



City of Philadelphia

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

BILL NO. 160199

Introduced March 10, 2016

**Councilmember Henon
for
Council President Clarke**

**Referred to the
Committee on Finance**

AN ORDINANCE

Amending Title 17 of The Philadelphia Code, entitled “Contracts and Procurement,” by adding language to bar the City from contracting with companies that use tax inversion or earnings stripping strategies to avoid paying taxes to the United States of America; 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 to read as follows:

TITLE 17. CONTRACTS AND PROCUREMENT.

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CHAPTER 17-100. PROCUREMENT CONTRACTS.

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§ 17-104. Prerequisites to the Execution of City Contracts.

(1) Definitions. For the purpose of this subsection, the following definitions shall apply:

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(m) *Tax Inversion Company.* Any corporation that was legally domiciled in the United States of America that relocated its legal domicile on or after July 1, 2016, to a lower-tax nation, or corporate haven, and that currently retains its material operations in the United States of America. The term also includes any company that employs an earnings stripping strategy, whereby the company uses loans between different divisions, or subsidiaries, of the same company to shift profits out of the United States of America's jurisdiction and into lower-tax foreign jurisdictions.

[(m)](n) Terminating Business in Iran or Sudan. Has produced a plan to end doing business in Iran or Sudan, as applicable, within one year and has been implementing its plan in good faith in order to disinvest or cease business operations over the twelve month period following adoption of the plan.

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(4) Prohibited Contracts.

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(c) *Tax Inversion Companies.* In the procurement of goods and services, no City Agency may accept any bid from, nor enter into an original or renewal contract with, nor purchase any product manufactured by a tax inversion company.

[(c)](d) Contract Requirements.

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(.3) Each City bid and contract must contain a clause stating the Business Entity is not a tax inversion company. Any contract, lease, grant condition or other agreement entered into by the City, or by any City-related Agency, shall contain a provision requiring the City-related Agency, in the procurement of goods and services purchased pursuant to such contract, lease, grant condition or other agreement with the City, to abide by the provisions of this subsection.

(.4) The false execution of a bid or contract in accordance with subsections 17-104(4)(c)(.1) or (.2) or (.3) shall result in the following:

(i) A prospective bidder shall be liable to the City in the amount of the bid surety provided by the bidder, as liquidated damages;

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(ii) A contractor shall be deemed to be in breach of its contract, for which the remedy shall be the cancellation or termination of the contract and the withholding of voucher payments due and owing under the contract; and

(iii) Business Entities that falsely execute a bid or contract shall be ineligible to bid on City contracts or subcontracts for a period of up to five (5) years.

([d] e) Notice. All invitations to bid, bid specifications, and contracts shall contain an appropriate notice and description of the duties, obligations, responsibilities, requirements, penalties, and sanctions imposed by this subsection.

([e] f) Waivers.

(.1) The Department may waive compliance with the provisions of subsection 17-104(4)(a) or (b) on one or more of the following grounds:

(i) The contract is for the purchase of goods and services from a sole source where there are no other sources available following extensive search certified to by the Procurement Commissioner;

(ii) The purchase or contract during any fiscal year is less than or equal to the City's formal contract amount;

(iii) The contract involves amendments to, or modifications of, contracts in existence on March 17, 1995 (with respect to the restrictions of subsection (a)) or January 1, 2010 (with respect to the restrictions of subsection (b)), and said amendments or modifications do not significantly alter the scope or extend the duration of the contract;

(iv) The contract is for the purchase of goods and services which are needed for the continued operation of equipment, mechanical or other systems that were purchased by the City prior to March 17, 1995 (with respect to the restrictions of subsection (a)) or January 1, 2010 (with respect to the restrictions of subsection (b)), and cannot be procured from any other source and is so certified by the Procurement Commissioner;

(v) The contract is for the purchase of goods and services which are necessary and essential to the protection of the public health and safety and cannot be procured from any other source and is so certified by the Procurement Commissioner;

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(vi) The contract is for the acquisition of news publication services, or for the acquisition of books, magazines or other publications;

(vii) The contract is for the acquisition of long distance telephone, telegraph or mail services;

(viii) The City may waive the prohibitions contained in subsection 17-104(4)(a) or (b) if the Procurement Commissioner certifies that the added cost to the City as a result of applying said prohibition exceeds ten percent (10%) of the otherwise lowest responsible bidder;

(ix) The City may waive the prohibitions contained in subsection 17-104(4)(a) or (b) if the Procurement Commissioner certifies that applying said prohibition may result in the loss of federal, state or similar funds or grants.

(.2) All waiver decisions including supporting documentation, shall be matters of public record. Copies of certifications by the Procurement Commissioner shall be forwarded to the President of City Council no later than one (1) week following award.

