

Legislation Text

File #: 160370, **Version:** 1

Amending Title 17 of The Philadelphia Code, entitled “Contracts and Procurement,” by adding provisions requiring the City Contractors to pay subcontractors promptly and setting forth an alternative process for prompt payment, all under certain terms and conditions.

WHEREAS, Philadelphia is the fifth largest city in the United States with a population of over 1.5 million people, 55% of whom are minorities; and

WHEREAS, Businesses owned by minorities, women and the disabled receive less than 12% of the contracts awarded by the City; and

WHEREAS, The City of Philadelphia’s current diversity and inclusion plan attempts to ensure that the economic opportunities of the City are afforded in accordance with the diversity of its population; and

WHEREAS, Representatives of government have made a commitment to working with private industry, building trades unions, educational institutions, chambers of commerce and nonprofit organizations, to improve economic inclusion for businesses owned by minorities, women and the disabled; and

WHEREAS, The City’s failure to timely pay its contractors results in delayed payments to businesses owned by minorities, women and the disabled performing as subcontractors; and

WHEREAS, Delayed payments to contractors requires subcontractors to finance payroll and materials for weeks or months while waiting for the City to pay its contractors, often forcing subcontractors into insolvency; and

WHEREAS, The use of a Joint Check Agreements is a best industry practice that can help them compete in the mainstream of the Philadelphia economy by providing access to operating capital; now, therefore,

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 17-1700.

PROMPT PAYMENT OF CITY VENDORS AND THEIR SUBCONTRACTORS.

§17-1701. Definitions.

(1) Procurement Contract. A contract under which the City procures goods or services, whether or not such contract is subject to competitive bidding.

(2) *Subcontractor.* A person providing goods or services under a contract with a Vendor.

(3) *Properly Executed Invoice.* An invoice prepared in accordance with the terms and conditions of the procurement contract.

(4) *Subcontractor Payment Directive Agreement.* An agreement between a Vendor, its subcontractor, and a funds administrator, where the Vendor agrees to make payments due the subcontractor by utilizing the funds administrator in order to ensure that the subcontractor's suppliers and lower tier subcontractors are paid.

[(2)](5) Vendor. A person providing goods or services under a Procurement Contract.

(6) *Funds Administrator.* An entity that, pursuant to a Subcontractor Payment Directive Agreement, assumes responsibility for making payments to the Vendor's subcontractors and such subcontractors' suppliers and lower tier subcontractors.

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§17-1703. Prompt Payment of Subcontractors.

(1) [It is the policy of the City of Philadelphia that any] *Any* subcontractor retained by a Vendor under a Procurement Contract should be paid promptly by the Vendor [after the Vendor receives payment from the City] *at the completion of its part of the project or upon submission of properly executed invoices.* [Council also finds with respect to Procurement Contracts subject to the "lowest responsible bidder" requirement that a Vendor who does not make prompt payments to its subcontractors is not a responsible bidder. In furtherance of that policy and that finding, all] *All* Procurement Contracts shall include provisions, in form approved by the City Solicitor, obligating the Vendor to carry out the following subcontractor "prompt payment" requirements:

(a) After a Vendor receives payment from the City, *and a properly executed invoice,* for labor, services, or materials furnished by a subcontractor retained by the Vendor, the Vendor shall pay the subcontractor within the same time period that the City was required to pay the Vendor (the "Prompt Payment Period").

(b) If a Vendor fails to make payments to a subcontractor within the Prompt Payment Period, the Vendor shall pay interest on any outstanding amounts at the rate of one and one-half percent (1.5%) per month or part of a month, beginning at the expiration of the Prompt Payment Period, except as follows:

(i) If the subcontractor has submitted an invoice to the Vendor and the invoice is incorrect, defective or otherwise improper, the Vendor shall within ten (10) days after receiving the invoice

notify the subcontractor that it must resubmit a corrected invoice. If the Vendor fails to so notify the subcontractor within such ten (10) day period, the invoice will be deemed correct as to form.

(ii) The Vendor may refuse to pay a subcontractor within the Prompt Payment Period if the Vendor in good faith believes that the subcontractor failed to perform its obligations to the Vendor in a proper manner, but only if the Vendor, within the Prompt Payment Period, provides written notice to the subcontractor detailing the subcontractor's failure to perform properly.

(c) The obligation of the Vendor to pay subcontractors promptly shall be passed along to all subcontractors and sub-subcontractors at any tier.

[(d) Agreements between a Vendor and a subcontractor and a subcontractor and a sub-subcontractor at any tier may include provisions for the resolution of any disputes arising under these "prompt payment" requirements.]

(2) Alternative Subcontractor Payment procedure. In lieu of the process outlined in §17-1703(1), a Vendor must give its Subcontractors the choice of entering into a Subcontractor Payment Directive Agreement where the Philadelphia Industrial Development Corporation ("PIDC") or other funds administrator and the Subcontractor have an agreement to pay all or part of a Subcontractor's approved invoices.

(3) Agreements between a Vendor and a Subcontractor and a subcontractor and a sub-subcontractor at any tier, may include provisions for the resolution of any disputes arising under these "prompt payment" requirements.

Explanation:

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