



City of Philadelphia

Philadelphia, PA 19107

BILL NO. 040772

Introduced September 23, 2004

Councilmembers Nutter, Goode, Kenney and DiCicco

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

AN ORDINANCE

Amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by adding provisions regulating the process by which the City awards professional services contracts and other non-competitively bid contracts, and prohibiting persons from entering into such contracts or from receiving City financial assistance if they or certain related parties have made certain contributions to elected City officers or candidates for City offices, all under certain terms and condition.

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

* * *

CHAPTER 17-1200. NON-COMPETITIVELY BID CONTRACTS; FINANCIAL ASSISTANCE

§17-1201. Definitions.

- (1) Applicant. A Person who has filed an application to be awarded a Non-Competitively Bid City Contract.*
- (2) Business. A Person other than an individual.*
- (3) Charter. The Philadelphia Home Rule Charter.*

City of Philadelphia

BILL NO. 040772 continued

(4) *City Agency.* Any office, department, board, commission or other agency of the City of Philadelphia.

(5) *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.

(6) *Consultant.* Any Person used by an Applicant or Contractor to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving, payment from the Applicant or Contractor or any other Person; provided, however, that “Consultant” shall not include a full-time employee of the Applicant or Contractor.

(7) *Contractor.* A Person who has entered into a Non-Competitively Bid Contract with a City Agency.

(8) *Contribution.* As defined in the Pennsylvania Election Code, 25 P.S. §3241.

(9) *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 or a City-related Agency, 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

City of Philadelphia

BILL NO. 040772 continued

including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such assistance.

(10) Immediate Family. As defined in §20-601, or a Life Partner, as defined in §9-1102.

(11) Incumbent. An individual who holds an elective City office.

(12) Non-Competitively Bid City Contract. A contract to which the City or a City Agency is a party that is not subject to the lowest competitive bidding requirements of Section 8-200 of the Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract.

(13) Person. An individual, corporation, limited liability company, partnership, association, joint venture, or any other legal entity.

(14) Political Committee. Any committee, club, association, political party or other group of Persons which receives contributions or makes expenditures for the purpose of, but not limited to, influencing a municipal election.

(15) Professional Services Contract. A contract to which the City or a City Agency is a party that is not subject to the lowest competitive bidding requirements of Section 8-200 of the Charter because it involves the rendition of professional services, and any renewal of such a contract.

§17-1202. 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 publicly advertise the availability of such contracting opportunity, and shall award such contract only to a party that completes an application form supplied by such City

City of Philadelphia

BILL NO. 040772 continued

Agency, which application form shall contain all disclosure forms required by subsection (1)(b) and shall include a summary of the provisions and requirements of this Chapter. The required advertisements shall be published in the same manner that sealed bids are advertised under Section 8-200(2)(a) of the Charter, and shall set forth:

(i) The City Agency seeking to enter into the contract;
(ii) The nature of the goods or services being sought;
(iii) The requirement that no party may be awarded the contract unless it files an application form provided by the City Agency, and the manner and time by which such application forms must be filed;

(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 the term of the contract; and

(v) The criteria by which the selection will be made.

(b) Mandatory Disclosures.

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

(.1) The names, business addresses and phone numbers of all Consultants used by the Applicant 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;

City of Philadelphia

BILL NO. 040772 continued

(.2) *All contributions of money or in-kind assistance made by the Applicant or by a Consultant during the four 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, and the date and amount of each such contribution, or certify that no such contributions have been made. The attribution rules of §17-1205 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.*

(ii) *The City Agency awarding the contract shall forward a copy of all disclosure forms it receives to the Department of Records.*

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

(c) *After the City Agency has selected the Applicant with which it intends to contract, the City Agency shall publish a notice setting forth the names of all Applicants, the Applicant to which the contract will be awarded, and the basis for the award, including a statement as to whether the Applicant to be awarded the contract was the lowest bidder and if not, why the applications of all lower bidders were rejected. Such notice shall be published in the same manner as the advertisements published under*

City of Philadelphia

BILL NO. 040772 continued

subsection (1)(a), and shall be published at least one week before the contract is executed. No later than the date of publication, the City Agency shall file a copy of the notice with the President and Chief Clerk of Council.

