



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 140406

Introduced May 8, 2014

Councilmembers Kenney, Goode and Blackwell

**Referred to the
Committee on Public Property and Public Works**

AN ORDINANCE

Amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by amending Chapter 17-1700, entitled "Prompt Payment of City Vendors and their Subcontractors," by requiring that certain notice be given to the City and subcontractors and sub-subcontractors, providing requirements for City action in certain situations, extending rights and requirements to other contractual parties, and adding certain enforcement options; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 17 of The Philadelphia Code is hereby amended as follows:

TITLE 17. CONTRACTS AND PROCUREMENT.

* * *

CHAPTER 17-1700. PROMPT PAYMENT OF CITY VENDORS AND THEIR SUBCONTRACTORS.

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§ 17-1703. Prompt Payment of Subcontractors.

(1) It is the policy of the City of Philadelphia that any subcontractor retained by a Vendor under a Procurement Contract should be paid promptly by the Vendor after the Vendor receives payment from the City. Council also finds with respect to Procurement Contracts subject to the "lowest responsible bidder" requirement that a Vendor who does not make prompt payments to its subcontractors is not a responsible bidder. In furtherance of that policy and that finding, all Procurement Contracts shall include

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provisions, in form approved by the City Solicitor, obligating the Vendor to carry out the following subcontractor "prompt payment" requirements:

(a) After a Vendor receives payment from the City for labor, services, or materials furnished by a subcontractor retained by the Vendor, the Vendor shall pay the subcontractor within the same time period that the City was required to pay the Vendor (the "Prompt Payment Period").

(b) If a Vendor fails to make payments to a subcontractor within the Prompt Payment Period, the Vendor shall pay interest on any outstanding amounts at the rate of one and one-half percent (1.5%) per month or part of a month, beginning at the expiration of the Prompt Payment Period, except as follows:

(i) If the subcontractor has submitted an invoice to the Vendor and the invoice is incorrect, defective or otherwise improper, the Vendor shall within ten (10) days after receiving the invoice notify the subcontractor that it must resubmit a corrected invoice. If the Vendor fails to so notify the subcontractor within such ten (10) day period, the invoice will be deemed correct as to form.

(ii) The Vendor may refuse to pay a subcontractor within the Prompt Payment Period if the Vendor in good faith believes that the subcontractor failed to perform its obligations to the Vendor in a proper manner, but only if the Vendor, within the Prompt Payment Period, provides written notice to the subcontractor *and the City* detailing the subcontractor's failure to perform properly.

(iii) *Notwithstanding anything to the contrary in any agreement between the Vendor and subcontractor, the City shall investigate any allegations made by the Vendor against the subcontractor when the Vendor fails to pay during the Prompt Payment Period.*

(A) *If after investigation the City finds that the subcontractor has performed its obligations in the proper manner, and the Vendor refuses to pay the subcontractor within seven business days of the City's determination, then the City shall pay the subcontractor according to the terms of the contract agreed to by the Vendor and subcontractor, including any applicable interest according to this Section, so long as funds are available on the existing contract or another contract between the Vendor and the City.*

(B) *If insufficient sums are available to provide full and proper payment to the subcontractor as provided under subsection (A), the City shall again demand payment by the Vendor of any balance due, and if the Vendor again refuses, the City is authorized to seek to debar the Vendor according to 17-1703 (1)(c).*

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(C) *The City may recover from the Vendor any funds that it pays a subcontractor in accordance with subsection (A) by withholding any sums remaining due the Vendor on the contract; or any sums due on other contracts between the Vendor or subcontractor and the City, including contracts between the City and another entity that controls, is under common control with, or is controlled by the Vendor or subcontractor. This remedy is in addition to any other remedies that the City may possess.*

(c) *The City, at its discretion, may debar a contractor or vendor who violates the terms of this Section. If the City determines to issue a debarment order, the City shall give the Contractor written notice thereof and the City or a designated hearing panel shall issue a written determination stating the grounds for its decision.*

(d) [(c)] *The obligation of the Vendor to pay subcontractors promptly and all provisions of this Section shall be passed along to all subcontractors and sub-subcontractors at any tier.*

(e) [(d)] *Agreements between a Vendor and a subcontractor and a subcontractor and a sub-subcontractor at any tier may include provisions for the resolution of [any] disputes arising under these "prompt payment" requirements, unless those provisions conflict with the affirmative responsibility of the City to investigate violations under this Section.*

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SECTION 2. This Ordinance shall take effect in thirty (30) days.

Explanation:

[Brackets] indicate matter deleted.

Italics indicates new matter added.

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