COUNCIL OF THE CITY OF PHILADELPHIA

COMMITTEE ON COMMERCE AND

ECONOMIC DEVELOPMENT

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, November 27, 2007
9:30 a.m.

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PRESENT:
COUNCILMAN W. WILSON GOODE, JR., CHAIR
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN FRANK DiCICCO
COUNCILMAN JUAN RAMOS
COUNCILWOMAN BLONDELL REYNOLDS BROWN

BILL 070910 - An ordinance amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by adding provisions requiring the City to pay its vendors promptly...

BILL 070911 - An ordinance amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by increasing the threshold amount that invokes requirement of the Economic Opportunity Plan...

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COUNCILMAN GOODE: Good morning. This hearing is called to order. This is a public hearing of the Commerce and Economic Development Committee on Bill Nos. 070910 and 070911. My name is W. Wilson Goode, Jr., Chair of the Committee.

I note that a quorum is present. To my left is Councilwoman Blondell Reynolds Brown, also Councilman Juan Ramos. To my right is Vice-Chair of the Committee, Frank DiCicco, also Councilman Darrell Clarke.

The title of Bill No. 070910, an ordinance amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by adding provisions requiring the City to pay its vendors promptly and requiring City vendors to pay their subcontractors promptly, all under certain terms and conditions.

The title of Bill No. 070911, an ordinance amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by increasing the threshold amount that involves requirement of the Economic Opportunity Plan, and excepting single family households, all under certain terms and conditions.

We will deal with 911 first, and I will ask our first witness to approach the witness table, Ms. Janet Hagan, Procurement Commissioner.

COMMISSIONER HAGAN: Good morning, Chairperson Goode and members of the Committee on Commerce and Economic Development. I am Janet Hagan, Acting Procurement Commissioner, and I am here to testify in support of Bill 070911 amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by increasing the threshold amount that involves requirement of the Economic Opportunity Plan, and excepting single family households, all under certain terms and conditions.

The Procurement Department will

include a prototype Economic Opportunity Plan, developed by MBEC, in service, concession and public works construction bid documents covered by this bill, which are reasonably anticipated to cost the City of Philadelphia more than a million dollars.

This concludes my testimony. Thank you.

COUNCILMAN GOODE: Are there any questions for this witness?

(No response.)

COUNCILMAN GOODE: Is there anyone else to testify on this particular bill?

(No response.)

COUNCILMAN GOODE: Thank you. Ms. Hagan, you may offer testimony on Bill 910 as well.

COMMISSIONER HAGAN: Yes. Good morning again, Chairperson Goode and members of the Committee on Commerce and Economic Development. I am Janet Hagan, Acting Procurement Commissioner, and I am prepared to give testimony concerning Bill No. 070910 and its impact on competitively bid City contracts that are awarded by the Procurement Department. Although "Procurement Contract" is defined in Section 17-1701 as a contract for goods and services, I will assume that the bill is also intended to apply to bids for public works or construction contracts that are let by the Procurement Department. For the reasons summarized below, the Procurement Department does not support the bill as currently drafted.

The City is aware that prompt payment is a number one concern of vendors who do business with the City of Philadelphia. That concern is shared by the Procurement Department and Finance, and we have instituted several measures to alleviate slow payment and ensure that all City vendors are paid promptly for supplies furnished and work satisfactorily performed.

The number one reason for slow payment is rejection of the vendor's invoice by the City department because of vendor error. Vendor error can add at least 20 days, if not longer, to the payment cycle. For example, a vendor may invoice a lump sum instead of breaking down the invoice in accordance with the contract pricing structure. Invoices are sent directly from the vendor to the using department receiving the goods and services for verification that, one, the goods and services were provided and, two, that the invoice is accurate in order to process for payment. Once the using department verifies that the invoice is correct, they submit to Finance for payment processing. The Procurement Department is not involved in the processing or payment of invoices. Section 17-1702(1)(b)(i) of the bill addresses defective invoices and the City's ability to refuse payment, but by requiring written notices to vendors.