([f] g) Contracts with a federal or state chartered bank or holding or trust company or federal or state savings or building and loan association, thrift institution or any other institution permitted by state or federal law to receive deposits of money and to pay out such money through loans, draft accounts or the sale of financial institution securities shall not be subject to this subsection 17-104(4)(a) or (b), but shall be subject to Section 19-201 of The Philadelphia Code.

([g] h) Grievances. Any Business Entity aggrieved by the decision of the Department that the City may not contract with the Business Entity pursuant to subsection 17-104(4)(a) or (b), or that action shall be taken pursuant to subsection 17-104(4)(a) or (b), may request a hearing before the Department. Such request shall be in writing and shall be filed within twenty-four (24) hours after receipt of written notification by the Department of its decision.

([h] i) Rules and Regulations. The Department shall promulgate such rules, regulations and procedures as it may deem necessary to aid in the administration and enforcement of the provisions of this subsection 17-104(4). Such rules and regulations shall include, but not be limited to, the following:

(.1) Standards, guidelines and procedures for the granting of waivers in accordance with subsection 17-104(4)(e);

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(.2) Pre-qualification procedures for Business Entities that bid on contracts on a regular basis;

(.3) Procedures for investigating Business Entities bidding on, or awarded, contracts in order to ascertain the origins of their goods and products and determine whether the City may contract with said Business Entities pursuant to subsection 17-104(4)(a) or (b), including the gathering and interpretation of information received from public and private sources.

([i] j) Professional Service Contracts. The provisions of subsection 17-104(4) apply to contracts for the rendering of professional services. However, the enforcement of the provisions of this subsection 17-104(4) with respect to such contracts shall be the duty of the Director of Finance, and any powers and duties of the Procurement Department under this subsection 17-104(4) shall also constitute the powers and duties of the Director of Finance with respect to professional service contracts.

([j] k) City Related Agencies. Any 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 procurement of goods and services purchased pursuant to such contract, lease, grant condition or other agreement with the City, to abide by the provisions of subsection 17-104(4). Such provision shall require City approval for any waivers from compliance with the provisions of subsection 17-104(4)(a) or (b).

([k] l) Penalties. A vendor's failure to comply with any of the requirements of this subsection, or of any contract clause mandated by this subsection, shall be deemed a material breach by such vendor of its contract and the following sanctions and penalties shall be applied:

(.1) The cancellation or termination of the contract or subcontract and the withholding of voucher payments due and owing under the contract or subcontract; and

(.2) For a first offense, the imposition of a fine or penalty of not less than fifty (50) dollars nor more than one hundred (100) dollars per day for each day the violation persists; or

(.3) For a second offense, the imposition of a fine or penalty of not less than one hundred (100) dollars nor more than two hundred (200) dollars per day for each day the violation persists; or

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(.4) For a third offense, the imposition of a fine of not less than three hundred (300) dollars per day for each day the violation persists and denial of eligibility to bid on City Agency contracts for a period of not less than three (3) nor more than five (5) years.

([I] *m*) Enforcement. For the purpose of enforcement of the provisions of this ordinance, the Department shall subscribe to information reporting services on the Investor Responsibility Research Center (Washington, D.C.). Such reporting services shall be used by the Department to periodically review the degree of compliance by City contractors with the provisions of this ordinance. This report shall be made available to the public free of charge by request of the Procurement Department.

([m] *n*) Repeat Offenders. A vendor who, on more than two (2) occasions, fails to comply with any of the requirements of this subsection, or of any contract clause mandated by this subsection, shall be guilty of a separate offense of Repeat Violation, and for such Repeat Violation, shall be subject to a fine of not more than three hundred (300) dollars, or both. A person shall be guilty of a Repeat Violation regardless whether the third or subsequent violation occurs before or after a judicial finding of a previous violation, but only if the third or subsequent violation was intentional. Each violation, after the second, shall constitute a separate Repeat Violation offense.

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CHAPTER 17-1200. FOREIGN OUTSOURCING AND TAX INVERSION COMPANIES.

§ 17-1201. Foreign Outsourcing *and Tax Inversion Companies* Prohibited.

(*a*) No work performed for the City pursuant to a service contract with any City department, board or commission may be performed, in whole or in part, in any location other than in the United States or any of its territories or possessions.

(*b*) *No work performed for the City pursuant to a service contract with any City department, board, commission, or City related agency may be performed, in whole or in part, by a tax inversion company, as defined under Section 17-104 of this Title.*

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SECTION 2. Effective date. This Ordinance shall take effect on July 1, 2016.

Explanation:

Italics indicate new matter added.
[Brackets] indicate matter deleted.