

AN ORDINANCE

Amending Section 17-107 of The Philadelphia Code, entitled “Contractors: Labor-Management Relationships,” by requiring the City’s Labor Standards Unit to enforce the City’s contract requirements for Workforce Diversity and by providing penalties for contractor failure to make good faith efforts to meet Workforce Diversity goals, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 17-107 of The Philadelphia Code is hereby amended to read as follows:

§17-107. Contractors: Labor-Management Relationships.

* * *

(2) *Contracts.*

(a) The specifications for all city-work contracts and contracts for Covered Projects (as defined in section 17-1601(1) of the Philadelphia Code) shall contain a provision stating the minimum wages to be paid for each occupational classification of employees and a provision stating the Workforce Diversity goals, established by the Office of Economic Opportunity, that the contractor must meet using good faith efforts. A “Diverse Workforce” or “Workforce Diversity” shall be defined as set forth in section 17-1608(1) of the Philadelphia Code. Such minimum wages shall be the prevailing wages as defined herein for the corresponding classification of employees. If, prior to the execution of the city work contract, the Director has issued a multi-year wage determination for the corresponding classification of employees, the city work contract shall also contain a provision mandating that the contractor and each subcontractor shall pay each affected worker any new prevailing wage rate, as of the first date on which the new prevailing wage rate is effective.

(b) Every City-work contract shall contain a provision that all employees performing city-work other than apprentices and job trainees as provided below shall be paid at least the applicable prevailing wages and given at least the applicable working conditions; and the contract shall also contain a provision stating that contractors shall make good faith efforts to meet Workforce Diversity goals using any commercially reasonable means, provided all workers are paid the prevailing wage; and that, upon any violation of this Section or any regulations promulgated hereunder, the City may withhold any sums remaining due on the contract until such time as the violation is remedied or, if the violation is not remedied promptly, the City may make such payments directly to affected employees, out of withheld sums, as may be necessary to remedy the violation. For

employees other than building service employees, the applicable prevailing wages shall be the prevailing wages for journeymen.

(.1) An apprentice may be paid less than the prevailing wage, provided that:

(a) Such apprentice is employed pursuant to, and individually registered in, a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau.

(b) The ratio of apprentices to journeymen on the job site in any craft classification is not greater than the ratio generally prevailing in the relevant trade, craft or industry in the Philadelphia area, as determined by the Director.

(c) Such apprentice is paid the full amount of fringe benefits set forth in subsection [17-107\(1\)\(k\)\(.1\)\(b\)](#), with respect to the definition of prevailing wage.

(.2) A bonafide member of a job training program may be paid less than the prevailing wage if said training program's primary purpose is to provide construction training opportunities and that the said training program has been approved by the City, a City Agency, or City-related Agency, and provided that the size of the construction project does not exceed 8 housing units.

(.3) No building service employee shall be or be deemed to be an apprentice or job trainee.

(c) Every *contract for City-work or a Covered-Project* [contract] shall contain a provision that the contractor shall require all subcontractors to, and shall itself, comply with and be bound by all the provisions of this Section; and requiring the contractor to attach the applicable wage-rate *and Workforce Diversity* information to all subcontracts. A violation by any subcontractor shall be deemed a violation by the prime contractor, as well.

(d) Every *contract for city-work or a Covered-Project* [contract] shall contain a provision requiring the contractor to post the applicable prevailing wage rates *and Workforce Diversity goals* in an area easily accessible by all employees on each job site.

(e) Every *contract for City-work or a Covered Project* [contract] shall contain a provision requiring the contractor to submit to the Unit a compilation contractor listing *and a plan for meeting Workforce Diversity goals* no later than seven (7) days before the starting date of work on any such contract, and to notify the Unit of any changes in the information contained in such listing within five (5) days of any such changes. *Plans for meeting Workforce Diversity goals shall include specific availability and utilization strategies for meeting Workforce Diversity requirements.* [Such] *The Contractor* listing shall include, for each contractor and subcontractor working on the contract:

(.1) the name, address, telephone number and contact person.

(.2) The applicable bid number(s).