This proposed law, by formalizing Procurement's process, will only lengthen the period for payment and undermine the City's ability to move quickly to help the vendor resolve its invoicing problems. In addition, this section requires the City to make payment for an incorrect invoice if the City fails to notify the vendor within ten days of the error. This is in direct conflict with the City of Philadelphia's Accounting Policies and Procedures.

Procurement is working effectively to alleviate payment problems. Invoicing and payment are addressed at pre-bid meetings, and language providing instruction for proper invoicing is included in each bid. Procurement also publishes a comprehensive guide to doing business with the City, which is available online at the Procurement Department's website. In addition, Finance issues electronic payments to vendors through the Automated

Clearing House, ACH, Vendor Enrollment system. Finance has also created VIPS, Vendor Information Payment System. While VIPS is not a payment mechanism, it allows vendors to track their invoices and make inquiries concerning the status of outstanding invoices.

Section 17-1703 of the bill, which requires prompt payment of subcontractors, will negatively impact the City's certified minority, MBE, women, WBE, and disabled, DSBE, business enterprises. Under Executive Order 02-05, all Procurement bids require the successful bidder to pay its M/W/DSBE subcontractors within five business days of its receipt of payment from the City, not 30 to 60 days as the bill would require.

Also, I would like to note to the Committee that the Commonwealth of Pennsylvania's Prompt Payment Act, which includes features similar to this bill, expressly exempts the City of

Philadelphia because the City remains under jurisdiction and financial oversight of the Pennsylvania Intergovernmental Cooperation Authority.

To reiterate, I do not support this bill as drafted for the reasons stated above and due to the November 21, 2007 memorandum from the City of Philadelphia's Law Department. I do share the bill's objective of ensuring that City vendors are paid promptly and will take it under advisement as a means of advancing the strides already made to improve the City's payment system.

Thank you.

COUNCILMAN GOODE: Thank you for your testimony. We're going to take testimony from Mr. Michael Kauffman before we take questions.

Good morning. Please state your name for the record and proceed with your testimony.

MR. KAUFFMAN: My name is Michael Kauffman. I'm Deputy Finance

Director for Accounting. Good morning, Councilman Goode and members of the Committee. I'm Deputy Director of Finance, Michael Kauffman. I am prepared to give testimony concerning Bill No. 070910 and its impact on the processing of payments to vendors.

Currently, the City processes more than 300,000 vouchers a year, of which approximately 80,000 are self-generated vouchers, meaning that we have to deal with over 220,000 invoices a year. The vendors send the invoices to the appropriate department. The departments are responsible for making sure that the goods or services have been received and that the invoice adheres to the provisions of the vendor's contract. When a vendor signs a contract with the City, they are given instructions as to what they must do to be paid accurately and timely. Not every vendor adheres to those instructions and they delay their payments by submitting invoices that are handwritten or not numbered, by sending the invoices before the goods and services are delivered, or by sending invoices that represent goods or services that were only partially delivered or damaged.

Other processing delays can occur if the invoices are for items that are being charged at a discount from a published catalogue price or where the item price changes daily or where an engineer must certify that the goods or services have been received. Delays can also be caused by invoices that have to be approved at multiple departmental locations or by different departments.

The bill, as written, puts the onus on the City to further instruct the vendors in submitting invoices in the proper form. Currently, either the Office of the Director of Finance or one of the other departments notifies a vendor that there is a problem with an invoice. That communication is done mostly over the phone. The bill, as written, would require that the City use certified mail to ensure that the vendor received the error notification. The creation of the letter and mailing would take time, time that would normally be spent processing payments. A new invoice tracking system would have to be established to keep track of the letters sent to the vendors so that interest would not be inadvertently paid or not paid to the vendor, as the case may be. If interest were to be charged, a separate voucher would have to be used to get the interest to the vendor. Since there is no central appropriation for interest payments, the interest voucher would have to be prepared by the department. The new system would have to calculate the interest due to ensure the correct dates were used.

