City of Philadelphia

(Bill No. 040772-AA)

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

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CHAPTER 17-1200. NON-COMPETITIVELY BID CONTRACTS

§17-1201. Definitions.

(1) Applicant. A Person who has filed an application to be awarded a Non-Competitively Bid Contract.

(2) Business. A Person other than an individual.

(3) Candidate. As defined in the Pennsylvania Election Code, 25 P.S. §3241.

(4) Charter. The Philadelphia Home Rule Charter.

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

(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) 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) 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 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).

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

(14) Political Committee. As defined in the Pennsylvania Election Code, 25 P.S. §3241.

(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, including any

renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed 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 so notify the Procurement Department, and shall coordinate with the Procurement Department in carrying out the requirements of this Chapter. The Procurement Commissioner shall develop procedures to ensure that such contracts are advertised and approved in a timely, efficient and coordinated manner in the best interest of the City. The Procurement Commissioner shall develop applications, disclosure forms, and procedures and guidelines to assist Applicants, Contractors and Disadvantaged Business Enterprises in complying with the provisions of this Chapter. The City Agency that seeks to enter into a Non-Competitively Bid Contract shall publish on the City's official website and file with the Procurement Commissioner, the Finance Director and the Commerce Director a notice of the availability of such contracting opportunity, and shall award such contract only to a party that completes an application form supplied by such City 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 notices shall appear on the City's official website for at least fourteen days before the time by which application forms must be filed. The Procurement Commissioner, the Finance Director and the Commerce Director shall each keep a printed copy of all required notices in a registry organized by the date application forms must be filed, and make such registry available for public inspection during regular business hours. The required notices must be available for public inspection in such

registries at least fourteen days before the time by which application forms must be filed. The required notices 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 and after 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 with respect to the contract at issue 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;

(.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 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 in the Commonwealth of Pennsylvania, 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.

(.4) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, asked the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant, to give money, services, or any other thing of value (other than a Contribution as defined in §17-1201) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in §17-1201) given to any Person in response to any such request. The Applicant 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.

(.5) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, directly or indirectly advised the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant that a particular Person could be used by the Applicant to satisfy any goals established in the contract for the participation of minority,

women, disabled or disadvantaged business enterprises. The Applicant shall also disclose the date the advice was provided, and the name of such particular Person .

(ii) The City Agency awarding the contract shall forward a copy of all disclosure forms it receives to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(iii) No Non-Competitively Bid 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 Mayor, Finance Director, Procurement Department, and 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 on the City's official website 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 appear on the City's website for at least one week before the contract is executed. No later than the date the notice first appears on the City's website, the City Agency shall file a copy of the notice with the President and Chief Clerk of Council, and the Mayor, Finance Director, Procurement Department, and Department of Records.

(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 notice 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 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 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 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. 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 §17-1205 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 §17-1201) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in §17-1201) 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. 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. 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.

(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 Procurement Commissioner, the Finance Director, and the City Solicitor prior to execution, except that Non-Competitively Bid Contracts entered into by Council shall require only the approval in writing of the Council President prior to execution.

(h) No Non-Competitively Bid Contract shall be amended to increase the amount to be paid under the contract by more than twenty percent (20%) or by more than $25,000, whichever is greater, unless such amendment is approved in writing by the Procurement Commissioner, the Finance Director, and the City Solicitor prior to execution, except that such amendments to Non-Competitively Bid Contracts entered into by Council shall require only the approval in writing of the Council President prior to execution. The City Agency seeking to amend the contract shall publish on the City's official website a notice identifying the contract and explaining the need for the amendment. Such notice shall appear on the City's website for at least one week prior to execution of the amendment, and no later than the day the notice first appears on the

City's website, the City Agency shall send a copy of the notice to the President and Chief Clerk of Council, and to the Mayor and Department of Records.

(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;

(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 proprietary information or other information protected by law 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) At least thirty (30) days before the start of each fiscal year, a written report, signed by the Mayor, shall be filed by the Mayor with the President and Chief Clerk of Council, with copies sent to the Procurement Commissioner, the Finance Director, the Commerce Director, and the Department of Records and published on the City's official website, listing for each City Agency (other than Council) the number of Non-Competitively Bid Contracts the City Agency anticipates awarding in the upcoming fiscal year (to the extent known at the time the report is filed) and for each such contract:

(a) The subject matter of the contract;

(b) The term of the contract; and

(c) The total dollar amount of the contract.

The Procurement Commissioner, Finance Director and Commerce Director shall each make a copy of the report available for public inspection during regular business hours at the same place the registry of notices required by subsection 17-1202(1)(a) is kept.

