



Report on public hearing held on November 13, 2019
By the City of Philadelphia Procurement Department on proposed regulations entitled:
"Regulations Regarding Chapter 17-1400 Non-Competitively Bid Contracts; Financial
Assistance."

Dated: 1/23/2020


Procurement Department
Monique Nesmith-Joyner
Commissioner

Dated: 1/17/20


Law Department
Lewis Rosman
Chief Deputy, Legislation

HEARING REPORT

CITY OF PHILADELPHIA PROCUREMENT DEPARTMENT

REGULATIONS REGARDING CHAPTER 17-1400 NON-COMPETITIVELY BID CONTRACTS; FINANCIAL ASSISTANCE

Background

On September 16, 2019, the City of Philadelphia Procurement Department filed regulations with the Department of Records entitled “Regulations Regarding Chapter 17-1400 Non-Competitively Bid Contracts; Financial Assistance” (“Regulations”). On October 16, 2019 the City received a request for a hearing on the proposed Regulations. The Office of the Chief Administrative Officer (“CAO”) and the Procurement Department accordingly scheduled this public hearing, pursuant to Section 8-407 of the City of Philadelphia Home Rule Charter. A hearing was held on November 13, 2019 at 2 pm at the Municipal Service Building, Procurement Bid Room, 1401 John F. Kennedy Blvd, Suite 170, Philadelphia, PA 19102. The hearing panel was comprised of Stephanie Tipton, Acting Chief Administrative Officer, Ellen Kaplan, Chief Integrity Officer, and Monique Nesmith Joyner, Procurement Commissioner. Richard Feder, Chief Deputy Legislation & Counsel to Solicitor, also attended as the representative for the Law Department.

Also in attendance were the following individuals:

- Krystle Baker, Office of the Chief Integrity Officer
- Iola Harper, Deputy Commerce Director, Office of Economic Opportunity, Commerce Department
- John Milligan, Milligan & Company, LLC
- Jessica Cosme, Bellevue Strategies
- Matthew Fisher, CAO
- Kevin Hannagan, Procurement Department
- Libby Peters, Commerce Department

The Office of the Chief Administrative Officer (“CAO”) is charged with the oversight of the City’s core administrative departments and functions, including the Office of Innovation and Technology, the Records Department, the Office of Administrative Review and Bureau of Administrative Adjudication, Human Resources and Talent, the Procurement Department and the Contracts Unit, among others. The mission of the CAO is to ensure the City’s services are efficient and effective, inclusive and equitable, transparent, and conducted with integrity.

Conclusions

The City appreciates the public participation in the process of providing input and recommendations to its regulations and will continue to work with stakeholders to improve the process while maintaining the integrity of the City contracting process.

The City considered all feedback in developing its Final Regulations attached to this report as Exhibit “A”. Additionally, the City has renumbered the Regulations to make easier to identify and cite. Where public comment cites the prior numbering, a footnote citing the new numbering system is provided.

The Final Regulations will go into effect ten (10) day after they are filed with the Department of Records.

Summary of Hearing, Public Comment, and Responses of Department

Stephanie Tipton started the hearing by providing background information on Chapter 17-1400 of the Philadelphia Code (the “Chapter”) and proposed Regulations before opening up for Public Comment.

- The Chapter was intended to eliminate favoritism in City professional services contracts and to level the playing field for all vendors seeking these contracts by breaking the real or perceived connection between political contributions, whether direct or attributed, and City contracts or financial assistance, by requiring transparency within the Request for Proposal (RFP) process.
- The Chapter was adopted by Council in 2005, and has not been materially amended since then, other than to add requirements regarding awards of financial assistance.
- The purpose of the proposed Regulations is to:
 - Provide additional clarity for businesses;
 - Establish clear processes;
 - Allow for correction of reasonable, inadvertent, non-material mistakes and omissions; and,
 - Increase transparency.
- The Regulations are based upon the City’s experiences implementing the requirements of the Chapter since 2006.
- The Regulations are part of a package of contract-related regulatory and legislative reforms that are currently being advanced to:
 - Ease and strengthen compliance with Chapter 17-1400;
 - Simplify the contracting process for certain professional services contracts; and,
 - Encourage more participation of Local Business Entities on City contracts.

