

City of Philadelphia



(Bill No. 080746)

AN ORDINANCE

Amending Section 17-104 of The Philadelphia Code, relating to "Prerequisites to the Execution of City Contracts," by adding a new subsection prohibiting the acceptance of bids on City contracts from, or the execution of original or renewal contracts with, corporations or other business entities that do business in Iran or Sudan, and imposing duties on the Procurement Department with respect to said prohibition and certain other related matters; and amending Section 19-201 of The Philadelphia Code, relating to "City Depositories," by adding provisions restricting City Depositories from providing certain services to corporations, banks, or financial institutions that do business in Iran or Sudan, and imposing duties on the City Treasurer with respect to said restrictions, and amending Section 22-1001, relating to "Investments," by adding a new subsection requiring the Board of Pensions and Retirement to divest from business entities doing business in Iran or Sudan, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 17-104 of The Philadelphia Code, relating to Prerequisites to the Execution of City Contracts, is hereby amended to read as follows:

§ 17-104. Prerequisites to the Execution of City Contracts.

(1) Definitions. For the purpose of this subsection, the following definitions shall apply:

* * *

(e) Department. The Procurement Department.

(f) Doing business in Iran. A business entity does business in Iran when it has, with actual knowledge, made an investment of \$20,000,000 or more, or any combination of investments of at least \$10,000,000 each, which in the aggregate equals or exceeds \$20,000,000 in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum or natural gas resources of Iran.

(g) Doing business in Sudan. A business entity does business in Sudan by maintaining or leasing equipment, facilities, personnel, or other apparatus of business or commerce in oil-related activities, mineral extraction activities, power production activities, or production of military equipment of Sudan, unless the business can

City of Philadelphia

BILL NO. 080746 continued

Certified Copy

demonstrate that it meets one of the exceptions set forth in Section 3(d) of the Sudan Accountability and Divestment Act of 2007, P.L. 110-174, 121 Stat. 2516 (2007).

(h) Exclusion from disqualification. A situation in which (i) the business entity has been affirmatively excluded from the United States Government's sanctions regime relating to Sudan or Iran, as applicable; or (ii) the business entity is terminating business in Iran or Sudan, as applicable.

(i) Federal override with respect to Iran. A circumstance in which the Congress or President of the United States has affirmatively and unambiguously declared, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that (.1) the Government of Iran is no longer seeking a nuclear weapons capability and no longer supports international terrorism; or (.2) local government laws or policies regarding economic disengagement from Iran interfere with the conduct of United States foreign policy.

(j) Federal override with respect to Sudan. A circumstance in which:

(.1) the Congress or President of the United States affirmatively declares that the government of Sudan has:

(.a) honored its commitments to abide by United Nations Security Council Resolution 1769 (2007);

(.b) ceased attacks on civilians;

(.c) demobilized and demilitarized the Janjaweed and associated militias;

(.d) granted free and unfettered access for delivery of humanitarian assistance; and

(.e) allowed for the safe and voluntary return of refugees and internally displaced persons;

(.2) the President of the United States rescinds or repeals Executive Order 13067, and does not replace the Order with a substantially similar Order; or

(.3) the Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that local government laws or policies regarding economic disengagement from Sudan interferes with the conduct of United States foreign policy.

City of Philadelphia

BILL NO. 080746 continued

Certified Copy

(k) Government of Iran. The Government of The Islamic Republic of Iran, its instrumentalities, and companies owned or controlled by the Government of Iran.

(l) Sudan. The government in Khartoum, Sudan that is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006, including the coalition national unity government agreed on in the comprehensive peace agreement for Sudan. The term Sudan does not include the regional government of Southern Sudan.

(m) Terminating Business in Iran or Sudan. Has produced a plan to end doing business in Iran or Sudan, as applicable, within one year and has been implementing its plan in good faith in order to disinvest or cease business operations over the twelve month period following adoption of the plan.

* * *

(3) Prohibited Contracts.

