

Legislation Text

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Amending Chapter 17-1400 of The Philadelphia Code, entitled “Non-Competitively Bid Contracts; Financial Assistance,” by making revisions to definitions; to contract and reporting requirements; to exceptions; and to enforcement provisions; and making related changes to Section 20-613 of The Philadelphia Code, entitled “Ethics-Related Matters Incorporated as Part of this Chapter”; 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 amended to read as follows:

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

§ 17-1401. Definitions.

\* \* \*

(3) Candidate.

*(a) Except as provided in subsection (b), the term “Candidate” shall have the same meaning as in Chapter 20-1000, relating to Campaign Contributions and Expenditures.*

*(b) For purposes of sections 17-1402(1)(b) and 17-1402(1)(e)(ii), relating to disclosure of Contributions: As defined in section 1621 of the Pennsylvania Election Code, Act of 1937, June 3, P.L. 1333, 25 P.S. § 3241, as amended from time to time.*

\* \* \*

(8) *City-Related Agency. All authorities and quasi-public corporations which either: receive appropriations from the City, have entered into continuing contractual or cooperative relationships with the City, or operate under legal authority granted to them by City ordinance.*

[(8)] (9) Contribution. As defined in the Pennsylvania Election Code, 25 P.S. § 3241; *except that “Contribution” shall not include a contribution to a campaign committee with respect to a campaign for federal office, except where the subject of such campaign is also a candidate for, or an incumbent holding, City elective office at the time of the contribution.*

[(9) City-Related Agency. All authorities and quasi-public corporations which either: receive appropriations from the City, have entered into continuing contractual or cooperative relationships with the City, or operate under legal authority granted to them by City ordinance.]

(10) *Financial Assistance.* Any grant, loan, tax incentive, bond financing subsidy for land purchase or otherwise, or other form of assistance that is realized by or provided to a Person in the amount of fifty thousand dollars (\$50,000) or more through the authority or approval of the City, including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, use of the power of eminent domain, Community Development Block Grant (CDBG) aid or loans, airport revenue bonds, and Enterprise Zone or similar economic development zone designations (such as Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, Keystone Opportunity Improvement Zones, and Economic Development District Zones), but not including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such assistance.

[(10)] (11) *Immediate Family.* [As defined in § 20-601, or a Life Partner, as defined in § 9-1102.] A spouse or Life Partner residing in the individual's household; and minor dependent children of either or of the individual.

\* \* \*

(12) *Non-Competitively Bid Contract.* A contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of the Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a [contract (other than a renewal term pursuant to an option to renew contained in an executed contract).] contract.

\* \* \*

[(16)] *Financial Assistance.* Any grant, loan, tax incentive, bond financing subsidy for land purchase or otherwise, or other form of assistance that is realized by or provided to a Person in the amount of fifty thousand dollars (\$50,000) or more through the authority or approval of the City, including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, use of the power of eminent domain, Community Development Block Grant (CDBG) aid or loans, airport revenue bonds, and Enterprise Zone or similar economic development zone designations (such as Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, Keystone Opportunity Improvement Zones, and Economic Development District Zones), but not including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such 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:

\* \* \*

(b) *Mandatory Disclosures.*

(i) An Applicant must disclose, by completing and signing disclosure forms attached to the application:

\* \* \*

(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] *elective City* office [in the Commonwealth of Pennsylvania or to an individual who holds such office,] *or to an Incumbent*, or to any political committee or [state] party in the [Commonwealth of Pennsylvania] *City of Philadelphia*, 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] *City of Philadelphia*, *or any contribution covered by subsection (3) or (4) of § 17-1405 ("Attribution Rules")*, 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);

\* \* \*

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

(i) *For contracts in an amount greater than the amount set forth in § 17-1404(1)(a) (where the Contractor is an individual) or the amount set forth in § 17-1404(1)(b) (where the Contractor is a business):* The Contractor shall 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). 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] *an* amount [of] *up to* 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] *elective City* 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,] *City of Philadelphia*, or to any group, committee or association organized in support of any such candidate, office holder, political committee or [state party,] *party in the City of Philadelphia, or any contribution covered by subsection (3) or (4) of § 17-1405 ("Attribution Rules")*, 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.] *on the schedule set forth in subsection (v) below*. 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 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.] *on the schedule set forth in subsection (v) below.* 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] *on the schedule set forth in subsection (v) below.* 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.