(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:

(i) A copy of the advertisement required by subsection (1)(a);

(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 forms required to be submitted by such Applicant under subsection (1)(b); and

(iii) A copy of the notice required by subsection (1)(c).

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

(i) 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 §17-1204(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 amount of 10% of the total value of the payments to be made to the Contractor under the contract.

(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 to a candidate for nomination or election to any elective City office or to an Incumbent or to any group, committee or association organized in support

City of Philadelphia

BILL NO. 040772 continued

of any such candidate or Incumbent, and the amount of such contribution. Such disclosure shall be made on a form provided by such City Agency, 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 Department of Records. The attribution rules of §17-1205 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.

(f) Every Non-Competitively Bid Contract shall include a representation and covenant by the Contractor that the Contractor's disclosures 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.

(g) Every Non-Competitively Bid Contract shall be approved in writing by the Finance Director, the City Solicitor, and the Mayor prior to execution.

(2) Failure to Disclose Consultant Contributions.

(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;

City of Philadelphia

BILL NO. 040772 continued

(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) *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.*

§17-1203. 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 propriety information or other information protected by law*

City of Philadelphia

BILL NO. 040772 continued

prior to making such applications available for public inspection, provided that the information required to be disclosed by §17-1202(1)(b) shall never be redacted.

(2) *On the first working day of each month, the Mayor shall file a written report with the President and Chief Clerk of Council, with a copy to the Department of Records, setting forth for each Non-Competitively Bid Contract under which goods were provided or services were rendered to the City during the previous month, and for each contract for which reporting is required by §17-1206(1)(d):*

- (a) *The parties to the contract and the subject matter of the contract;*
- (b) *The term of the contract and the length of the term remaining;*
- (c) *The total amount of the contract and the total of all payments that have been made under such contract to date; and*
- (d) *A copy of any contribution disclosure forms filed in compliance with the requirement of §17-1202(1)(e)(ii) since the date of the last report.*

(3) *Any document that must be filed with the Department of Records under this Chapter shall be kept on file and available for public inspection during regular office hours.*

§17-1204. Eligibility for Non-Competitively Bid City Contracts and Financial Assistance.

(1) *Determining Eligibility.*

(a) *If an individual makes contributions in excess of \$1,000 in the aggregate during a calendar year to a candidate for nomination or election to any elective City office or to an Incumbent, then, during the term of office to which such candidate is elected or during the Incumbent's term of office, the individual shall not be eligible to apply for or to enter into any Non-Competitively Bid City Contract in excess of \$10,000,*

City of Philadelphia

BILL NO. 040772 continued

nor shall said individual be eligible to be a sub-contractor of any such contract, nor shall the individual be eligible to receive Financial Assistance.

(b) If a Business makes a contribution in excess of \$5,000 in the aggregate during a calendar year to a candidate for nomination or election to any elective City office or to an Incumbent, then, during the term of office to which any such candidate is elected or during the Incumbent's term of office, the Business shall not be eligible to apply for or to enter into any Non-Competitively Bid City Contract in excess of \$10,000, nor shall said Business be eligible to be a sub-contractor of any such contract, nor shall the Business be eligible to receive Financial Assistance.

(2) The attribution rules of §17-1205 shall apply to determine the amount of contributions made by an individual or Business for purposes of subsection (1).

(3) Disclosure by Applicants for Financial Assistance.

(a) A Person seeking Financial Assistance shall file with the City Agency providing such assistance all disclosure forms that Applicants seeking Non-Competitively Bid City Contracts must file under §17-1202(1)(b).

(b) The City Agency providing the Financial Assistance shall forward a copy of all disclosure forms it receives to the Department of Records.

(c) No Financial Assistance shall be provided unless all required disclosure forms are completed, signed and filed with the City Agency providing such assistance and are on file with 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 forms required by this subsection (3).

City of Philadelphia

BILL NO. 040772 continued

§17-1205. Attribution Rules. The following attribution rules shall apply throughout this Chapter to determine what contributions shall be considered to be contributions of an Applicant, Consultant, Contractor, or Person seeking Financial Assistance:

(1) Contributions made by a member of an individual's Immediate Family shall be considered to be contributions made by the individual.