(a) Entities Doing Business in Northern Ireland. In the procurement of goods and services, no City Agency may accept any bid from, nor enter into an original or renewal contract with, nor purchase any product manufactured by any Business Entity having any investments, licenses, franchises, management agreements or operations of any kind in Northern Ireland, if such Business Entity has not implemented the fair employment principles embodied in the MacBride Principles.

(b) Entities Doing Business in Iran or Sudan. In the procurement of goods and services, no City Agency may accept any bid from, nor enter into an original or renewal contract with, nor purchase any product manufactured by any Business Entity doing business in Iran or Sudan, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies. In the case of disqualification of a business entity from a City contract based on doing business in Sudan, the procedural requirements of Section 3(e) of the Sudan Accountability and Divestment Act of 2007, P.L. 110-174, 121 Stat. 2516 (2007), shall apply in addition to procedural requirements otherwise provided for in this Section.

[(b)](c) Contract Requirements.

(.1) Each City bid and contract must contain a clause stating that the Business Entity does not retain any investments, licenses, franchises, management agreements, or operations in Northern Ireland nor that any products being delivered pursuant to the contract originate in Northern Ireland, unless the Business Entity has implemented the fair employment principles embodied in the MacBride Principles.

City of Philadelphia

BILL NO. 080746 continued

Certified Copy

(.2) *Each City bid and contract must contain a clause stating that the Business Entity does not do business in Iran or Sudan, and that no products being delivered pursuant to the contract were manufactured by an entity doing business in Iran or Sudan, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.*

[(.2)](.3) The false execution of a bid or contract in accordance with subsections [17-104(2)(c)(.1)]17-104(3)(c)(.1) or (.2) shall result in the following:

(i) A prospective bidder shall be liable to the City in the amount of the bid surety provided by the bidder, as liquidated damages;

(ii) A contractor shall be deemed to be in breach of its contract, for which the remedy shall be the cancellation or termination of the contract and the withholding of voucher payments due and owing under the contract; and

(iii) Business Entities that falsely execute a bid or contract shall be ineligible to bid on City contracts or subcontracts for a period of up to five (5) years.

[(c)](d) Notice. All invitations to bid, bid specifications, and contracts shall contain an appropriate notice and description of the duties, obligations, responsibilities, requirements, penalties, and sanctions imposed by this subsection.

[(d)](e) Waivers.

(.1) The Department may waive compliance with the provisions of subsection [17-104(2)(b)] 17-104(3)(a) or (b) on one or more of the following grounds:

* * *

(iii) The contract involves amendments to, or modifications of, contracts in existence on March 17, 1995 (*with respect to the restrictions of subsection (a)*) or January 1, 2010 (*with respect to the restrictions of subsection (b)*), and said amendments or modifications do not significantly alter the scope or extend the duration of the contract;

(iv) The contract is for the purchase of goods and services which are needed for the continued operation of equipment, mechanical or other systems that were purchased by the City prior to March 17, 1995 (*with respect to the restrictions of subsection (a)*) or January 1, 2010 (*with respect to the restrictions of*

City of Philadelphia

BILL NO. 080746 continued

Certified Copy

subsection (b)), and cannot be procured from any other source and is so certified by the Procurement Commissioner;

* * *

(viii) The City may waive the prohibitions contained in subsection [17-104(2)(b)] *17-104(3)(a) or (b)* if the Procurement Commissioner certifies that the added cost to the City as a result of applying said prohibition exceeds ten percent (10%) of the otherwise lowest responsible bidder;

(ix) The City may waive the prohibitions contained in subsection [17-104(2)(b)] *17-104(3)(a) or (b)* if the Procurement Commissioner certifies that applying said prohibition may result in the loss of federal, state or similar funds or grants.

* * *

[(e)](f) Contracts with a federal or state chartered bank or holding or trust company or federal or state savings or building and loan association, thrift institution or any other institution permitted by state or federal law to receive deposits of money and to pay out such money through loans, draft accounts or the sale of financial institution securities shall not be subject to this subsection [17-104(2)(b)] *17-104(3)(a) or (b)*, but shall be subject to Section 19-201 of The Philadelphia Code.