Ms. Tipton summarized the process that would follow the hearing and opened it up for public comment.

John Milligan, CEO of Milligan & Company, LLC., provided public comment. This supplemented the written comment and request for public hearing submitted on October 16, 2019 by Mr. Milligan. Below is a summary of the main issues raised by Mr. Milligan pertaining to the Regulations. Issues raised in public comment that do not directly address the Regulations are outside the scope of this report and generally are not included in the report.

➤ **Controlling Shareholder**

Comment: "Controlling Shareholder" is defined in Regulation 17-1401(7b)¹. Under the Chapter's Attribution Rules, Contributions of an inactive minority shareholders who owns 1% or more of a business, are attributed to the business. There are numerous situations where an individual who is a minority shareholder and not involved in the business could unintentionally, or intentionally, create compliance deficiencies for the business without active management's knowledge.

City Response: The City agrees that there may be situations where management may not always have the ability to adequately control the activities of minority shareholders. As a result, the City has raised the threshold for a Controlling Shareholder from 1% to 5% in the Final Regulations.

➤ **Inadvertent and immaterial mistakes or omissions**

Comment: Regulation 17-1402(.a)² provides an applicant an opportunity to correct an inadvertent or reasonable and immaterial mistake or omission in lieu of disqualification. However, the example given of a material mistake arguably can be viewed as inadvertent and immaterial. The example should give clear guidance where most likely to create differences of opinion.

City Response: The Regulation authorizes correction of an application at the discretion of the Procurement Commissioner or designees "if the mistake or omission is both (i) inadvertent or reasonable; and (ii) not material (as that term is defined at Reg. 7.1.2.) and in such other instances when, in the assessment of the Commissioner or designee, to do so would not jeopardize the integrity of the selection process."

Regulation 7.1.2 defines a material as a misstatement or omission which:

¹ Reg. 1.3 in Final Regulations.

² Reg. 2.1 in Final Regulations.

- Would have made the Applicant or Contractor ineligible for the contract; or
- Is of such number, degree or kind that, had it not been misstated or omitted, could have caused reasonable people, based on all the facts and circumstances, to question the integrity of the contract selection or contract administration process.

The mistake and/or omission then must meet both parts of the test (inadvertent/reasonable and not material), and the individual facts and circumstances inform that analysis.

The examples in Regulation 7.1.2 compare the following scenarios:

- An applicant completes the application form but, due to a typographical error, entered a “4” instead of a “5” in entering its Employer Identification Number (EIN). The applicant would be permitted to correct its application.
- An applicant entering a parent company EIN instead of a subsidiary company...at the discretion of the Designee and depending on the circumstances, may not be allowed to correct the application, as they are unique business entities.

In the first example, given the facts of a simple typographical error, both parts of the test are met and the Procurement Commissioner or designee could allow for correction of the mistake:

- The mistake by itself is likely inadvertent. The fact that 1 out of 9 numbers in an EIN was incorrect and all other information in the application was correct and complete indicates there was no intent to deceive or hide information and likely does not call into question the integrity of the contracting process.
- This mistake does not create an issue of eligibility under §17-404 of the Code pertaining to political contributions, as there is no political contribution in this case, so the analysis turns to whether reasonable people, given the facts and circumstances, would have cause to question the integrity of the contracting process. As noted above, these facts show no intent to deceive or hide information and likely does not call into question the integrity of the contracting process.

In the second example where a parent company utilizes the EIN of subsidiary company, depending on the specific facts, a reasonable person could question the inadvertent or reasonable nature of the mistake, as well as question the integrity of the process.

- The mistake could be viewed as intentional, not inadvertent. The parent

company would have additional information on the subsidiary EIN. This information could be used to create an unfair advantage and could seek to hide any number of issues of the parent company that could negatively affect their eligibility for a contract award, including but not limited to political contributions, tax noncompliance, or financial instability. Contrast this with the typographical EIN mistake, where the applicant would not have additional information about the other company EIN's input due to typographical error and could inadvertently use an EIN that actually negatively impacts them.