(2) The following shall be considered a contribution by a Business:

(a) A contribution made by any parent, subsidiary, or otherwise affiliated entity of a Business ("affiliate");

(b) A contribution made by any Person for which they are reimbursed by such Business or affiliate;

(c) A contribution from an officer, director, controlling shareholder or partner of such Business or affiliate;

(d) A contribution by a political action committee controlled by the Business or affiliate, or controlled by an officer, director, controlling shareholder or partner of such Business or affiliate.

(3) A contribution in excess of \$1,000 in the aggregate during a calendar year to any political committee which, during the calendar year in which the contribution is made, itself makes contributions or gives financial support in excess of fifty percent of the committee's total receipts for that calendar year to a particular candidate for nomination or election to any elective City office or to a particular Incumbent, shall be considered a contribution to such candidate or Incumbent.

(4) Any other contribution made not directly to a candidate for nomination or election to any elective City office or Incumbent, but with the purpose and intent that the entity to whom the contribution is made will, directly or indirectly, make such

City of Philadelphia

BILL NO. 040772 continued

contribution available to such candidate or Incumbent, shall be considered a contribution to such candidate or Incumbent.

§17-1206. Exception for Sole Source Contracts.

(1) The provisions of this Chapter shall not apply to contracts for the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, provided:

(a) The Procurement Commissioner certifies in writing that the contract is for the purchase of a unique article or an article which for any other reason cannot be obtained in the open market, and sets forth in such certification the basis for that conclusion;

(b) The contract is approved in writing by the Finance Director, the City Solicitor, and the Mayor;

(c) The disclosures provisions of §17-1202(1)(b) shall apply to all such contracts; and

(d) A list of all such contracts is included as part of the monthly report required under §17-1203(2).

(2) The exception provided by this Section shall not apply to any Professional Services Contract.

§17-1207. Penalties; Remedies.

(1) A contract made in violation of §17-1204 shall be voidable at the City's option.

(2) If an Applicant makes material misstatements or omissions in the disclosures required by §17-1202(1)(b), or if a Contractor makes material misstatements or omissions in the disclosures required by §17-1202(1)(e)(ii), such Applicant or Contractor

City of Philadelphia

BILL NO. 040772 continued

shall be prohibited from entering into any Non-Competitively Bid City Contract for a period of three years, and shall be subject to a fine of three hundred dollars (\$300). If a Person seeking Financial Assistance makes material misstatements or omissions in the disclosures required by §17-1204(3)(a), such Person shall be subject to a fine of three hundred dollars (\$300).

(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 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. 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 advertisements are published under §17-1202(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.

§17-1208. City-related Agencies.

(1) Any contract, lease, grant or other agreement (“City agreement”) entered into by the City with any City-related Agency shall contain a provision requiring that the City-related Agency abide by the provisions of this Chapter in awarding any contracts or providing any Financial Assistance in connection with its City agreement, as though such contracts and the provision of Financial Assistance were directly subject to the provisions of this Chapter.

City of Philadelphia

BILL NO. 040772 continued

SECTION 2. Effective Date; Applicability.

(a) This ordinance shall take effect upon the effective date of the amendment to Section 8-200 of the Philadelphia Home Rule Charter proposed by Resolution No. 040818.

(b) The provisions of §17-1204 of The Philadelphia Code added by Section 1 of this ordinance prohibiting the award of non-competitively bid contracts and the provision of financial assistance to persons who made certain contributions to candidates and incumbents, shall apply only with respect to contributions made on and after January 1, 2005. However, contributions made prior to January 1, 2005 shall be subject to the disclosure requirements of §§17-1202(1)(b), 17-1202(1)(e)(ii) and 17-1204(3)(a) of The Philadelphia Code added by Section 1 of this ordinance.

(c) The provisions of §17-1203(2) of The Philadelphia Code added by Section 1 of this ordinance, requiring the filing of a monthly report concerning certain contracts, shall apply to contracts in existence at the time this ordinance takes effect.

Explanation:

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