



City of Philadelphia

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

BILL NO. 070001

Introduced January 23, 2007

Councilmember Blackwell

**Referred to the
Committee on Law and Government**

AN ORDINANCE

Amending Chapter 17-1400 of The Philadelphia Code, entitled “Non-Competitively Bid Contracts; Financial Assistance,” by requiring applicants for and recipients of non-competitively bid contracts and financial assistance to certify compliance with contract eligibility rules, and eliminating certain disclosure requirements for such applicants and recipients, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 17-1400 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 17-1400. NON-COMPETITIVELY BID CONTRACTS; FINANCIAL ASSISTANCE.

* * *

§17-1402. Open and Public Process Required For Non-Competitively Bid Contracts.

(1) A Non-Competitively Bid Contract shall be awarded in compliance with the following:

(a) A City Agency that seeks to enter into a Non-Competitively Bid Contract shall so notify the Procurement Department, and shall coordinate with the Procurement Department in carrying out the requirements of this Chapter. The Procurement Commissioner shall develop procedures to ensure that such contracts are advertised and

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approved in a timely, efficient and coordinated manner in the best interest of the City. The Procurement Commissioner shall develop applications, [disclosure] *certification* forms and procedures and guidelines to assist Applicants, Contractors and Disadvantaged Business Enterprises in complying with the provisions of this Chapter. The City Agency that seeks to enter into a Non-Competitively Bid Contract shall publish on the City's official website and file with the Procurement Commissioner, the Finance Director and the Commerce Director a notice of the availability of such contracting opportunity, and shall award such contract only to a party that completes an application form supplied by such City Agency, which application form shall contain all [disclosure] *certification* forms required by subsection (1)(b) and shall include a summary of the provisions and requirements of this Chapter. The required notices shall appear on the City's official website for at least fourteen days before the time by which application forms must be filed. The Procurement Commissioner, the Finance Director and the Commerce Director shall each keep a printed copy of all required notices in a registry organized by the date application forms must be filed, and make such registry available for public inspection during regular business hours. The required notices must be available for public inspection in such registries at least fourteen days before the time by which application forms must be filed. The required notices shall set forth:

* * *

(iv) The requirements of subsection (1)(b) that the Applicant [disclose the names of subcontractors the Applicant intends to use on the contract, the names of Consultants used to assist in securing the contract, certain contributions made by the Applicant and such Consultants, and the continuing disclosure requirements of subsection (1)(e) concerning such contributions made during and after the term of the contract] *certify compliance with the eligibility requirements of §17-1404*; and

* * *

(b) **Mandatory [Disclosures] *Certification*.**

(i) An Applicant must [disclose] *certify*, by completing and signing [disclosure] *certification* forms attached to the application [:], *that the Applicant is in compliance with the eligibility requirements of §17-1404 and will remain compliant with said requirements during the term of the contract.*

[(.1) The names, business addresses and phone numbers of all Consultants used by the Applicant with respect to the contract at issue within the year prior to the date the application must be filed, and the amount paid or to be paid to each such Consultant for such services, or certify that no Consultants were so used;

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(.2) All contributions of money or in-kind assistance made by the Applicant or by a Consultant during the two years prior to the date the application must be filed to any candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party in the Commonwealth of Pennsylvania, and the date and amount of each such contribution, or certify that no such contributions have been made. The attribution rules of §17-1405 shall apply to determine what contributions must be disclosed as contributions of the Applicant or of a Consultant under this subsection (1)(b);

(.3) The names, business addresses and phone numbers of all subcontractors the Applicant intends to use on the contract, and the amount or percentage to be paid to each such subcontractor.

(.4) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, asked the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant, to give money, services, or any other thing of value (other than a Contribution as defined in §17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in §17-1401) given to any Person in response to any such request. The Applicant shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(.5) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, directly or indirectly advised the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant that a particular Person could be used by the Applicant to satisfy any goals established in the contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Applicant shall also disclose the date the advice was provided, and the name of such particular Person.]

(ii) The City Agency awarding the contract shall forward a copy of all [disclosure] *certification* forms it receives to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(iii) No Non-Competitively Bid Contract shall be awarded unless all required [disclosure] *certification* forms are completed, signed and attached to the application for such contract and on file with the Mayor, Finance Director, Procurement Department, and the Department of Records.

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* * *

(d) If Council approval of a Non-Competitively Bid Contract is required under Section 2-309 or other provision of the Charter, then such contract must be specifically approved by ordinance. An ordinance approving a Non-Competitively Bid Contract shall include as exhibits:

* * *

(ii) A copy of the application form submitted by the Applicant to whom the contract is proposed to be awarded, together with a copy of all [disclosure] *certification* forms required to be submitted by such Applicant under subsection (1)(b); and

* * *

(e) Every Non-Competitively Bid Contract shall include [the following provisions:

(i) The Contractor shall] *a* covenant that during the term of the contract, [contributions will not be made that would render the Contractor ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of §17-1404(1)] *Contractor will remain in compliance with the eligibility requirements of §17-1404.* Breach of such covenant shall render the contract voidable at the City's option, and shall make the Contractor liable for liquidated damages to the City in the amount of 10% of the maximum payments to the Contractor allowed under the contract, regardless whether actually paid.

