



City of Philadelphia

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

BILL NO. 120008

Introduced January 26, 2012

**Councilmembers Green, Jones, Goode, Blackwell, Council President
Clarke, Councilmembers Johnson, Quiñones Sánchez, Reynolds Brown
and O'Neill**

**Referred to the
Committee on Finance**

AN ORDINANCE

Amending Chapter 17-1000 of The Philadelphia Code, entitled “Employment of Low- and Moderate-Income Persons by City Contracts,” to require that a certain percentage of work hours performed under certain public construction and non-professional services contracts be performed by available City resident workers, and that businesses entering into such contracts submit an employment plan and report on workforce compliance; to add further requirements for employment of low and moderate income persons; all under certain terms, conditions and penalties.

WHEREAS, In 2001, City Council enacted Bill No. 000181-A, which added a new Chapter 17-1000 to The Philadelphia Code, requiring the employment of low- and moderate-income persons by certain city contractors; and

WHEREAS, The evidence, testimony and circumstances that underpinned City Council’s enactment of the “Employment of Low- and Moderate-Income Persons by City Contractors” ordinance still apply, and are incorporated herein by reference; and

WHEREAS, The rate of unemployment in Pennsylvania was 7.9 percent as reported by the U.S. Bureau of Labor Statistics in November 2011; however, during the same period, unemployment reached 10.9 percent in Philadelphia; and

WHEREAS, According to the U.S. Bureau of Labor Statistics, among the 11 counties that make up the Philadelphia-Camden-Wilmington, Pa.-N.J.-Del-Md. Metropolitan Statistical Area, Philadelphia is the only county that experienced an over-the-year

City of Philadelphia

BILL NO. 120008 continued

increase in the rate of unemployment between September 2009 and September 2011; during this period, the rate of unemployment increased by 0.6 percentage points; and

WHEREAS, While the rate of U.S. unemployment declined on average by 0.4 percentage points during the last year, in Philadelphia, the rate of unemployment rose 0.2 percentage points; and

WHEREAS, According to the U.S. Census, 27 percent of Philadelphians, or more than one in four residents, live below the poverty line; and

WHEREAS, The U.S. Census further reports that approximately 38 percent of all Philadelphia jobs are held by non-residents of the City of Philadelphia; and

WHEREAS, Studies show that non-resident workers spend less of their income in the area where it is earned, in contrast to resident workers who typically spend a larger percentage of their income supporting local businesses such as the neighborhood grocer, dry cleaner and other community businesses and thereby improve the local economy; and

WHEREAS, The rate of unemployment and poverty in Philadelphia increases or continues to be disproportionately higher than unemployment rates in surrounding jurisdictions when Philadelphia jobs, including public works jobs, are filled by non-residents rather than by qualified available resident workers; and

WHEREAS, The Philadelphia Code requires that most City employees establish bona fide residency in the City and the City desires to expand this residency requirement when it hires others by contract, to perform work on its behalf; and

WHEREAS, In expending its funds and resources, the City has a duty to its taxpayers to leverage its purchasing power in a manner that reduces unemployment and poverty among its residents and increases the overall economic benefits of its projects to its residents and businesses; and

WHEREAS, It is the goal and intent of the City of Philadelphia that jobs created by government-funded projects and other resources owned or controlled by the City be used to hire available residents in preference to non-resident workers in order to reduce unemployment, decrease poverty, increase employment opportunities for available residents and to produce overall economic benefits for all Philadelphians; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

City of Philadelphia

BILL NO. 120008 continued

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) *Available Resident.* An individual who is qualified, able to perform work, willing to perform work at a competitive wage, and who is a bona fide resident of the City of Philadelphia.

~~[(1)](2)~~ City. Includes the City and its departments, boards, commissions or agencies.

~~[(2)](3)~~ City-related Agency. All authorities, government agencies and quasi-public corporations which:

- (a) receive appropriations from the City;
- (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)](4)~~ Construction Contract. Any agreement for the erection, repair, demolition or alteration of any building, structure, bridge, roadway or other improvement to real property.

~~[(4)](5)~~ Covered ~~[Construction]~~ Contract. Any construction *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.

City of Philadelphia

BILL NO. 120008 continued

[(5)](6) 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)](7) 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 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.