- Utilization of subsidiary EIN could certainly be material. Although eligibility under §17-404 is not directly at issue here, because of the apparent incentives and potential for deception, a reasonable person could question the integrity of the contracting process, if allowed to correct the error.

Additional facts or circumstances could change the analysis and conclusions in each example. Because each case will be so factually dependent, more detailed examples are not practical, and the City keeps the example as-is in the Final Regulations.

➤ **Ineligibility Appeal Procedure**

Comment: The City's appeal procedures for a contractor who is determined to be ineligible for a contract should be conducted by a party who is unbiased, independent, and knowledgeable in the subject matter. The City may consider utilizing a third-party appeal panel or board. It is not good policy to have an appeal heard by the administrator who initiated the action.

City Response: To address this concern, the Final Regulations clarify that any applicant found ineligible under § 17-1404 has the right to appeal to City representative(s) who do not report to the Procurement Department or designee.

➤ **“Amount Expected to be Realized”**

Comment: The terminology "amount expected to be realized" in Regulation 17-1404(a)³ is too subjective and subject to speculation.

City Response: § 17-1404 provides political contribution thresholds for Non-Competitively Bid Contracts, where the value of those contracts exceed specified amounts. Certain types of contracts do not have a specified amount the City will pay. An example of this is where a vendor is paid a percentage based on the revenue generated by the services provided. The actual amount to be realized will not be specified in the

³ Reg. 4.1. in Final Regulations.

contract, rather estimates of revenue that will be generated and payment calculated that the parties mutually agree upon during the contracting process. The “amount expected to be realized” in Regulation 4.1 accounts for these types of contracts.

➤ **Regulation 17-1407(.b)⁴ – Number of mistakes in determining materiality**

Comment: The definition of a misstatement or omission that is not material includes the following language: "Every misstatement or omission is not "material". A misstatement or omission is "material" if the matter that was misstated or omitted either: 1. Would have made the Applicant or Contractor ineligible for the contract, or 2. Is of such number, degree or kind that, had it not been misstated or omitted, could have caused reasonable people, based on all the facts and circumstances, to question the integrity of the contract selection or contract administration process." The words "Is of such number" has been used by the City to justify a disqualification for an omission of one very minor contribution to an elected individual who was not involved in the process. The City multiplied these few omissions by the number of proposals that were submitted and deemed the one immaterial omission on an application to be material due to a few contributions being omitted on prior applications. This definition needs clarification to avoid future disagreements on this issue.

City Response: As a general principle, the City agrees a single mistake or omission should not be “multiplied” as described to find a material misstatement or omission; however, other facts and circumstances may indicate and result in a finding of materiality. Number is but an example of a factor in evaluating misstatement(s) or omission(s) under the reasonable people standard based all facts and circumstances, as quoted from the Regulations in the above comment. The scenario described above, as stated, including one “minor” contribution and “few” omissions, is vague and subjective. The analysis of facts and circumstances around the “minor” and “few” omissions could easily result in a conclusion of material or immaterial. In fact there could be a situation, where a single “minor” contribution given other facts and circumstances, could cause a reasonable person to question the integrity of the process. Although this may result in disagreements, as the Commenter notes, the Regulations provide a clear process for when there is finding of a material omission or misstatement that provides ample opportunity to respond and a process for an appeal. This is necessary to safeguard the integrity of the process and ensure appropriate use of taxpayer dollars.

➤ **Penalties – Liquidated Damages**

⁴ Reg. 7.1.2. in Final Regulations.