[(ii) The Contractor shall, during the term of such contract and for one year thereafter, disclose any contribution of money or in-kind assistance the Contractor or any Consultant has made during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within five business days of the contribution. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The

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attribution rules of §17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.]

[(iii) The Contractor shall, during the term of such contract and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in §17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in §17-1401) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within five business days after a request was made or a payment in response to a request was made, as the case may be. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.]

[(iv) The Contractor shall, during the term of such contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within five business days after the Contractor was so advised. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.]

(f) Every Non-Competitively Bid Contract shall include a representation and covenant by the Contractor that the Contractor's [disclosures] *certifications* required by subsection (1)(b) contain no material misstatements or omissions. Breach of such representation and covenant shall render the contract voidable at the City's option, and shall subject the Contractor to liquidated damages to the City in the amount of 10% of the total value of the payments to be made to the Contractor under the contract.

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[(2) Failure to Disclose Consultant Contributions.

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(a) It shall not be a violation of subsection (1)(b)(i)(.2) if an Applicant fails to disclose a contribution made by a Consultant because the Applicant was unable to obtain such information from the Consultant, provided the Applicant demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the contract, and before the Consultant communicated with a City Agency, official or employee on behalf of the Applicant;

(ii) Including in such agreement a provision requiring the Consultant to provide the Applicant in a timely manner with all information required to be disclosed under the provisions of this Chapter, and providing, in effect, that the agreement will be terminated by the Applicant if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Applicant as of the date of such termination;

(iii) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Applicant to comply with all provisions of this Chapter; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

(b) The contract provision required by subsection (1)(e)(ii) shall include provisions excusing the failure to disclose a Consultant's contributions during the term of the contract under the same terms and conditions set forth in subsection (2)(a).]

[(3)] (2) Nothing in this Chapter shall be construed to require the award of a Non-Competitively Bid Contract to the lowest responsible bidder, nor shall this Chapter be construed in any other way to limit the discretion of a City Agency in awarding or not awarding a Non-Competitively Bid Contract if the procedures required by this Chapter have been followed.

§17-1403. Public Information; Reporting.

(1) After a Non-Competitively Bid Contract has been executed, all applications for such contract shall become public information, except that the City Agency awarding such contract may redact proprietary information or other information protected by law prior to making such applications available for public inspection [, provided that the information required to be disclosed by §17-1402(1)(b) shall never be redacted].

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(3) On January 31, April 30, July 31 and October 31 of each year, a written report, signed by the Mayor, shall be filed by the Mayor with the President and Chief Clerk of Council, with a copy to the Department of Records and a copy published on the City's official website, setting forth for each Non-Competitively Bid Contract (except for contracts awarded by Council) under which goods were provided or services were rendered to the City during the three month period ending one month prior to the date the report must be filed, and for each contract for which reporting is required by §17-1406(1)(d):

* * *

(d) A copy of any [disclosure] *certification* forms filed in compliance with the requirement of §17-1402(1)(e) since the date of the last report.

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§17-1404. Eligibility for Non-Competitively Bid Contracts.

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(3) [Disclosure] *Certification* by Applicants for Financial Assistance.

(a) A Person seeking Financial Assistance shall file with the City Agency providing such assistance all [disclosure] *certification* forms that Applicants seeking Non-Competitively Bid City Contracts must file under §17-1402(1)(b).

(b) The City Agency providing the Financial Assistance shall forward a copy of all [disclosure] *certification* forms it receives to the Finance Director, and the Department of Records.

(c) No Financial Assistance shall be provided unless all required [disclosure] *certification* forms are completed, signed and filed with the City Agency providing such assistance and are on file with the Finance Director, and the Department of Records.

(d) If Council approval of the Financial Assistance is required by law, the ordinance approving such Financial Assistance must include as exhibits copies of all [disclosure] *certification* forms required by this subsection (3).

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(e) Every recipient of Financial Assistance shall, for a period of five years after receiving such assistance, be subject to the provisions of §17-1402(1)(e), requiring certain covenants and [disclosures] *certifications*, as if such recipient were a Contractor executing a Non-Competitively Bid Contract. The City Agency providing the Financial Assistance shall enter into such agreements with the recipient of Financial Assistance as the City Solicitor deems necessary to carry out the purpose and intent of this subsection.

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§17-1406. Sole Source Contracts, Emergencies, and Other Exceptions.