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

§ 17-1002. *Bid 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 contract are low- or moderate-income persons, and*

(b) *That for the duration of the contract, the business responsible for performing the work shall make every good faith effort to employ Available Residents to perform one hundred percent (100%) of the total hours worked pursuant to the covered contract. The scope of “covered contracts” under this subsection may be further defined by regulation as provided in § 17-1008(1)(a).*

[(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 subsection (1)(a) and subsection (1)(b).*

City of Philadelphia

BILL NO. 120008 continued

(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 of current full-time employees who are low- or moderate-income persons.

(b) The percentage of workers previously hired on a temporary basis to work on construction contracts in the City who were low- or moderate-income persons.] *The total number of skilled, full time workers required to perform the covered contract and the total number of hours to be worked by such workers.*

(b) *The total number of unskilled, full time workers required to perform the covered contract and the total number of hours to be worked by such workers.*

(c) *The total number of skilled, part-time and temporary workers required to perform the covered contract and the total number of hours to be worked by such workers.*

(d) *The total number of unskilled, part-time and temporary workers required to perform the covered contract and the total number of hours to be worked by such workers.*

(e) *The total number of low- and moderate-income persons employed on the date of bid submission for a covered contract.*

(f) *The total number of bona fide Philadelphia residents employed on the date of bid submission for a covered contract.*

[(c)](g) The bidder's or contractor's plans for achieving compliance with the hiring requirements, including any plans to utilize the services of the Philadelphia

City of Philadelphia

BILL NO. 120008 continued

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 Requirements.

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 the number of and type of jobs created, the number of hours of work to be completed in performing the covered contract; and how the business will comply with the provisions of this Chapter 17-1000, including but not limited to, a description of the efforts that will be made to maximize employment opportunities for available 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.

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 working on the project to-date, and the percentage of hours worked on the project to-date by bona fide 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. Reports shall include:

(a) The percentage of skilled and unskilled, full time workers who are low- or moderate-income that worked under a covered contract during the present reporting period.

(b) The percentage of skilled and unskilled, full time workers who are bona fide residents of the City of Philadelphia that worked under a covered contract during the present reporting period.

City of Philadelphia

BILL NO. 120008 continued

(c) *The percentage of skilled and unskilled, part-time and temporary workers who are low- or moderate-income persons that worked under a covered contract during the present reporting period.*

(d) *The percentage of skilled and unskilled, part-time and temporary workers who are bona fide residents of the City of Philadelphia that worked under a covered contract during the present reporting period.*

§ 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 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 *Bid and Contract Requirements, Published Employment Plan 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) *After reviewing evidence submitted to the Procurement Commissioner, with respect to covered contracts to which the City is a party, or the Director of Finance, with respect to covered contracts to which the City is not a party, by the contractor that every good faith effort was made to comply with the provisions of § 17-1002(a) and (b), the Commissioner or Director certifies that workers who are low- and moderate-income persons or available residents are not available to perform the work under the covered contract awarded.*

(c) 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.*

City of Philadelphia

BILL NO. 120008 continued

[(c)](d) 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 therefore.*

[§ 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 the contract term required by § 17-1002(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 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(k) 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(k).

(3) *The requirement of every good faith effort applies to the certification requirements of § 17-1002(a) and the good faith requirements § 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.

City of Philadelphia

BILL NO. 120008 continued

(1) *The Procurement Department and the Director of Finance shall promulgate such regulations as they 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 a particular contract constituting a “Financial Assistance” award as defined by § 17-1001(6) is a City-controlled project and City-controlled grant of funds under the provisions of this Chapter, such that the requirements of § 17-1002(b) should apply.*

(b) *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;*

(c) *Criteria for determining whether low- and moderate-income persons and available residents are “not available” pursuant to §17-1006(1)(b) so as to justify the exception for unavailability authorized therein;*

(d) *Criteria for determining whether a contracting party has, pursuant to § 17-1007(1), “made every good faith effort to comply” with the certification requirements of § 17-1002 and the available resident hiring requirements § 17-1006(b);*

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

§ 17-1009. Annual Report.

Not later than February 1 of each year, the Director of Finance shall issue a report in 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;*

City of Philadelphia

BILL NO. 120008 continued

(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 total number of jobs created to perform the contract, the percentage and number of workers who were low- or moderate-income persons that worked on the covered contract, the percentage and number of available residents that worked on the covered contract, and the percentage and number of hours worked by bona fide residents to perform the contract. 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] indicate matter deleted.
Italics indicate new matter added.