(3) On January 31, April 30, July 31 and October 31 of each year, a written report, signed by the Mayor, shall be filed by the Mayor with the President and Chief Clerk of Council, with a copy to the Department of Records and a copy published on the City's official website, setting forth for each Non-Competitively Bid Contract (except for contracts awarded by Council) under which goods were provided or services were rendered to the City during the three month period ending one month prior to the date the report must be filed, 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 dollar 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 disclosure forms filed in compliance with the requirement of §17-1202(1)(e) since the date of the last report.

(4) By September 30 of each year, the Mayor shall file an annual report with the President and Chief Clerk of Council, and the Department of Records (with a copy also published on the City's official website) summarizing the award of Non-Competitively Bid Contracts (other than contracts awarded by Council) during the prior fiscal year. Such report shall be signed by the Mayor, and shall list for each City Agency (other than Council) the number of contracts awarded by type of contract, the total dollar amount of such contracts, and the total payments made under such contracts. The report shall also include the Finance Director's analysis of the City's experience with the requirements of

this Chapter during the previous fiscal year, and the Finance Director's recommendations, if any, to amend the requirements of this Chapter or otherwise to improve the procurement process to ensure efficiency, economy and productivity, including the use of innovative means of procurement that will be competitive and in the best interest of the City.

(5) The Council President shall sign and file the reports required by subsections (2), (3) and (4) in the same manner, form and content as required in those subsections, with respect to Non-Competitively Bid Contracts awarded or to be awarded by Council.

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

§17-1204. Eligibility for Non-Competitively Bid Contracts .

(1) Determining Eligibility.

(a) If an individual makes contributions in excess of $2,500 (as such amount is adjusted from time to time under §17-1204(1)(c)) 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 Contract in excess of $10,000, nor shall said individual be eligible to be a sub-contractor (at any tier) of any such contract.

(b) If a Business makes a contribution in excess of $10,000 (as such amount is adjusted from time to time under §17-1204(1)(c)) 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 Contract in excess of $25,000, nor shall said Business be eligible to be a sub-contractor (at any tier) of any such contract.

(c) On January 1, 2008 and on January 1 every four years thereafter, the maximum amounts set forth in §17-1204(1)(a) and (b) shall be adjusted, as follows. On the December 15 immediately preceding the adjustment, the Finance Director shall calculate the "CPI Multiplier" by dividing the average consumer price index for Philadelphia during the then-current calendar year by the average consumer price index for Philadelphia during calendar year 2005. To determine the average consumer price index for Philadelphia, the Finance Director shall use the latest available figures for the Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, as measured by the United States Department of Labor, Bureau of Labor Statistics. After calculating the CPI Multiplier, the Finance Director shall calculate the new maximum amounts, as follows:

(i) The maximum amount for purposes of §17-1204(1)(a) shall equal $2,500, multiplied by the CPI Multiplier, rounded to the nearest $100.

(ii) The maximum amount for purposes of §17-1204(1)(b) shall equal $10,000, multiplied by the CPI Multiplier, rounded to the nearest $100.

The Finance Director shall certify the new maximum amounts in writing to the Mayor, the Council President and Chief Clerk of Council.

(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).

§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, or Contractor:

(1) Contributions made by a member of an individual's Immediate Family shall be considered to be contributions made by the individual, but only if such contribution exceeds the maximum amount specified in §17-1204(1)(a). Only the amount of such contribution in excess of such maximum amount shall be attributed to 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, except that this provision shall not apply to not-for-profit Businesses or affiliates;

(d) A contribution by a political action committee controlled by the Business or affiliate;

(e) A contribution by a political action committee controlled by an officer, director, controlling shareholder or partner of such Business or affiliate (other than a not-for-profit Business or affiliate).

(3) A contribution 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. A contribution to a political committee that has listed the names of any candidates on a registration statement filed pursuant to the Election Code (25 P.S. §3244) shall be considered a contribution to each such candidate.

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

(5) Any contribution solicited by a Person shall be considered a contribution by such Person, and if a Person sponsors or hosts a fundraising event, then any contributions raised at such event shall be considered to be contributions by such Person. Any contribution solicited by an officer, director, controlling shareholder or partner of a Business or affiliate (other than a not-for-profit Business or affiliate) shall be considered a contribution by such Business, and if any officer, director, controlling shareholder or partner of a Business or affiliate (other than a not-for-profit Business or affiliate) sponsors or hosts a fundraising event, then any contributions raised at such event shall be considered to be contributions by such Business.

(6) Any contribution for which a Person is an intermediary shall be considered as a contribution by such Person, and any contribution for which an officer, director, controlling shareholder or partner of a Business or affiliate (other than a not-for-profit Business or affiliate) is an intermediary shall be considered a contribution by such Business. For purposes of this subsection, an "intermediary" means a Person who, other than in the regular course of business as a postal, delivery or messenger service, delivers a contribution from another Person to the recipient of such contribution.

