



# City of Philadelphia

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

**BILL NO. 070304**

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**Introduced April 19, 2007**

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**Councilmembers Greenlee and Ramos**

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

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## **AN ORDINANCE**

Repealing Section 17-101 of The Philadelphia Code, entitled “Prequalification of Prospective Bidders for Contracts for Construction of Public Works,” and enacting a new Section 17-101 of The Philadelphia Code, entitled “Prequalification of Responsible Contractors and Subcontractors for Public Works Contracts,” providing for a prequalification and approval process for all prospective contractors and subcontractors seeking to perform public works contracts by requiring that they meet certain standards, in areas including, but not limited to, past project performance, past compliance with the law, business integrity, technical qualifications and competency, financial responsibility, adequacy of resources, competent management, employment diversity and craft labor, and further providing that contractors and subcontractors meeting prequalification requirements be qualified for a period of three years, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Section 17-101 of The Philadelphia Code, entitled “Prequalification of Prospective Bidders for Contracts for Construction of Public Works” is hereby repealed in its entirety.

SECTION 2. A new Section 17-101 of The Philadelphia Code, entitled “Prequalification of Responsible Contractors and Subcontractors for Public Works Contracts,” is hereby enacted as follows:

### **CHAPTER 17-100. PROCUREMENT CONTRACTS.**

*§17-101. Prequalification of Responsible Contractors and Subcontractors for Public Works Contracts.*

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(1) *Purpose.* The purpose of this Section is to ensure that all prospective contractors and subcontractors, seeking to perform public works contracts, are responsible in that they are qualified to perform such contracts, by requiring that they undergo a prequalification application and approval process to ensure that they have satisfactory records regarding past project performance and that they satisfy certain criteria concerning present performance capabilities, including, but not limited to, technical competency, financial stability, apprenticeship training, workforce development and stability, and employment diversity. It is further intended that contractors and subcontractors meeting prequalification requirements be qualified for a period of three years.

(2) *Definitions.* The following definitions apply to this Section:

(a) *Applicant.* A contractor or subcontractor that submits a prequalification application to the Procurement Commissioner;

(b) *Class A Apprenticeship Program.* An apprenticeship program that has standards that are currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three of the past five years;

(c) *Commissioner.* The Procurement Commissioner;

(d) *Contractor.* A person, corporation, partnership or any other type of business entity that performs or seeks to perform work on a public works contract as a general contractor or prime contractor;

(e) *Department.* The Procurement Department;

(f) *Firm.* A contractor or subcontractor performing or seeking to perform work on a public works contract;

(g) *Public Works Contract.* Any building or construction work, under a contract with the City, including renovation, modernization, repair, alteration or remodeling, done on behalf of the City;

(h) *Subcontractor.* A person, corporation, partnership or any other business entity that performs or seeks to perform work on a public works contract as a subcontractor, at whatever tier, for a general contractor or prime contractor.

(3) *Prequalification Process.*

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*(a) In furtherance of the requirement of Section 8-200 of the Philadelphia Home Rule Charter that prospective bidders for public works contracts be responsible bidders, all contractors and subcontractors shall, as a condition of performing public works contracts, first be prequalified by the Department in accordance with the provisions of this Section.*

*(b) Other Contracts. To determine whether prospective bidders for a City contract, other than for public works are responsible bidders, the Department may require the bidders to submit such information as will enable the Department to ascertain their qualifications.*

*(c) Prequalification Application. The application form for prequalification required by this Section and any related forms and procedures for this process shall be prepared by the Department.*

*(.1) The Department shall require applicants to submit a certified prequalification application that shall include appropriate verification and documentation of the conditions and standards required by this Section. If an applicant fails to provide the required information, its application shall be denied.*

*(.2) In addition to information specified by this Section, regarding contractor responsibility requirements, the Department may request or reserve the right to request, in prequalification applications, or separately on a project by project basis, any additional information it deems necessary to ensure that prospective contractors and subcontractors are qualified, responsible firms for purposes of performing work on public works contracts or to ensure that prospective contractors and subcontractors have the capabilities or specialized experience to meet the needs of particular projects. For purposes of this subsection, additional information may include, but is not limited to, information concerning an applicant's general or specialized experience, record of performance on prior contracts, financial resources, equipment and plant facilities, organization and other resources, including personnel, existing workload, contract and bonding capacity and general or specialized experience.*