Comment: The enforcement and penalties under the Chapter are too inflexible, specifically § 17-1402 (l)(e)(i) which provides liability in the amount of 10%. Many contracts also are written with a "Maximum not-to-exceed" amount based on a fee structure and amounts to be paid are based on task orders that the City issues. There are times where the City does not issue any task orders under contracts and the contracts have no economic value. These contractors are penalized the same amount as contractors who receive the full value of the contract. This not fair to the Contractor who hasn't received any payments or a value less than the maximum amount

City Response: The City partially agrees with this comment and made the below changes to the Final Regulation in Reg. 2.6.2:

If the maximum payment stated in the contract exceeds the amount expected to be realized by the Business, the City shall take that into consideration in assessing liquidated damages.

In the scenario of a contract that has a not-to-exceed amount but the contractor is not guaranteed work and will only be issued work via task orders that specify payment, under the Final Regulation, the City shall take that into account in assessing liquidated damages.

Other Issues addressed by the City's legislative reform of the Chapter

Mr. Milligan raised additional issues that do not speak directly to the Regulations, some of these issues have been addressed through the City's package of legislative and regulatory reforms to the Chapter.

➤ **Penalties – Liquidated Damages**

Comment: The enforcement and penalties under the Chapter are too inflexible, specifically § 17-1402(l)(e)(i) which provides liability in the amount of 10%. The penalties are the same for an unintentional clerical error as they are for a party that intentional omitted material contributions made with the intent to influence the award of a contract. Similarly, this provision provides for 10% of the maximum of contracts even if no amount was paid to the Contractor. Many contracts also are written with a "Maximum not-to-exceed" amount based on a fee structure and amounts to be paid are based on task orders that the City issues. There are times where the City does not issue any task orders under contracts and the contracts have no economic value.

City Response: The City agreed with this comment and proposed amendment in Bill #190786. This provision was recently amended so liquidated damages may be assessed in an amount up to 10% of the maximum payments under the contract, so the facts and circumstances of each contract can be utilized in assessing liquidated damages.

➤ **5 Day disclosure period for political contributions**

Comment: The Chapter requires reporting of political contributions made after award of contract on a form provided by the City Agency awarding the contract within 5 business days of contribution; during the contract period and 1 year thereafter. It is likely there is a high amount of non-compliance on this requirement, as it is be burdensome for City contracting departments and contractors.

City Response: The City agreed with Comment based on the years of administering the Chapter's requirements. This was one of the amendments proposed by the City in Bill# 170786 which recently was signed into law by Mayor Kenney. Under that amendment, the disclosure schedule is as follows:

The disclosure forms required by subsections (ii), (iii) and (iv), above, shall be filed by each of the following dates, provided that no form need be filed if no contributions, requests, payments or advice was made during the relevant filing period:

- **January 15** (for the period November 1 through December 31 of the immediately preceding year),
- **March 15** (for the period January 1 through the last day of February),
- **May 15** (for the period March 1 through April 30),
- **July 15** (for the period May 1 through June 30),
- **September 15** (for the period July 1 through August 31), and
- **November 15** (for the period September 1 through October 31).

EXHIBIT A

THE PROCUREMENT DEPARTMENT
REGULATIONS REGARDING CHAPTER 17-1400
NON-COMPETITIVELY BID CONTRACTS; FINANCIAL ASSISTANCE

These regulations (“Regulations”) are promulgated by the Procurement Department, pursuant to its authority under the City of Philadelphia Charter § 8-407, authorizing reasonable regulations as may be necessary and appropriate in the exercise of its powers and performance of its duties under Phila. Code § 17-1402(1)(a). These Regulations are intended to supplement and clarify Chapter 17-1400 of The Philadelphia Code.

The Regulations are identified in bold and underlined text.

The language of Chapter 17-1400 of The Philadelphia Code as of January 1, 2020 is provided with these Regulations for convenience and to provide context and any error in transcription shall not be considered a change in the law as set forth in the official publication of The Philadelphia Code.

The following Regulations regarding Chapter 17-1400 are hereby adopted:

Regulation 1. Definitions; Supplemental

§ 17-1401. Definitions.

For purposes of these regulations and the interpretation of Chapter 17-1400, the following words are defined as follows:

1.1 Affiliate. A Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, another Person; including, but not limited to, parents and subsidiaries.