[(f)](g) Grievances. Any Business Entity aggrieved by the decision of the Department of the City may not contract with the Business Entity pursuant to subsection [17-104(2)(b)] *17-104(3)(a) or (b)*, or that action shall be taken pursuant to subsection [17-104(2)(b)] *17-104(3)(a) or (b)*, may request a hearing before the Department. Such request shall be in writing and shall be filed within twenty-four (24) hours after receipt of written notification by the Department of its decision.

[(g)](h) Rules and Regulations. The Department shall promulgate such rules, regulations and procedures as it may deem necessary to aid in the administration and enforcement of the provisions of this subsection 17-104([2]3). Such rules and regulations shall include, but not be limited to, the following:

(.1) Standards, guidelines and procedures for the granting of waivers in accordance with subsection 17-104([2]3)(e);

* * *

(.3) Procedures for investigating Business Entities bidding on, or awarded, contracts in order to ascertain the origins of their goods and products and determine whether the City may contract with said Business Entities pursuant to

City of Philadelphia

BILL NO. 080746 continued

Certified Copy

subsection [17-104(2)(b)] *17-104(3)(a) or (b)*, including the gathering and interpretation of information received from public and private sources.

[h)](i) Professional Service Contracts. The provisions of subsection 17-104([2]3) apply to contracts for the rendering of professional services. However, the enforcement of the provisions of this subsection 17-104([2]3) with respect to such contracts shall be the duty of the Director of Finance, and any powers and duties of the Procurement Department under this subsection 17-104([2]3) shall also constitute the powers and duties of the Director of Finance with respect to professional service contracts.

[i)](j) 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 goods and services purchased pursuant to such contract, lease, grant condition or other agreement with the City, to abide by the provisions of subsection 17-104([2]3). Such provision shall require City approval for any waivers from compliance with the provisions of subsection [17-104(2)(b)] *17-104(3)(a) or (b)*.

[j)](k)

* * *

[k)](l)

* * *

[l)](m)

* * *

SECTION 2. Section 19-201 of The Philadelphia Code, relating to City Depositories, is hereby amended to read as follows:

§ 19-201. City Depositories.

* * *

(6) The City Treasurer shall not keep any City funds on deposit in any bank or other financial institution designated by Council as a depository of City funds which:

(a) provides, either directly or indirectly through such entities as its parent corporation, affiliate, subsidiary or agent, any of the following services:

City of Philadelphia

BILL NO. 080746 continued

Certified Copy

* * *

(b) knowingly provides, either directly or indirectly through such entities as its parent corporation, affiliate, subsidiary or agent, any of the following services:

(.1) underwrites securities of an entity doing business in Iran or Sudan;

(.2) makes one or more loans or provides any other financial services to an entity doing business in Iran or Sudan; or

(.3) provides any trade related credit or non-credit services for an entity doing business in Iran or Sudan.

This subsection (b) shall not apply with respect to services provided to a business entity that the United States Government affirmatively declares to be excluded from a federal sanctions regime relating to Iran or Sudan or a federal override with respect to Iran or Sudan, as applicable, is in place. In the case of disqualification of an entity for use as a City depository based on the provision of services to an entity doing business in Sudan, the procedural requirements of Section 3(e) of the Sudan Accountability and Divestment Act of 2007, P.L. 110-174, 121 Stat. 2516 (2007), shall apply in addition to any other applicable procedural requirements. For purposes of this subsection (b), the terms “doing business in Iran,” “doing business in Sudan,” “federal override with respect to Iran,” and “federal override with respect to Sudan” shall have the meanings set forth in Section 17-104 of this Code.

SECTION 4. Effective Dates. This Ordinance shall take effect six months after it becomes law.

Explanation:

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

City of Philadelphia

BILL NO. 080746 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 3, 2009. The Bill was Signed by the Mayor on December 16, 2009.



Michael A. Decker
Chief Clerk of the City Council