADMINISTRATIVE OFFICER,
AND ARTICLE XX PUBLIC CONTRACTS AND SUPPLIES

Legislation Text

Attachment A - Staff Report Article XII and XX
Attachment B - Proposed Amendments Block 1 Article XII Sec 1201
Attachment C - Proposed Amendments Block 1 Article XX Sec 2000
Attachment D - Commission Argument Supporting SEC 1201 Amendments

Deputy City Manager Laurie Montes provided staff report

Discussion

Howard Seligman - supported competitive bidding process; informed the Committee that the Commission does not support removal of spending limits from the City Charter

Dale Stocking - spoke to spending limit issues and revisions to City Auditor section of the Charter

Recommendation

Approve proposed language as recommended by staff and forward to the full Council for approval to place on the November 4, 2014 ballot.

Moved by: Chair Miller, seconded by Councilmember Zapien.

Vote: Motion carried 3-0

Yes: Councilmember Burgos Medina, Councilmember Zapien, and Chair Miller.
AD-HOC COMMITTEE FINAL RECOMMENDATION
AS IT WOULD APPEAR ON THE BALLOT AND CHARTER IF ADOPTED

ARTICLE XII, SECTION 1201 Chief Administrative Officer

The City Manager may make and execute contracts and authorize expenditures pursuant to SECTION 2002 of this Charter, on behalf of the City;

ARTICLE XX PUBLIC CONTRACT AND SUPPLIES

SECTION 2000 Letting of Certain Contracts

The City Council by ordinance shall provide for a competitive method of awarding contracts for public works, services, and the purchase of materials and supplies.

SECTION 2001 Awarding of Contracts Without Bidding

The ordinance shall permit the award of contracts without competitive bidding in cases where the City Council has approved findings which support and justify exceptions to the competitive bidding process. Those circumstances may include, but are not limited to:

a) Cases of emergencies;
b) Negotiated contracts following solicitation of competitive proposals instead of sealed bids;
c) Sole source vendors.

SECTION 2002 Increase of Administrative Spending Authority

The City Manager shall recommend and the City Council shall consider and adopt by ordinance the administrative spending authority of the City Manager.