(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.

(a) Except as provided in subsection (b), the term “Candidate” shall have the same meaning as in Chapter 20-1000, relating to Campaign Contributions and Expenditures.

(b) For purposes of sections 17-1402(1)(b) and 17-1402(1)(e)(ii), relating to disclosure of Contributions: As defined in section 1621 of the Pennsylvania Election Code, Act of 1937, June 3, P.L. 1333, 25 P.S. § 3241, as amended from time to time.

(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.

1.2 Control. The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Business or political action committee, whether through the ownership of voting securities or other ownership interests; by contract; or otherwise.

1.3. Controlling Shareholder. A shareholder or partner of a Business shall be considered a controlling shareholder or partner if any of the following are met:

1.3.1. With respect to a publicly traded Business that is registered with the Securities and Exchange Commission: Any Person holding, directly or indirectly, five percent (5%) or more of the outstanding Ownership interest in the Business.

1.3.2. With respect to a professional corporation subject to Chapter 29 of Title 15, Pa. C.S., or a comparable provision of the law of another State: Any Person holding, directly or indirectly, any Ownership interest in the Business.

1.3.3. With respect to any other Business: Any Person holding, directly or indirectly, any Ownership interest in the Business, unless the Person is not actively involved in the management or operation of the Business and holds less than five percent (5%) of the outstanding Ownership interest.

1.3.4. Any Person held out by a Business in a manner that reasonably leads the public or the City to believe that the Person is a Controlling Shareholder.⁵

(8) 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.

1.4. “City-Related Agency” shall mean a not-for-profit corporation or authority for which either:

1.4.1 City Officials or Appointees constitute more than fifty percent (50%) of the membership of the board; or

1.4.2 In light of the purposes of this Chapter, and Sections 17-1406(6) and 17-1408 in particular, the City Solicitor certifies that the entity has a sufficient nexus with City government to be deemed a City-Related Agency based on any combination of the following factors, or such other factors as the Solicitor deems relevant:

a. The entity was incorporated or established or caused to be established by a City Official or City ordinance;

b. City Officials or Appointees historically have constituted more than fifty percent (50%) of the membership of the board;

⁵ Independently elected officials may choose, at their option, not to abide by this subsection (7b)(d) for contracts under their supervision.

c. A substantial portion of the entity’s mission is the performance of governmental or quasi-governmental services sought by the City; or

d. The entity receives all or substantially all of its funding from the City.

1.4.3. The Solicitor shall withdraw such certification upon a determination that the nexus is no longer present.

1.4.4. For purposes of this definition, a “City Official or Appointee” means an individual who is either (1) a City official who was appointed or is serving on the board in the official’s official capacity; or (2) appointed by a City official; or (3) appointed jointly by a City official and others (except for members appointed by the board or entity).

(9) Contribution. As defined in the Pennsylvania Election Code, 25 P.S. § 3241; except that “Contribution” shall not include a contribution to a campaign committee with respect to a campaign for federal office, except where the subject of such campaign is also a candidate for, or an incumbent holding, City elective office at the time of the contribution.

1.5. Contribution; Supplemental.

1.5.1 “Contribution,” under the Pennsylvania Election Code generally includes any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee made for the purpose of influencing any election in this Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election.

1.5.2, “Contribution” also includes the purchase of tickets for or sponsorship of events such as dinners, luncheons, rallies and all other fund-raising events; the granting of discounts or rebates not available to the general public; and any payments provided for the benefit of any candidate, including any payments for the services of any person serving as an agent of a candidate.

1.5.3. Contribution” also shall not include a contribution to a campaign committee with respect to a campaign for any office other than a City elective office, except where the subject of such campaign is also a candidate for, or an incumbent holding, City elective office at the time of the contribution.

(10) Financial Assistance. Any grant, loan, tax incentive, bond financing subsidy for land purchase or otherwise, or other form of assistance that is realized by or provided to a Person in the amount of fifty thousand dollars (\$50,000) or more through the authority or approval of the City, including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, use of the power of eminent domain, Community Development Block Grant (CDBG) aid or loans, airport revenue bonds, and Enterprise Zone or similar economic development zone designations (such as Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, Keystone Opportunity Improvement Zones, and Economic Development District Zones), but not including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such assistance.

