



City of Philadelphia

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

BILL NO. 100495

Introduced June 17, 2010

**Councilmembers Green, Jones, Tasco, DiCicco, Goode, Sanchez, Greenlee,
Reynolds Brown, Krajewski, Kelly, Council President Verna,
Councilmembers O'Neill, Miller, Blackwell and Clarke**

**Referred to the
Committee on Commerce and Economic Development**

AN ORDINANCE

Amending Chapter 17-1000 of The Philadelphia Code, entitled "Employment of Low- and Moderate-Income Persons by City Contracts," by requiring businesses responsible for performing work under certain contracts to provide for a certain percentage of the work to be performed by City residents, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 17-1000 of The Philadelphia Code, entitled "Employment of Low- and Moderate-Income Persons by City Contractors," is hereby amended to read as follows:

**CHAPTER 17-1000. EMPLOYMENT OF *CITY RESIDENTS AND* LOW- AND
MODERATE-INCOME PERSONS BY CITY CONTRACTORS.**

§ 17-1001. Definitions.

(1) City. Includes the City and its departments, boards, commissions or agencies.

(2) City-related Agency. All authorities, government agencies and quasi-public corporations which:

(a) receive appropriations from the City;

City of Philadelphia

BILL NO. 100495 continued

(b) have entered into continuing contractual or cooperative relationships with the City, including any agreement whereby the City funds an agency's debt service; or

(c) operate under legal authority granted to them by City ordinance.

(3) **Construction Contract.** Any agreement for the erection, repair, demolition or alteration of any building, structure, bridge, roadway or other improvement to real property.

(4) **Covered [Construction] Contract.** Any construction contract *or non-professional service contract* with a total value in excess of \$150,000 which:

(a) is paid for in whole or in part with City funds;

(b) is financed either wholly or partially by state or federal funds which are administered by the City;

(c) is funded in whole or in part by Financial Assistance; or

(d) is located on property for which the current owner or owners have received Financial Assistance from the City with respect to its purchase.

(5) **Financial Assistance.** Any grant, loan, incentive or abatement provided by, or with the authority or approval of, the City or a City-related agency, including but not limited to bond financing subsidies; Tax Increment Financing aid; industrial development bonds; use of the power of eminent domain; Community Development Block Grant loans or grants; airport revenue bonds; Enterprise Zone designations; and aid from the Philadelphia Workforce Development Corporation or other similar agencies.

(6) **Low- or Moderate-Income Person.** A person whose income does not exceed more than eighty percent (80%) of the median income for the Philadelphia metropolitan area, as determined or adjusted by the Secretary of Housing and Urban Development pursuant to 42 U.S.C. § 5302(a)(20). A person who no longer meets the income eligibility criteria set forth above because of employment by a party to a covered construction contract, but who met the criteria on his or her date of hire, shall be deemed a low- or moderate-income person for three years from the date of his or her hire.

(7) **Non-Professional Service Contract.** Any purchase or contract for the provision of services subject to Section 8-200(2) of *The Home Rule Charter*.

(8) **Resident.** A *bona fide* resident of the City of Philadelphia.

City of Philadelphia

BILL NO. 100495 continued

§ 17-1002. *Bidding and Contract Requirements.*

(1) Every covered [construction] contract shall contain a provision requiring *the following:*

(a) [that] *That* the business responsible for performing work under the contract must certify that at least forty percent (40%) of the workers who work on the covered [construction] contract are low- or moderate-income persons, *and*

(b) *That at least 50 percent (50%) of the total hours worked pursuant to the contract are performed by residents.*

[(a)](c) Apprentices and those working in on-the-job training positions shall be considered workers for purposes of [this] subsection (1)(a) *and the hours worked by such persons shall be considered for purposes of subsection (1)(b).*

(d) *The same worker may count toward fulfilling the requirements of both subsections (1)(a) and (1)(b).*

(2) Every covered [construction] contract shall contain a provision requiring that the business responsible for performing work under the contract will procure the same certification from all subcontractors performing work pursuant to the covered construction contract.