(.3) Estimated starting and completion dates for each contractor and subcontractor and for all work on the contract, and for each distinct phase of work on the contract.

(.4) The dollar value of each contract and subcontract.

(.5) Each contractor and subcontractor's commercial activity license number and federal tax identification number.

(.6) A detailed scope of work to be performed by all subcontractors.

(3) Every contractor and/or subcontractor shall keep an accurate record preserved on employee time sheet or time cards showing the name, address, social security number, demographic information, occupational classification, wages and other benefits paid or provided, and number of hours worked for each employee assigned to City-work or a Covered Project, and such record shall be preserved at the current place of business of the employing contractor or subcontractor for two years from the date of final payment on the contract. The contractor shall maintain and make his or her accounting and employment records and records relating thereto available for inspection by authorized representatives of the Unit, at all reasonable hours, and shall permit such representatives to interview employees during the hours on the job, all without prior notice. No contractor shall allow any employee or other person to interfere with any such inspection or interview.

(a) If fringe benefits are paid into a benefits plan, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan is financially responsible, that the plan has been communicated in writing to the covered employees, and the costs anticipated or the actual costs incurred in providing such benefits.

(b) Contractors employing apprentices under approved programs shall maintain written evidence of the registration of such programs, the registration of the apprentices including demographic information and the ratios and wage rates prescribed in the applicable programs.

(4) All contractors and subcontractors performing City-work or work on a Covered Project shall, upon commencement of work activity submit certified payrolls through the prime contractor on a weekly basis, not later than seven (7) days after completion of the work week, file with the Unit a copy of payroll Form WH-347 (Weekly Certified Payroll), and a certified statement setting forth (to the extent not included in the Payroll) the name, address, occupational classification, demographic information, wages and other benefits paid or provided and number of hours worked with respect to each employee performing City-work or work on a Covered Project. The Director may, by

regulation, require such information to be submitted in machine- readable form. The certification shall affirm that the statement and payroll are correct and complete, that the wages set forth therein are not less than those required by the contract and this Section for City-work and Covered Projects and that the occupational classification set forth for each employee conforms with the work he performed and that each employee, including any apprentices, employed during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. Part 3, relating to contractors on public works projects. The requirements set forth herein shall be contained in every contract for City-work or a Covered Project [contract].

(a) All payrolls shall bear the applicable bid number(s), and shall be numbered sequentially by each contractor and subcontractor, with the initial payroll on a contract or subcontract marked "Initial", and the final payroll on the contract or subcontract marked "Final".

(b) All certifications and payrolls shall bear the original signature of the president of the company or a company officer with power of attorney.

(5) *Employee Complaints.*

(a) No person shall take any adverse action (including discharge or other discrimination in employment) against any other person [(including discharge or other discrimination in employment)] (including a person seeking work pursuant to a contractor's obligation to meet Workforce Diversity goals) for filing a complaint under this subsection or for otherwise reporting any violation of this Section or instituting or testifying in any proceeding relating to any violation of this Section.

(6) The Unit shall have the responsibility of administering this Section and in connection therewith shall:

(a) Maintain a current schedule of the Workforce Diversity goals and the prevailing wages and working conditions for each occupational classification in each craft, trade, service and industry involved in City-work or work on a Covered Project.

(b) Receive and refer to the Commissioner under whose supervision a contract for City-work or a Covered Project [contract] is being performed, complaints against any contractor or subcontractor for alleged violations of this Section or the provisions of the contract for City-work or a Covered Project [contract] required hereby. Thereafter, the Director shall investigate such complaints and in connection therewith or with respect to any investigation shall have full power and authority to subpoena any witness, books, records, or other data of any person for the purposes of obtaining information pertinent to such investigation. The Director shall make a finding in writing with respect to each complaint filed, and shall send a copy thereof to the complainant and the contractor and

shall maintain it on file. Upon request, the unit shall provide any affected contractor or subcontractor with a hearing, pursuant to subsection 8(e).

(c) Monitor the daily operations of contractors and subcontractors with respect to contracts for City-work or Covered Projects [contracts] to insure compliance with this Section and with the prevailing wage provisions and Workforce Diversity requirements of any contract for City-work or a Covered Project [contract].