(11) Immediate Family. A spouse or Life Partner residing in the individual's household; and minor dependent children of either or of the individual.

(11.1) Incumbent.⁶ An individual who holds an elective City office.

1.6. An individual who has been elected to an elective City office but has not yet been seated is also deemed to be an Incumbent.

(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.

1.7. Non-Competitively Bid Contracts

1.7.1 Cooperative or Joint Purchasing. A Non-Competitively Bid Contract shall not include any contract entered into pursuant to Section 8-200(4) of the Charter, relating to cooperative or joint purchasing arrangements.

1.7.2 Professional Services and Best Value. A Non-Competitively Bid Contract includes, but is not limited to, any Professional Services Contract and any contract awarded pursuant to the best value provisions of Section 8-200(5) of the Charter.

1.7.3 Renewals. A Non-Competitively Bid Contract includes all renewals made to that contract. See also § 17-1406(c), for important exceptions.

1.8. Officer. An officer shall be any individual who performs a policy-making function for a Business, including the President or Vice-President in charge of a principal business unit, division or function (such as sales, administration or finance). Where a person has the title of President or Vice-President, there shall be a presumption that this individual is in a policy-making function and is an officer. The burden shall be on the Business to overcome this presumption.

1.9. Ownership. Direct or beneficial ownership. A beneficial owner is a Person who enjoys the benefits of ownership while lacking specific ownership rights.

1.10 Partner. A partner shall be:

1.10.1. Any partner, including any non-equity partner, other than a passive investor who holds less than a one percent equity interest.

1.10.2. Any Person held out by a Business in a manner that reasonably leads the public or the City to believe that the Person is a Partner.⁷

Example: If a Business's website or marketing materials, or an employee's business card, identifies the employee as a partner, the employee will be presumed a partner for the purposes of this Chapter.

(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.

⁶ Renumber because of the duplicate use of the number (11) in amendments made to this Section of the Chapter 17-1400.

⁷ Independently elected officials may choose, at their option, not to abide by this subsection (12c)(b) and the related Example, for contracts under their supervision.

(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).

Regulation 2. Mandatory Disclosures and Provisions

§ 17-1402. Open and Public Process Required For Non-Competitively Bid Contracts.

(1) The Procurement Commissioner shall develop procedures to ensure that Non-Competitively Bid Contracts are advertised, awarded and approved in a timely, efficient and coordinated manner in the best interest of the City; in a manner that maximizes accessibility by vendors and maximizes transparency to the public; and in compliance with all applicable provisions of this Chapter. 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 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;

2.1. Where an Applicant makes mistakes or omissions in completion of the application forms, the Procurement Commissioner or designee shall allow the Applicant an opportunity to correct the application and maintain eligibility for award of the contract whenever, in the assessment of the Commissioner or designee, the mistake or omission is

both (i) inadvertent or reasonable; and (ii) not material (as that term is defined at Reg. 7.1.2); and in such other instances when, in the assessment of the Commissioner or designee, to do so would not jeopardize the integrity of the selection process. The Procurement Commissioner or a designee may determine the Applicant not to be eligible to be awarded the Non-Competitively Bid contract for which the Applicant applied if the Applicant fails to correct the mistake within such period of time, not to exceed ten (10) business days, as the Commissioner or designee shall provide. Even if corrected, the mistake or omission may be considered by the contracting department in making its award decision.

Example: An applicant completes the application form but, due to a typographical error, entered a “4” instead of a “5” in entering its Employer Identification Number (EIN). The applicant would be permitted to correct its application. Contrast this with an applicant entering a parent company EIN instead of a subsidiary company. In this case, the applicant, at the discretion of the Designee and depending on the circumstances, may not be allowed to correct the application, as they are unique business entities.