The City Controller's Office has the ability to hold payments for various reasons such as tax delinquency, incomplete information on the invoice or that they want their engineers to look at work completed. The bill does not address whether or not the City Controller's Office is included as part of the City when it comes to notifications or interest payments.

The Office of the Director of Finance is charged with reviewing the invoices for adherence to contract prices and adherence to the City's internal control process. We are constantly streamlining the City's payment process to make sure that payments are made timely and accurately. In conjunction with Fleet Management, we have established a totally electronic process using imaging technology. No paper invoices or vouchers pass between Fleet Management and the Office of the Director of Finance. However, we must still review the invoices to make sure that we are paying correct price for items.

In addition, our electronic

voucher system allows departments to enter receiving report information online. The invoice information is also entered online, and if the invoice and the receiving report match, an electronic voucher is prepared. The electronic voucher is then sent on an electronic approval path to facilitate processing.

The Office of the Director of Finance, working with MOIS, has established a website that allows vendors to check on the status of their invoices. They can then contact the department to find out the reason for any delay in payments. There is also a similar system that can be accessed by phone.

We also have an electronic check program for the vendors. This program allows the City to send payments directly to the vendor's bank account. The funds are available to him as soon as they are deposited. This program saves the vendor time, in that he does not have to wait for the check to arrive in the mail, he does not have to take the check to the bank and he does not have to wait for the check to clear.

The Office of the Director of Finance makes every effort to accommodate vendors so that they are paid in a timely manner.

Thank you. That concludes my testimony.

COUNCILMAN GOODE: Thank you for your testimony.

Let me note for the record that the sponsor of the bill has asked that testimony from a previous resolution on this subject be incorporated into the transcript, and that will be forwarded to the stenographer.

Councilman DiCicco.

COUNCILMAN DiCICCO: Actually, I had a question. It's not probably related to these bills, but it's a general question.

Example: When the Department of Recreation enters into or decides to do a project within the Department of Recreation, to rehabilitate a recreation center or park, a contract is let with a private contractor. Is that contract generated and signed by the Department of Recreation or does it go through the Procurement and/or Finance Department for approval?

COMMISSIONER HAGAN: I can address that. Janet Hagan, Procurement Commissioner.

If it's for the renovation or the construction, it will come under the Procurement Department public works and the contract would be -- the bid would be let by the Procurement Department, awarded in conjunction with the using department, and the contract will be signed as to form by the Law Department and myself.

COUNCILMAN DiCICCO: The reason I ask the question -- and I suspect this happens all over the City, but in my councilmanic district, there is a recreation facility that was contracted out almost three years ago. The start-up date was a little bit more than two years ago. The contract, in everyone's estimation, the work to be performed would have taken no more than one year. We are now coming close to the end of the second year and probably we'll get into the third year before the contract is finalized.

Do we not, as a matter of policy, require contractors to have a completion date in certain work that is being performed?

My point is, my understanding, it's open ended. That contractor literally can take ten years or as long as he or she would like to complete that project. And it becomes very frustrating for the community, who has now gone without a center for almost the better part of two years.

I remember when I worked for the Highway Department many, many years ago, my recollection is when a contract was let with a highway contractor to do a portion of I-95, there was a start date and there was a completion date, and if the project was not completed by that completion date, a penalty would be imposed and, conversely, there was an incentive awarded if the work was completed before the end of the contract date.

Wouldn't that be a better policy for us to encourage contractors who start a job, then leave a job to go do something else that may be un-City related work and literally just come back and forth to complete that recreation facility at their leisure. Why don't we do that? Is that something that we're prohibited from doing or is it just policy that we've never initiated?