*(d) Prequalification Term. Once a firm's prequalification application is approved by the Department, the firm shall be prequalified for a period of three years.*

*(.1) It shall be the obligation of the prequalified firm to report any material changes to its business or operations that are relevant to its prequalification application or its capability to perform public works contracts successfully. Any such information must be reported within seven days of the firm's knowledge of the material change.*

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*(.2) It shall be the obligation of the prequalified firm to renew its prequalification in a timely manner.*

*(e) Application Review. The Department shall review and investigate contractor prequalification applications and shall approve applications that comply with the requirements of this Section, provided the Department is satisfied that the proposed firm has submitted the required information and supporting documents and otherwise has demonstrated that it meets minimum responsibility and qualification standards necessary to successfully perform public works contracts.*

*(.1) In conducting its review and investigation, the Department may consult with other City departments or agencies and consider any other relevant sources of information concerning the applicant firm. For good cause shown, a firm may be prequalified by the Department even where it does not satisfy all elements required in the prequalification application.*

*(.2) The Department shall notify applicants in writing of whether or not they have been approved as prequalified responsible firms.*

*(.3) Each firm approved for prequalification shall be assigned a designated prequalification number. Firms denied prequalification shall be notified in writing.*

*(.4) Nothing contained in this Section shall prohibit the Department from disqualifying any bidder at any time prior to the award of a City contract if the Department obtains information which, in its opinion, adversely affects the responsibility or qualifications of such bidder.*

*(f) Appeal. A firm denied prequalification under this Section may seek reconsideration of the determination by submitting a notice of appeal to the Commissioner.*

*(.1) An appeal submitted pursuant to this subsection shall be submitted in writing, within seven days of the date of the notice of the prequalification denial, and may present evidence supporting the applicant's appeal.*

*(.2) Appeals of prequalification denials shall be reviewed in a public hearing before a board of three members, to be composed of the Commissioner and two other City officials to be designated by the Managing Director.*

*(.3) The hearing officers shall review the responsibility of an applicant that has filed an appeal pursuant to this subsection, consider evidence*

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*presented by the applicant, as well as evidence provided by other parties or interested members of the public and render a decision on the appeal as soon as practicable.*

*(4) Prequalification Certifications. Prequalification applications, submitted pursuant to this Section shall, at a minimum, require a sworn certification by the applicant attesting to the facts specified in this subsection. In submitting a prequalification application:*

*(a) The applicant shall certify that, at the time of the submission of its prequalification application and for the duration of any public works contract it seeks to perform during the term of its prequalification, it shall:*

*(.1) Possess all technical qualifications and resources, including equipment, management, technical and craft labor personnel and financial resources necessary to perform the work required for the project, or will obtain them through the use of responsible, prequalified subcontractors.*

*(.2) Possess all valid, current licenses, registrations or other certificates required for the contractor or its employees by federal, state, or City law necessary for the type of work required for the project, including, but not limited to, licenses, registrations or certificates for any type of trade work or specialty work which the applicant seeks to self-perform.*

*(.3) Not have any outstanding liability to the City in the form of tax obligations, fines or other fees, unless it has entered into and is in compliance with a payment agreement with the City for such taxes, fines or fees.*

*(.4) Meet all bonding requirements, as required by applicable law or contract specifications, and all insurance requirements as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance requirements.*

*(.5) Participate in a Class A Apprenticeship Program for each separate trade or classification in which it employs craft employees, except truck drivers.*

*(.6) Provide binding grievance-arbitration procedures for employment disputes impacting craft labor employees.*

*(.7) Maintain equal employment opportunity policies in the recruitment, hiring and retention of all workers, including minority and women workers, employed in its performance of public works contracts. Such policies shall be designed and administered in a manner to promote diversity in the workplace, and the firm shall*

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*strive toward having a workforce that is representative of the population of the community.*

*(b) The applicant shall provide a detailed statement regarding related companies if, at any time during the past three years, the firm has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry. It will disclose such facts by attaching a detailed statement to its prequalification application explaining the nature of the relationship.*

*(c) The applicant shall certify that for the past three years:*

*(.1) The firm has not had any type of business, contracting or trade license, registration or certificate revoked or suspended;*

*(.2) The firm has not been debarred or suspended by any federal, state or local government agency;*