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(2) The provisions of §17-1402(1)(a), (1)(c) and (1)(e)[(i)], and the provisions of §17-1404, shall not apply with respect to contracts the Finance Director certifies in writing are for the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, provided that this exception shall not apply to Professional Services Contracts. All other provisions of this Chapter shall apply to such contracts [, except that the disclosures required by §17-1402(1)(b) need not be filed until fourteen days after a contract is executed].

(3) The provisions of §17-1402(1)(a) and (1)(c) shall not apply to a Non-Competitively Bid Contract if the Finance Director certifies in writing that delay in the award of such contract would cause a material threat to public health or safety. All other provisions of this Chapter shall apply to such contracts [, except that the disclosures required by §17-1402(1)(b) need not be filed until fourteen days after a contract is executed].

(4) The provisions of §17-1402(1)(a), (1)(c) and (1)(g) shall not apply to a Non-Competitively Bid Contract if the City Solicitor certifies in writing that such contract must be awarded immediately to avoid material damage to the legal interests of the City. All other provisions of this Chapter shall apply to such contracts [, except that the disclosures required by §17-1402(1)(b) need not be filed until fourteen days after a contract is executed].

(5) The provisions of §17-1402(1)(a) and (1)(c) shall not apply to Non-Competitively Bid Contracts in an amount less than that set forth in Section 8-200(2) of the Home Rule Charter, as such amount is adjusted from time to time, provided that such contracts are awarded only after the contracting agency conducts a competitive process designed to maximize competition without imposing an administrative burden more costly than appropriate given the size of the contract. All other provisions of this Chapter shall apply

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to such contracts [, except that the disclosures required by §17-1402(1)(b) need not be filed until fourteen days after a contract is executed].

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(8) The provisions of §17-1402(1)(a) and (1)(c) shall not apply to contracts with not-for-profit entities awarded by the Office of Housing and Community Development, the Department of Human Services, the Health Department, the Recreation Department, the Office of Emergency Shelter and Services, the Office of Behavioral Health and Mental Retardation, the Office of Adult Services, the Mayor’s Office of Community Services, the Philadelphia Prisons, the Commission on Disabilities, the Commission on Aging, or the Office of the District Attorney. All other provisions of this Chapter shall apply to such contracts [, except that the disclosures required by §17-1402(1)(b) need not be filed until fourteen days after a contract is executed].

§17-1407. Prohibited Conduct; Penalties; Remedies.

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(2) No Applicant shall make a material misstatement or omission in the [disclosures] *certifications* required by §17-1402(1)(b); and no Contractor shall make a material misstatement or omission in the [disclosures] *certifications* required by §17-1402(1)(e); and no Person seeking Financial Assistance shall make a material misstatement or omission in the [disclosures] *certifications* required by §17-1404(3)(a). If an Applicant makes material misstatements or omissions in the [disclosures] *certifications* required by §17-1402(1)(b), or if a Contractor makes material misstatements or omissions in the [disclosures] *certifications* required by §17-1402(1)(e), such Applicant or Contractor shall be prohibited from entering into any Non-Competitively Bid Contract for a period of from one to three years, and such act shall be subject to a fine of the Maximum Fine Amount, as defined herein. If a Person seeking Financial Assistance makes material misstatements or omissions in the [disclosures] *certifications* required by §17-1404(3)(a), such act shall be subject to a fine of the Maximum Fine Amount, as defined herein. For purposes of this subsection (2), the “Maximum Fine Amount” shall be seven hundred dollars (\$700) for violations committed during calendar year 2005; eleven hundred dollars (\$1,100) for violations committed during calendar year 2006; fifteen hundred dollars (\$1,500) for violations committed during calendar year 2007; nineteen hundred dollars (\$1,900) for violations committed during calendar year 2008; and two thousand dollars (\$2,000) for violations committed thereafter.

(3) The Finance Director shall provide a process by which a final written determination may be made as to whether an Applicant or Contractor has made a material misstatement or omission and is therefore debarred and subject to an action seeking the

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imposition of fines under subsection (2), which process shall include written notice to the Applicant or Contractor and an opportunity for the Applicant or Contractor to be heard prior to any final determination. In making such determination, the Finance Director shall not find that an Applicant or Contractor has made a material misstatement or omission in a [disclosure] *certification* required by this Chapter if such [disclosure] *certification* is attested to by a duly authorized agent who has made reasonable inquiry to determine all facts that must be [disclosed] *certified*, who has fully and accurately [disclosed] *certified* all facts revealed by such reasonable inquiry, and who has no actual knowledge of the misstatement or omission. A copy of every such written notice and final written determination shall be filed with the Department of Records. Upon receiving a final written determination, the Department of Records shall publish, in the same manner that notices are published under §17-1402(1)(a), a summary of such written determination, including the name of the applicant, the contract for which the applicant had applied, the findings as to material misstatement or omission set forth in the final determination, and the penalties to which the Applicant or Contractor is subject.

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Note:

[Bold brackets] indicate matter deleted.

Italics indicate matter added.