(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 elective City office or to an Incumbent, or to any political committee or party in the City of Philadelphia, or to any group, committee or association organized in support of any such candidate, office holder, political committee or party in the City of Philadelphia or any contribution covered by subsection (3) or (4) of § 17-1405 ("Attribution Rules"), and the date and amount of each such contribution, or certify that no such contributions have been made. The attribution rules of § 17-1405 shall apply to determine what contributions must be disclosed as contributions of the Applicant or of a Consultant under this subsection (1)(b);

2.2. Mandatory disclosures required under § 17-1402(b) include disclosure of returned contributions.

2.3. Relation to § 17-1404. When determining eligibility for Non-Competitively Bid Contracts and Financial Assistance, the City may look beyond the two-year period subject to mandatory reporting as detailed in § 17-1402(1)(b)(i)(2). Eligibility is determined pursuant to § 17-1404 and is not determined by or evaluation limited to the two-year reporting period.

(.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 § 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in § 17-1401) 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;

2.4. For purposes of § 17-1402(1)(b)(4), “City officer or employee” shall include any City employee, elected official, or employee of the office of an elected official.

(.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 also contain a copy of the notice of the availability of such contracting opportunity (including any Request For Proposals or other related documents) previously published pursuant to subsection (a). All information published to comply with this subsection (c) shall appear on the City’s website for at least one week before the contract is executed, and shall remain on the website for

at least five years. 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

2.5. Subsequent to the posting of the Notice of Intent to Award and prior to execution of the contract in § 17-1402(1)(c), the Contractor shall update all disclosures required by § 17-1402(1)(b), through and including the date of the update.

(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) For contracts in an amount greater than the amount set forth in §17-1404(1)(a) (where the Contractor is an individual) or the amount set forth in § 17-1404(1)(b) (where the Contractor is a business): 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 § 17-1404(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 an amount up to 10% of the maximum payments to the Contractor allowed under the contract, regardless whether actually paid.

2.6. For purposes of 17-1402(1)(e)(i):

2.6.1. To comply with the requirement that disqualifying contributions will not be made, the Contractor shall covenant that the Contractor (including any Person whose contributions are attributable to the Contractor pursuant to § 17-1405) will not make contributions in excess of the amounts set forth in § 17-1404(1)(a) and § 17-1404(1)(b), as adjusted from time to time under § 17-1404(1)(c), in the aggregate during a calendar year to any candidate for nomination or election to any elective City office or to an Incumbent or to any political committee controlled by any such candidate or an Incumbent; and shall covenant to require that subcontractors at any tier enter into such covenants on their own behalf.

2.6.2. If the maximum payment stated in the contract exceeds the amount expected to be realized by the Business, the City shall take that into consideration in assessing liquidated damages.

(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 elective City

office, or to any political committee or party in the City of Philadelphia, or to any group, committee or association organized in support of any such candidate, office holder, political committee or party in the City of Philadelphia, or any contribution covered by subsection (3) or (4) of § 17-1405 ("Attribution Rules") 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 on the schedule set forth in subsection (v) below. 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 § 17-1405 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 § 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in § 17-1401) 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 on the schedule set forth in subsection (v) below. 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 on the schedule set forth in subsection (v) below. 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.

(v) The disclosure forms required by subsections (ii), (iii) and (iv), above, shall be filed by each of the following dates, provided that no form need be filed if no contributions, requests, payments or advice was made during the relevant filing period: January 15 (for the period November 1 through December 31 of the immediately preceding year), March 15 (for the period January 1 through the last day of February), May 15 (for the period March 1 through April 30), July 15 (for the period May 1 through June 30), September 15 (for the period July 1 through August 31), and November 15 (for the period September 1 through October 31).

(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.

Regulation 3. Additional Reporting Requirements

§ 17-1403. 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 § 17-1402(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 report shall also include, for each City Agency (other than Council) the dollar amount of each type of Financial Assistance the City Agency anticipates awarding in the upcoming fiscal year (to the extent known at the time the report is filed). 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 17-1402(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 § 17-1406(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 § 17-1402(1)(e) since the date of the last report.