*(.3) The firm has not defaulted on any project;*

*(.4) The firm has not committed a willful violation of federal or state safety laws;*

*(.5) The firm has not been found in violation of any other law relating to its contracting business, including, but not limited to, wage and hour laws, environmental laws, antitrust laws or tax laws, where the penalty for such violation resulted in the imposition of fines, back pay damages or any other type of penalty in the amount of \$1,000 or more.*

*(d) The applicant shall certify that it understands that in performing public works contracts, it will be required to use only those subcontractors that have been prequalified in accordance with the requirements of this Section.*

*(e) The applicant shall certify that the application has been executed by a principal or person employed by the applicant who has sufficient knowledge and authority to address all matters in the prequalification application and include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.*

*(5) Administration of Prequalification Program.*

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*(a) Prequalification Application List. The Department shall post a list of the names and addresses of firms which have submitted prequalification applications on the City's official website.*

*(.1) This list shall be updated at least once a month. Full copies of prequalification applications shall be made available to the public by posting them on the City's official website or by other comparable means.*

*(.2) No prequalification application shall be approved by the Department until it has been available for public review and inspection for at least thirty days.*

*(.3) Any interested person or organization may submit a protest to a prequalification application, for good cause shown, by submitting a notice to the Commissioner, in writing, and providing evidence of the grounds for which prequalification should be denied.*

*(b) Approved Contractor Prequalification List. The Department shall publicly post a list of all prequalified firms on the City's official website. This list shall include the names, addresses and assigned prequalification numbers of prequalified firms and applicable dates of prequalification approval. This list shall be updated on a monthly basis.*

*(c) Prequalification Status Review. The Department shall review periodically, not less often than once a year, the performance of firms prequalified in accordance with this Section, to determine whether contractors are performing satisfactorily. Any interested person or organization may submit a protest to a firm's prequalified status, for good cause shown, by submitting a notice to the Commissioner, in writing, and providing evidence of the grounds for which prequalification should be suspended or revoked.*

*(d) Bids or proposals submitted by firms that are not prequalified shall be rejected and returned.*

*(6) Subcontractor Prequalification. Subcontractor prequalification requirements for public works contracts shall be administered as follows:*

*(a) Subcontractor Requirements. All subcontractors shall be prequalified in accordance with this Section prior to performing work on a public works contract.*

*(b) Subcontractor List. When submitting a bid on a public works contract, a contractor shall, at the time it submits its bid, submit a list of all subcontractors it will*

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*use on the prospective contract to the City department or agency responsible for the contract. This list shall include the name and address of each subcontractor, its assigned prequalification number and a brief description of the subcontractor's scope of work.*

*(c) Substitutions. A contractor may not substitute a subcontractor included on this list unless it obtains written authorization from the Procurement Department and the proposed substitute subcontractor has been prequalified in accordance with this Section.*

*(7) Administrative Regulations. The Department may develop such rules and regulations it deems necessary for the implementation and administration of this Section.*

*(8) Penalties. The penalties for violations of this Section are as follows:*

*(a) The failure of any firm to report material changes to its business or operations, pursuant to the requirements of subsection (3)(d)(.1) shall subject the firm to suspension or revocation of its prequalification status or such other penalties deemed appropriate by the Department.*

*(b) If it is determined by the Department that a firm has submitted false or misleading material information in connection with the prequalification requirements of this Section and did so knowingly or with reckless disregard of the truth or has omitted material information knowingly or with reckless disregard of the truth, the firm for which the certification was submitted shall be prohibited from performing work for the City for a period of up to five years and be subject to immediate contract termination and to such other penalties or sanctions available to the City at law or in equity. A contract terminated under these circumstances shall further entitle the City to withhold, as liquidated damages, payment of any monies due to the firm.*

*(c) The prequalified status of a firm may be suspended or revoked by the Department, and the firm may be subject to such other penalties deemed appropriate by the Department if, after a prequalification status review, under subsection (5)(c), the Department determines that the firm has failed to comply with any of the standards and requirements of this Section.*

*(d) A firm may appeal any penalty imposed under this subsection in accordance with the procedures set forth in subsection (3)(f).*

SECTION 3. This Ordinance shall become effective one hundred and eighty (180) days after it is enacted.



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**Explanation:**

*Italics indicate new matter added.*

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