COMMISSIONER HAGAN: Well --

COUNCILMAN DiCICCO: And I don't mean to get off the intent of this, but since the two of you are here, I was going to start this conversation at the budget round, but I would like to start it today, find out why aren't we doing that.

COMMISSIONER HAGAN: Okay. With a recreation facility, that would more than likely come under the jurisdiction of the Capital Programs Office. Although the Procurement Department lets the contract, they are the contract project manager, and they do set a schedule of milestones and completions and notify Procurement if there is a problem with the vendor not adhering.

The particular playground --

COUNCILMAN DiCICCO: Let me interrupt you. Who sets? You said they set the completion dates.

COMMISSIONER HAGAN: They generally have a project schedule, which includes milestones along the project.

COUNCILMAN DiCICCO: "They" meaning Capital?

COMMISSIONER HAGAN: Yes. Or if it's the case of an airport, then it would be the airport, but Capital Programs would be the party for recreation centers.

COUNCILMAN DiCICCO: My understanding from speaking to the Capital Office is there are no completion dates. A contract is let and it's pretty much left up to the contractor to decide how long it's going to take to do the renovations or the new construction.

I think Councilwoman Tasco one time, I think she was talking about a facility in her district that took almost ten years to complete.

COMMISSIONER HAGAN: Well, I could certainly look into it, but can you tell me the playground or facility?

COUNCILMAN DiCICCO: Yes. It's the Columbus Park at 12th and Water.

COMMISSIONER HAGAN: I thought it was that.

COUNCILMAN DiCICCO: And I know

there were some problems with the contractor and the subs, but that should not be an excuse, because when you sign a contract and you're being paid, you expect the job to be done within a certain amount of time, and if we give it a year, that's based on performances and what everyone expects would happen based on experience of doing that type of build-out. I mean, it could possibly have taken three years, four years for that project to be complete. We're literally at the end of a two-year period for a job that should have taken no more than one year. And the facility, the field house and the facilities around it, were shut down for two years. And naturally you know who gets blamed for it. But that's okay. We get paid a lot of money to be criticized here.

But I think it's a serious problem and I think at some point -- I don't know if it's Procurement, maybe it's the Capital Office -- we should set some standards, as would be done in private industry. If you're building a factory to start up your business, you're not going to let the contractor just take forever to complete. You have to have certain dates. And we should, because the public depends on us to get these projects completed.

I'm not criticizing. For just informational purposes, I'd like to see us start talking about it.

And I didn't mean to, Mr. Chairman, to get off this, but since I have the Procurement Department here, I wanted to try to get some answers to those questions today.

Thank you.

COUNCILMAN GOODE: Commissioner, just a few questions. First a very basic question. Is there a problem with prompt pay or not?

COMMISSIONER HAGAN: Is there a problem with vendors?

COUNCILMAN GOODE: With prompt

payment.

COMMISSIONER HAGAN: With prompt payment? In general; not the bill?

COUNCILMAN GOODE: In general.

COMMISSIONER HAGAN: Whenever we get a complaint about payment, the Procurement Department buyer looks into it to try to get the vendor paid. There are not many occasions that I've come across where vendors are complaining about prompt payment, and if they are complaining, they're not complaining it to our office, I should say.

COUNCILMAN GOODE: Well, aside from complaints about prompt payment, because if there are longstanding issues with prompt payment, at some point people may stop to complain because they think that's just the system in place. I guess my question is how quickly does the City pay and do you know on average whether the City pays in a time in which it's supposed to pay?

COMMISSIONER HAGAN: Since the Procurement Department isn't involved with the receiving of the invoices or the processing or the payments, I can't answer that question.

COUNCILMAN GOODE: So you don't know whether there is a problem with prompt payment or not?

COMMISSIONER HAGAN: I don't know how quickly they're paid, because as Mr. Kauffman has said, the invoices go to the using department who received the goods or the service. They verify that it's in accordance with the contract and that the goods or service have been provided, and then send it to --

COUNCILMAN GOODE: I'm not asking what the process is. I'm asking whether the process is timely.