[§ 17-1003. Reporting Requirements.]

[(1)] (3) All bidders or contractors on any covered [construction] contract shall provide to the Procurement Commissioner [and the Economic Opportunity Task Force], in the case of contracts to which the City is a party, or to the Director of Finance [and the Economic Opportunity Task Force], in the case of contracts to which the City is not a party, such information as the [Task Force,] Commissioner or the Director may need to assess the bidder's or contractor's ability to meet the hiring requirements set forth in § 17-1002, including:

(a) The percentage *and number* of current full-time employees who are low- or moderate-income persons, *and the breakdown between skilled and unskilled labor positions.*

(b) The percentage of workers [previously] hired on a temporary basis *in the prior calendar year* to work on construction contracts in the City who were low- or moderate-income persons.

City of Philadelphia

BILL NO. 100495 continued

(c) *The percentage and number of current full-time employees who are residents, and the breakdown between skilled and unskilled labor positions.*

[(c)] (d) The bidder's or contractor's plans for achieving compliance with the hiring requirements, including any plans to utilize the services of the Philadelphia Workforce Development Corporation or any related entities, or training or apprenticeship programs such as the Philadelphia Housing Authority's Working Together for Jobs Agreement, the TOP/WIN program, the DAP program, the Congreso de Latinos Unidos Apprenticeship Prep for Trades APTitude Program, YouthBuild Philadelphia or other similar programs.

§ 17-1003. Published Employment Plan Requirement.

(1) *Before any building permit is issued for any work to be performed under a covered contract that is a construction contract, and before any work is begun pursuant to any covered contract that is a non-professional services contract, the business responsible for performing the work shall provide to the Procurement Commissioner, in the case of contracts to which the City is a party, or to the Director of Finance, in the case of contracts to which the City is not a party, an employment plan describing how it will comply with the provisions of this Chapter, including but not limited to: a description of the proposed composition of the workforce and efforts that will be taken to maximize employment opportunities for residents and low- and moderate-income persons. Such employment plan shall be kept on file and made publicly available for inspection.*

§ 17-1004. Reporting Requirements.

(1) *Upon the award of a covered contract, the business to whom the contract was awarded shall provide periodic reports on the ongoing composition of its workforce, in a format designed by the Director of Finance, that will enable the City to determine the percentage of low- and moderate-income persons on the project to date, and the percentage of hours worked on the project to date by residents. Such reports shall be submitted to the Procurement Commissioner in the case of contracts to which the City is a party, and to the Director of Finance in the case of contracts to which the City is not a party.*

[§ 17-1004.] § 17-1005. City-Related Agencies.

(1) Every contract, lease, grant, condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring the City-related

City of Philadelphia

BILL NO. 100495 continued

Agency, in the execution of all covered [construction] contracts entered into pursuant to agreement between the City and the City-related Agency, to abide by the provisions of §§ 17-1002 [and 17-1003] *through 17-1004*, [relating to Contract Requirements and Reporting Requirements,] as though such contracts were directly subject to such provisions.

[§ 17-1005.] § 17-1006. Exceptions.

(1) The Procurement Commissioner, with respect to Covered [Construction] Contracts to which the City is a party, or the Director of Finance, with respect to Covered [Construction] Contracts to which the City is not a party, may waive compliance with the provisions of this Chapter on one or more of the following grounds:

(a) The contract or subcontract is for the purchase of goods or services from a sole source and there are no other sources available following extensive search.

(b) The Procurement Commissioner, or where applicable, the Finance Director, certifies that the added cost of the contract or subcontract as a result of applying the provisions of this Chapter exceeds by ten percent (10%) or more what would have been the cost of the contract if it had been awarded to the otherwise lowest responsible bidder. *Any such certification shall include an explanation of the manner in which the calculation was determined.*

(c) The Procurement Commissioner, or where applicable, the Finance Director, certifies that applying the provisions of this Chapter will result in the loss of federal, state or similar funds or grants, or is otherwise prohibited by federal or state law. *Any such certification shall specify the funds or grants that would be lost, or federal or state law prohibiting application of this Chapter.*

(2) The Director of Finance may waive compliance by a City-related agency, in accordance with the foregoing exceptions, upon request of the agency and at the discretion of the Director of Finance. *Any such waiver shall include an explanation of the grounds therefor.*

[§ 17-1006.] § 17-1007. Penalties and Enforcement.