(7) *Board of Labor Standards.* There is hereby created a Board to be known as the Board of Labor Standards.

(a) The Board shall consist of five (5) persons to be appointed by the Mayor. One member shall be from among representatives of labor organizations in the building and construction fields; one member from among employers in the building and construction fields who employs competent and first class workmen and mechanics; two public members; and one City employee who shall be the Chairman. In addition, the Mayor may appoint for each member an alternate selected from the same group as the member for whom he is to act. Such alternate shall have all of the powers and responsibilities and may act in place and stead of the member in the member's absence or unavailability for any reason.

(b) The Board shall serve as an appeal body to review the findings made under subsection (6)(b) of this Section or any other violation found by the Director.

(.1) No appeal shall be considered unless after the completion and determination of the due process hearing by the Labor Standards Unit the appeal is filed in writing with the Board within ten (10) days of the date that the findings or violation notice was sent to the parties.

(.2) Appeals to the Board may be taken by any person aggrieved or by any officer, department, board or commission of the City or organization affected by these findings.

(.3) The Director and, if applicable, the operating department overseeing the contract, upon a notice of appeal, shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(.4) In the exercise of its powers, the Board may reverse, affirm or modify the finding, order, or determination appealed from.

(.5) Hearings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine.

(.6) All Board hearings shall be open to the public and shall be recorded. Transcripts shall be prepared upon the request of and payment by any party to the appeal.

(.7) The Board may administer oaths and compel the attendance of witnesses and the production of records and documents for which purposes subpoenas may be issued.

(.8) The Board shall keep minutes of its deliberations showing the vote of each member or his alternate upon each appeal or, if absent or failing to vote, indicating such fact, and shall keep records of its hearings and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(.9) The Board shall fix a reasonable time for the hearing of appeals and give due notice to the parties in interest, and decide the same within a reasonable time.

(.10) Any party may appear in person, by his attorney or by a representative acceptable to the Director; except that for good and proper cause the right of a representative to practice before the Board may be suspended by the Board. Statements by a person's attorney or representative on his behalf may be considered as testimony.

(.11) Findings of fact and conclusions of the Board shall be conclusive and binding upon the parties and shall not be subject to review by any court except on jurisdictional, procedural or legal grounds.

(.12) All reasonable costs associated with the appeal shall be payable to the City of Philadelphia by the appealing party, in advance of any appeal hearing.

(8) *Enforcement.*

(a) The violation of any requirement of this Section or of the provisions of a contract for City-work or a Covered Project [contract] required thereby shall be considered a substantial breach of the contractor's obligation under the contract. The requirements of this Section and of a contract for City-work or a Covered Project [contract] shall not be deemed to have been violated where it is contended that a particular craft, trade, service or industry is not the appropriate one and the wages and conditions applicable to another craft, trade, service or industry should have been used, provided that the prevailing wages have been paid and the prevailing working conditions given as determined for any craft, trade, service or industry specified in the contract.

(b) Upon a finding by the Director of a failure by any contractor or subcontractor to pay the applicable prevailing wage to any employee(s), or to make good faith efforts to meet Workforce Diversity goals, the Director may direct the appropriate department(s) to withhold from the contractor on the applicable City-work contract or Covered Project such sums as the Director, in his or her discretion, believes appropriate to insure compliance, which may include but not be limited to any sums remaining due on the contract; or in the case of failing to pay the prevailing wage, the amount determined still to be owing to the employees had the prevailing wage requirements been met; or a sum equal to one hundred and fifty percent (150%) thereof. Such withheld moneys shall be retained by the City until all employee(s) on the applicable City-work contract or Covered Project have received the appropriate wage payments under this Section.

(.1) Upon the conclusion of any appeals, or the expiration of time in which an appeal may be filed, from a finding of violation by the Director or a decision by the Director to direct the withholding of any sums, the Director may direct the appropriate department(s) to make such payments directly to affected employees, out of any withheld sums, as may be necessary to remedy the violation.