COMMISSIONER HAGAN: Yes, I understand, but since I'm not involved in that process, I'm not sure. I would have to defer to Michael Kauffman, who may be able to answer that question.

COUNCILMAN GOODE: The next question is, in your testimony you state that the bill's requirement of prompt payment of subcontractors will negatively impact the City's certified DBE subcontractors because of an Executive Order which exists from February 2005 that requires that DBE subcontractors be paid within five business days rather than the 30 to 60 days that the bill would require.

Do you actually believe that DBE subcontractors are paid within five days?

COMMISSIONER HAGAN: I am not sure. I can't answer that because I'm not the one paying them and I haven't heard from vendors saying they're not getting paid. However, I just made a statement because of -- the bill is requiring 30 and we're already saying five. I would just think that the vendor --

COUNCILMAN GOODE: But you

don't know whether the DBE contractors are being paid within five days?

COMMISSIONER HAGAN: No, I do not.

COUNCILMAN GOODE: And you don't know whether they're being paid within 30 days?

COMMISSIONER HAGAN: No, I do not.

COUNCILMAN GOODE: You don't know whether they're being paid within 60 days?

COMMISSIONER HAGAN: No, I do not.

COUNCILMAN GOODE: Thank you.

Any other questions for this witness?

(No response.)

COUNCILMAN GOODE: The Committee will stand in recess for one minute.

(Short recess.)

COUNCILMAN GOODE: Thank you for your testimony.

COMMISSIONER HAGAN: You're welcome.

COUNCILMAN GOODE: Are there any other questions for this panel?

(No response.)

COUNCILMAN GOODE: Is there anyone else to testify on this bill?

(No response.)

COUNCILMAN GOODE: We are waiting for a quorum again and we will move into a public meeting.

(Pause.)

COUNCILMAN GOODE: We will move from our public hearing into a public meeting to consider Bill Nos. 070910 and 070911.

The Chair recognizes Councilman DiCicco for a motion on Bill No. 070910.

COUNCILMAN DiCICCO: Thank you, Mr. Chairman. I move that Bill No. 070910 be approved by this Committee and a further recommendation that the rules of Council be suspended so as to permit first reading of this bill at our next session of City Council.

(Duly seconded.)

COUNCILMAN GOODE: All in favor?

(Aye.)

COUNCILMAN GOODE: Those opposed?

(No response.)

COUNCILMAN GOODE: Bill No. 070910 is reported out of Committee with a favorable recommendation and a suspension of the rules to allow its first reading at our next Council session.

The Chair recognizes Councilman Clarke for an amendment to Bill No. 070911.

COUNCILMAN CLARKE: Thank you, Mr. Chairman. Mr. Chairman, I move for the adoption of an amendment to Bill No. 070911.

(Duly seconded.)

COUNCILMAN GOODE: All in favor?

(Aye.)

COUNCILMAN GOODE: Those opposed?

(No response.)

COUNCILMAN GOODE: The bill is amended.

The Chair recognizes Councilman Clarke for a motion on Bill No. 070911 as amended.

COUNCILMAN CLARKE: Mr. Chairman, I make a motion that Bill No. 070911 be reported out of Committee as amended with a favorable recommendation and a request for rules suspension as to allow reading at the next session of Council.

(Duly seconded.)

COUNCILMAN GOODE: All in favor?

(Aye.)

COUNCILMAN GOODE: Those opposed?

(No response.)

COUNCILMAN GOODE: Bill No.

070911 as amended is reported out of Committee with a favorable recommendation and a suspension of rules to allow its first reading at our next Council session.

This concludes our public meeting. Thank you all very much.

(Committee on Commerce and Economic Development adjourned at 10:00 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on November 27, 2007, and that this is a true and correct transcript of same.

____

MICHELE L. MURPHY
RPR-Notary Public

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