CHAPTER 34.*

CONTRACTORS: FALSE CLAIM AND DEBARMENT PROCEDURES

Sec. 34-1. False Claims.
Sec. 34-2. Disqualification of irresponsible contractors.
Sec. 34-3. Conduct required.

Sec. 34-1. Submitting false claims: monetary penalties.

(a) Any contractor, subcontractor, or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to $10,000 for each false claim:

(1) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(3) Conspires to defraud the City by getting a false claim allowed or paid by the City;

(4) Knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City;

(5) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discover of the false claim.

(b) This Section does not apply to any controversy involving any amount less that $500 in value. For purposes of this Subdivision, "controversy" means any one or more false claims submitted by the same contractor, subcontractor or consultant in violation of this Section.

(c) Every contract performed at the expense of the City of Paramount, or the cost of which is paid for out of monies deposited in the treasury of said City, whether directly awarded or indirectly by or under subcontract, subpartnership, day labor, station work, piece work, or any other arrangement whatsoever, shall contain a clause reciting the provision of Subdivision (a).

(d) Liability under this Section shall be joint and several for any act committed by two or more persons.

*Editor's Note: Chapter 34, "Schools," previously contained herein was repealed in its entirety by Ordinance No. 699, Sec. 1; adopted April 16, 1987.

(e) Definitions: For purposes of this Chapter:

(1) "Contractors" shall have the same definition as found in the Business and Professions Code of California, Chapter 9, Article 2, Sections 7025, et. seq.

(2) "Subcontractors" shall have the same definition as found in the Civil Code of California, Section 3104.

(3) "Consultant" shall be broadly defined to include any person or entity that provides services to the City.

(f) For purpose of this Section, "claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the City, or to any contractor, subcontractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded was issued for, or was provided by the City.

(g) For purposes of the Section, "knowingly" means that a contractor, subcontractor or consultant, with respect to information, does any of the following:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information;

(3) Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent is not required and reliance on the claim by the City is also not required.

Sec. 34-2. Disqualification of irresponsible contractors; procedure; effect of disqualification.

(a) Disqualification. Any contractor who fails to comply with the terms of its contract with the City, or contractor, subcontractor or consultant who violates any provision in Chapter 34, or who fails to abide by any rules and/or regulations adopted pursuant to Chapter 34, may be declared an irresponsible bidder.

(b) Procedure. When charges are brought for violation of Section 34.1, 34.2 or 34.3 of Chapter 34, the contractor, subcontractor or consultant shall be given notice of the charges and of all evidence supporting such charges. The contractor, subcontractor or consultant or its attorney shall be entitled to offer rebuttal evidence and any other evidence in support of its position. The department head, board of commission shall conduct a hearing, where the charges and all evidence shall be presented. In the alternative, the department head, board or commission may appoint a hearing officer to conduct such a hearing and make written findings of fact to be submitted to the department head, board or commission, who shall render the final decision. Following any decision finding a contractor, subcontractor or consultant irresponsible, the department head, board of commission who made the finding of irresponsibility retains authority to modify the decision.

The Department Head responsible for the public work or improvement at issue shall serve written notice to the contractor, subcontractor or consultant responsible for the violation; specifying the grounds for disqualification and declaration that the person or entity is an irresponsible bidder. The notice shall be served personally or by registered mail to the violator as their name and address appears on the records of the City. Said notice shall declare and order that the party in violation shall not be permitted to act as a contractor, subcontractor or consultant on any public work or improvement for the City of Paramount for a period of up to five (5) years as determined by the Department Head.

(c) Appeal. City Manager. A disqualified person or entity shall have the right to appeal the disqualification pursuant to the following procedure:

After service of disqualification notice, the person or entity may appeal the order to the City Manager within ten (10) days thereof.

The City Manager, within ten (10) days of receiving the notice of appeal, shall hear and consider all relevant evidence, objections or protests and shall review testimony from the person or entity involved, City personnel and other interested persons. Based upon the evidence presented at the hearing, the City Manager may confirm, modify or vacate the order.

The City Manager shall prepare a report of findings and decision, a copy of which shall be served upon the appealing party or entity.

City Council. A person or entity dissatisfied by the decision of the City Manager may appeal the matter to the City Council by filing notice of appeal at the Office of the City Clerk within ten (10) days after the service of the decision of the City Manager. A written, dated appeal shall contain the following:

(1) A specific identification of the facility or project which is the subject of the appeal.

(2) A caption reading: "Appeal of _____," giving the names of the appellant person or entity participating in the appeal.

(3) A brief statement setting forth the legal interest of each of the appellants involved in the notice and order of disqualification.

(4) A statement in ordinary and concise language of the specific order or action protested, together with any material facts supporting the contentions of the appellant.

(5) The signatures of all parties named as appellants, and their official mailing address.

(6) The verification of at least one (1) appellant as to the truth of the matters stated in the appeal.

As soon as practical after receiving the written appeal, the City Clerk shall set a date for hearing of the appeal by the City Council, which date shall be not less than three (3) days nor more than thirty (30) days from the date the appeal was filed. Written notice of the time and place of the hearing shall be given at least three (3) days prior to the date of the hearing to each appellant by the City Clerk, either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal. Continuances of the hearing may be granted by the City Council on request of the appellant for good cause shown, or on the City Council's own motion.

Upon conclusion of the hearing on such appeal, the City Council shall by resolution either:

a. Vacate the order;
b. Confirm the action and decision of the City Manager; or
c. Modify such decision based upon evidence adduced at said hearing.

Section 34-3. Conduct required of responsible contractors.

The covenant of good faith and fair dealing is contained in every City contract, and contractors, subcontractors and consultants shall at all times deal in good faith with the City and shall submit claims, requests for equitable adjustments, requests for change orders, requests for contract modifications or requests of any kind seeking increased compensation on a City contract only upon a good faith, honest evaluation of the underlying circumstances and a good faith, honest calculation of the amount sought. Violation of this Section subjects the contractor, subcontractor or consultant to the penalties set forth in Chapter 34, including disqualification. The act of knowingly submitting a false, untrue or misleading claim, request for equitable adjustment, request for modification, request for change order or request of any kind seeking increased compensation is sufficient of itself to subject the contractor, subcontractor or consultant to the penalties stated in Chapter 34, regardless of the City's reliance on, or response to the submission. (Ord. No. 859.)

(Ord. Nos. 699, 859)