(1) Unless a contracting party can demonstrate that it has made every good faith effort to comply, any contracting party that fails to comply with the certification required by § 17-1002(a) and § 17-2002(b) shall be subject to suspension of contract payments[,]; termination of its contract; *payment of liquidated damages; loss of part or all of any performance bond or other bidder security; a requirement to compensate in future contracts for any shortfall in past ones; and/or a bar on participation in future city*

City of Philadelphia

BILL NO. 100495 continued

funded contracts or Financial Assistance. Suspension, termination, and the extent and duration of any contract bar *or other penalty*, shall be subject to the discretion of the Procurement Commissioner or the Director of Finance, as appropriate, in light of the severity or frequency of any violation and the extent of the contracting party's good faith, *provided that each penalty shall be imposed in a manner consistent with the regulations promulgated pursuant to § 17-1008.*

(2) The Procurement Commissioner or the Director of Finance, as appropriate, in assessing a contracting party's good faith compliance efforts, shall take into account the extent to which the contracting party has in place, and has attempted to comply with, the plans called for by [§ 17-1003(c)] § 17-1002(3)(d) and § 17-1003; and the extent to which the contracting party has made use of appropriate job training, apprenticeship and recruitment programs similar to those set forth in [§ 17-1003(c)] § 17-1002(3)(d).

(3) *The requirement of good faith effort applies to the certification requirements of § 17-1002(a) and § 17-1002(b) separately. Waiver requests must be brought separately with respect to § 17-1002(a) and § 17-1002(b), and the Procurement Commissioner or Director of Finance, as appropriate, shall consider each waiver request separately.*

§ 17-1008. Regulations.

(1) *The Procurement Department shall promulgate such regulations as it may deem necessary to aid in the administration and enforcement of the provisions of this Chapter, and shall submit any such regulations to the Mayor, the President of City Council, and the Chief Clerk of City Council when it submits them to the Department of Records as required by Section 8-407(a) of The Home Rule Charter. Those regulations shall at a minimum provide the following:*

(a) *Criteria for determining whether the "extensive search" requirement of § 17-1006(1)(a) has been met so as to justify the sole source exception authorized therein;*

(b) *Criteria for determining whether a contracting party has, pursuant to § 17-1007(1), "made every good faith effort to comply" with the certification requirements in § 17-1002;*

(c) *The factual circumstances that will result in each of the penalties specified in § 17-1007(1).*

§ 17-1009. Annual Report.

City of Philadelphia

BILL NO. 100495 continued

(1) *Not later than February 1 of each year, the Director of Finance shall issue a report in the writing to the Mayor, the President of City Council, and the Chief Clerk of City Council providing at a minimum the following information with respect to the prior calendar year:*

(a) *The total number of completed and the number of initiated covered contracts;*

(b) *The number and type of requests for waivers from the requirements of § 17-1002 received by the Procurement Commissioner or Director of Finance, the disposition of each such request, and the basis for that outcome;*

(c) *The number and types of contracts found to be out of compliance with the requirements of § 17-1002 and the penalty imposed as a result, with an explanation of the basis for that penalty;*

(d) *For each completed covered contract, the percentage and number of workers who were low- or moderate-income persons, the percentage and number of residents, and the percentage of hours worked by residents. With respect to each of the reporting requirements in this subsection, the report shall also indicate the breakdown between skilled and unskilled labor positions; and*

(e) *Recommended amendments to the provisions of this Chapter, if any.*

SECTION 2. This Ordinance shall apply to all covered contracts executed ninety (90) days or more after this Ordinance becomes law.

Explanation:

[Brackets] indicated matter deleted.

Italics indicate new matter added.

City of Philadelphia

BILL NO. 100495 continued