§17-1206. Sole Source Contracts, Emergencies, and Other Exceptions.

(1) Any provision of this Chapter may be waived if the Finance Director certifies in writing that compliance with such provision may lead to the loss of federal, state or

similar grant funds, or if the City Solicitor certifies in writing that application of such provision would violate federal or state law.

(2) The provisions of §17-1202(1)(a), (1)(c) and (1)(e)(i), and the provisions of §17-1204, shall not apply with respect to contracts the Finance Director certifies in writing are for the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, provided that this exception shall not apply to Professional Services Contracts. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by §17-1202(1)(b) need not be filed until fourteen days after a contract is executed.

(3) The provisions of §17-1202(1)(a) and (1)(c) shall not apply to a Non-Competitively Bid Contract if the Finance Director certifies in writing that delay in the award of such contract would cause a material threat to public health or safety. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by §17-1202(1)(b) need not be filed until fourteen days after a contract is executed.

(4) The provisions of §17-1202(1)(a), (1)(c) and (1)(g) shall not apply to a Non-Competitively Bid Contract if the City Solicitor certifies in writing that such contract must be awarded immediately to avoid material damage to the legal interests of the City. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by §17-1202(1)(b) need not be filed until fourteen days after a contract is executed.

(5) The provisions of §17-1202(1)(a) and (1)(c) shall not apply to Non-Competitively Bid Contracts in an amount less than that set forth in Section 8-200(2) of the Home Rule Charter, as such amount is adjusted from time to time, provided that such contracts are awarded only after the contracting agency conducts a competitive process designed to

maximize competition without imposing an administrative burden more costly than appropriate given the size of the contract. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by §17-1202(1)(b) need not be filed until fourteen days after a contract is executed.

(6) The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract with a governmental agency or with a not-for-profit corporation established by the City, except that all such contracts shall be included in the reports required by §17-1203.

(7) All written certifications required under this Section shall set forth the basis for such certification, and shall be filed with the Department of Records.

(8) The provisions of §17-1202(1)(a) and (1)(c) shall not apply to contracts with not-for-profit entities awarded by the Office of Housing and Community Development, the Department of Human Services, the Health Department, the Recreation Department, the Office of Emergency Shelter and Services, the Office of Behavioral Health and Mental Retardation, the Office of Adult Services, the Mayor's Office of Community Services, the Philadelphia Prisons, the Commission on Disabilities, the Commission on Aging, or the Office of the District Attorney. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by §17-1202(1)(b) need not be filed until fourteen days after a contract is executed.

§17-1207. Prohibited Conduct; Penalties; Remedies.

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

(2) No Applicant shall make a material misstatement or omission in the disclosures required by §17-1202(1)(b); and no Contractor shall make a material misstatement or omission in the disclosures required by §17-1202(1)(e). 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), 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. 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.

(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. 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 §17-1202(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 pursuant to its City agreement, as though such contracts were directly subject to the provisions of this Chapter, except that the exception set forth in §17-1206(8) shall apply to such City-related Agency as if such City-related agency were listed in that subsection. Each City agreement shall also include a provision detailing how the City-related Agency is to carry out its duties under this Section, including, but not limited to, specifying who at the City-related Agency is responsible for carrying out duties that this Chapter assigns to City officers and employees.

SECTION 2. Effective Date; Applicability.

(a) This ordinance shall take effect February 1, 2006, but only if the amendment to Section 8-200 of the Philadelphia Home Rule Charter proposed by Resolution No. 050428 is approved by the voters, and only with respect to contracts executed on and after February 1, 2006 for which the City had not issued a request for proposals prior to February 1, 2006.

(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 to persons who made certain contributions to candidates and incumbents, shall apply only with respect to contributions made on and after January 1, 2006. However, contributions made prior to

January 1, 2006 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(3) of The Philadelphia Code added by Section 1 of this ordinance, requiring the filing of a quarterly report concerning certain contracts, shall apply to contracts in existence at the time this ordinance takes effect.

(d) No later than six months after the date this ordinance becomes law, the Managing Director shall file a report with the Mayor and the President and Chief Clerk of Council recommending methods by which those agencies listed in the exemption set forth in §17-1206(8) of The Philadelphia Code added by Section 1 of this ordinance may revise their contracting practices to achieve a more transparent process that will expand contracting opportunities, including opportunities for local and disadvantaged business enterprises, consistent with the goal of restoring the public's faith in the City no-bid contract award process.

Explanation:

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

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 26, 2005. The Bill was Signed by the Mayor on June 9, 2005.

Patricia Rafferty

Patricia Rafferty
Chief Clerk of the City Council