(v) *The disclosure forms required by subsections (ii), (iii) and (iv), above, shall be filed by each of the following dates, provided that no form need be filed if no contributions, requests, payments or advice was made during the relevant filing period: January 15 (for the period November 1 through December 31 of the immediately preceding year), March 15 (for the period January 1 through the last day of February), May 15 (for the period March 1 through April 30), July 15 (for the period May 1 through June 30), September 15 (for the period July 1 through August 31), and November 15 (for the period September 1 through October 31).*

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

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(9) *The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract if the City Solicitor certifies that it is for a service the primary purpose of which is creative expression or entertainment, including public speakers, artists and musicians, except that all such contracts shall be included in the reports required under Section 17-1403.*

(10) *The provisions of this Chapter, other than the reporting requirements of Section 17-1403, shall not apply to a Non-Competitively Bid Contract for the services of a rating agency in connection with bond or similar financing; or for the purchase of liability insurance (City as named insured).*

(11) *The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract awarded by the Law Department, the District Attorney's Office or counsel for a City-Related Agency, whether awarded directly or through outside counsel, for the procurement of an expert opinion for purposes of litigation, except*

that all such contracts shall be included in the reports required under Section 17-1403 except to the extent inclusion in a report would disclose privileged material or jeopardize the City's or the agency's litigation interests.

(12) The provisions of § 17-1402(1)(a), (b) and (c) but not (d) except subsections (d)(i), (ii), and (iii) shall not apply to the following forms of renewal of a Non-Competitively Bid Contract:

(a) A renewal pursuant to an option to renew contained in a Non-Competitively Bid Contract.

(b) A renewal of a Non-Competitively Bid Contract, which contract contains an option to renew, so long as the City Solicitor certifies that the renewal is on substantially similar terms to those set forth in the contract prior to the renewal.

(c) A renewal of a Non-Competitively Bid Contract, so long as (i) the Director of Finance certifies that the City is working diligently pursuant to this Chapter to award a contract for similar services or materials and that the renewal is for no longer than necessary to complete such award; and (ii) the contracting agency certifies that the renewal will enable the City to continue to provide or receive important services or materials. A renewal pursuant to this subparagraph (c) should generally be for no longer than three months, and, absent a determination by the Director of Finance of extraordinary circumstances, shall be for no longer than six months.

(d) A renewal of a Non-Competitively Bid Contract, so long as (i) the City Solicitor certifies that the renewal is on substantially similar terms to those set forth in the contract prior to the renewal; and (ii) the Director of Finance certifies that the renewal is necessary to enable the other party to the contract to complete ongoing work on a discrete project and that changing the contractor prior to completion of the ongoing work would cause substantial hardship to the City. A renewal pursuant to this subparagraph (c) shall be for no longer than one year.

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

(1) A contract made in violation of § 17-1404 shall be voidable at the City's option.

(2) No Applicant shall make a material misstatement or omission in the disclosures required by § 17-1402(1)(b); and no Contractor shall make a material misstatement or omission in the disclosures required by § 17-1402(1)(e); and no Person seeking Financial Assistance shall make a material misstatement or omission in the disclosures required by § 17-1404(3)(a). If an Applicant makes material misstatements or omissions in the disclosures required by § 17-1402(1)(b), or if a Contractor makes material misstatements or omissions in the disclosures 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 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.] *as provided for in Chapter 20-1300 (“Penalties For Campaign Finance-Related And Ethics-Related Violations”)*.

(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 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 required by this Chapter if such disclosure is attested to by a duly authorized agent who has made reasonable inquiry to determine all facts that must be disclosed, who has fully and accurately disclosed all facts revealed by such reasonable inquiry, and who has no actual knowledge of the misstatement or omission. *Upon determination of a material misstatement or omission, the Finance Director shall refer the matter to the Board of Ethics for imposition of such fines as the Board deems appropriate.*

(4) 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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SECTION 2. Section 20-613 of The Philadelphia Code is amended to read as follows:

§ 20-613. Ethics-Related Matters Incorporated as Part of this Chapter.

(1) The following provisions of the Code are incorporated by reference as part of this Chapter and shall be subject to the jurisdiction of the Board of Ethics under § 20-606 (including, but not limited to, *with respect to subsection (b), below*, the Board's powers and duties relating to education, training, issuance of advisory opinions, receipt of complaints, investigations, referral, and adjudication), and violations of these provisions shall be subject to the penalties set forth in Chapter 20-1300:

(a) The provisions of § 17-1407(2) prohibiting certain persons from making material misrepresentations or omissions in disclosures required by Chapter 17-1400 (relating to Non-Competitively Bid Contracts) [and by Chapter 17-1300 (relating to Competitively Bid Contracts)], *as provided in § 17-1407(3)*.

(b) The provision of § 20-1006(4) prohibiting the failure to file information as required by § 20-1006 or the making of material misstatements or omissions in any filing required by that Section in Chapter 20-1000 (relating to Campaign Contributions and Expenditures).

SECTION 3. This Ordinance shall be effective January 1, 2020.

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**Explanation:**

[Brackets] indicate matter deleted.

*Italics* indicate new matter added.