(c) No payments shall be made by the City on any contract or by any contractor on any subcontract, and no work shall be performed on any contract or subcontract if:

(.1) A current compilation contractor listing or a Workforce Diversity plan has not been filed with the Unit.

(.2) A contractor does not provide the Unit with access to documents or employees, or allows an employee or other person to interfere with such access or with an interview with an employee, in violation of subsection 3.

(d) To the extent any money owing to an employee under this Section is not timely paid by an employer, such money shall accrue interest at a rate of six percent (6%) per annum from the date of commencement of the violation.

(e) Upon notice from the Unit to a contractor or subcontractor that a violation has occurred, the contractor or subcontractor may make a written request for a hearing from the Unit, which request for hearing shall stay all penalties, except that any decision by the Director to withhold sums from a contractor or subcontractor shall not constitute a penalty and shall proceed.

(9) *Penalties.*

(a) No contract for City-work or a Covered Project shall be awarded to any contractor or subcontractor, or any principal, affiliate, successor or assignee of any contractor or subcontractor, who has been found to have intentionally violated any provisions of this Section or who has been found to have violated this Section with respect to more than one City-work contract, Covered Project or subcontract within the past three years, until three years have elapsed from the date of the determination of such violation unless the Procurement Commissioner, after reviewing the recommendation of the Director, or the Board of Labor Standards, on appeal, shall fix a shorter period in view of extenuating circumstances relating to the particular violation.

(b) A fine of three hundred dollars (\$300) for each violation committed against every employee on each project shall be imposed upon any contractor who:

(.1) Violates subsection 5(a), relating to retaliation.

(.2) Is found, after audit by the Unit, to have failed to make good faith efforts to meet Workforce Diversity goals or to have paid any employee less than the prevailing wage or provided to the employee less than the prevailing working conditions.

(.3) Is found, after audit by the Unit, to have paid any employee less than the prevailing wage or provided to the employee less than the prevailing working conditions, and subsequently fails to make timely remedy to the employee.

(c) A fine of three hundred dollars (\$300) for each violation shall be imposed upon any contractor who:

(.1) Submits a second or subsequent late or incomplete payroll on any contract, in violation of subsection (4).

(.2) Does not provide the Unit with access to documents or employees, or allows an employee or other person to interfere with such access or an interview with an employee, in violation of subsection (3).

(d) Each act of retaliation, each underpayment of any employee, each late payroll and each failure to provide access or act of interference shall constitute a separate violation.

(e) For the purpose of enforcing the provisions of this Section, notices of violation shall be issued by authorized inspectors within the Labor Standards Unit or any other persons authorized to enforce ordinances. Such notices of violation shall be issued under the procedures set forth in § [1-112](#), except that the amount required to be remitted in response to a notice of violation shall be one hundred dollars (\$100).

(10) *City Related Agencies.* Any contract, lease, grant, condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring the City-related Agency, in the procurement of (i) all building or construction work for compensation that exceeds twenty-five thousand dollars (\$25,000), including repair, alteration and remodeling done on behalf of the City-agency under a contract awarded by the City-agency; and (ii) all offsite fabrication of sheet metal ducts or similar sheet metal products for heating, ventilating, and air- conditioning systems produced as non standard items for such work; and (iii) all other non-professional service contracts with the City-agency for compensation that exceeds two hundred thousand dollars (\$200,000), including building service contracts except that such contracts need only exceed one hundred thousand dollars (\$100,000); purchased pursuant to such contract, lease, grant, condition or other agreement with the City, to abide by the provisions of subsection [17-107\(2\)](#), as if such procurement were for City-Work or a Covered Project. The City may waive the requirements of subsection [17-107\(2\)](#) if the Procurement Commissioner certifies that applying said prohibition may result in the loss of federal, state or similar funds or grants. The requirements of this paragraph and subsection [17-107\(2\)](#) as it relates to prevailing wage, shall not apply to any City funded or City-related Agency funded

housing rehabilitation or construction project that involves eight (8) or fewer housing units.

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SECTION 2. Effective Date. This Ordinance shall take effect immediately upon becoming law.

Explanation:

[brackets] indicate matter deleted

Italics indicate new matter added