The report shall also detail each provision of Financial Assistance made during the reporting period, and for each provision of Financial Assistance: (i) the City Agency providing such assistance; (ii) the type of Financial Assistance awarded; (iii) the recipient of such assistance; and (iv) the dollar amount of such assistance

3.1. Quarterly Reports. The quarterly written report to be filed by the Mayor on January 31, April 30, July 31 and October 31 of each year pursuant to § 17-1403(3) shall report on the three-month period ending one month prior to the date the report must be filed.

(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. The report shall also summarize the provision of Financial Assistance, detailing for each City Agency the number and dollar amount of each type of Financial Assistance the City Agency awarded during the prior fiscal year.

3.2. Annual Reports. The annual report filed pursuant to § 17-1403(4) shall include, for each agency listed in § 17-1406(8):

3.2.1. The agency's plans for the current fiscal year to promote competition and transparency in the award of contracts with not-for-profit entities.

3.2.2. The agency's analysis of its compliance in the prior fiscal year with its stated plans to promote competition and transparency.

3.2.3 For each contract with a not-for-profit entity awarded during the prior fiscal year:

a. A description of any competitive process used to award the contract (e.g., the process provided for at § 17-1402(1)(a), (c); published request for proposals, information or qualifications; targeted request for proposals, information or qualifications), including when that process was used and the duration of the process;

b. An explanation as to whether such competitive process was sufficient, and why; and

c. Whether and, if so, when, for any prior contract with such not-for-profit entity, any competitive process, including but not limited to the process provided for at § 17-1402(1)(a), (c), was used.

(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.

Regulation 4. Eligibility

§ 17-1404. Eligibility for Non-Competitively Bid Contracts and Financial Assistance.

(1) Determining Eligibility.

(a) If an individual makes contributions in excess of \$2,500 (as such amount is adjusted from time to time under § 17-1404(1)(c) or § 17-1404(1)(d)) 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, nor shall the individual be eligible to receive Financial Assistance.

(b) If a Business makes a contribution in excess of \$10,000 (as such amount is adjusted from time to time under § 17-1404(1)(c) or § 17-1404(1)(d)) 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, nor shall the Business be eligible to receive Financial Assistance.

4.1. For the purposes of §17-1404(1)(a) and (b), the value of the Non-Competitively Bid Contract shall be the amount stated in the contract or, if greater, the amount expected to be realized by the Business through the contract.

Example: A towing company has a Non-Competitively Bid Contract with the City to provide emergency towing services to City residents. The City expects the company to receive about \$35,000 from those whose cars are towed, based on past experience or other City estimates. The Contract will be deemed to be for \$35,000, even though the company will not receive payments from the City treasury.

4.2. Contributions covered by § 17-1404(1)(a) and (b) shall:

4.2.1. Include contributions made prior to the submission of an application by an Applicant; contributions made subsequent to the submission of an application; and any contributions made subsequent to the award or execution of a Contract. Ineligibility covered by subsections (a) and (b) includes ineligibility for a Contract for which a Notice of Intent to Award has been posted and any contract, executed or otherwise, in connection with which the contributions were disclosed.

4.2.2. Not affect the eligibility of an Applicant, nor shall a contribution be attributed to a Person pursuant to § 17-1405 (“Attribution Rules”), if the contribution is returned consistent with the conditions set forth below:

a. the contribution was returned, in full, to the contributor, no later than ten (10) days after it was received;

b. the contribution was timely disclosed pursuant to all disclosure obligations of this Chapter 17-1400 (including § 17-1402(1)(b)(i)(.2), (e)(ii) and § 17-1404(3));

c. the contribution’s return was reported to the Procurement Commissioner or designee no later than ten (10) days after it was returned;

d. the Procurement Commissioner or designee has not determined that such contribution or return was intended to circumvent the purposes of this Chapter 17-1400.

(c) On January 1, 2008 and on January 1 every four years thereafter, the maximum amounts set forth in § 17-1404(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 § 17-1404(1)(a) shall equal \$2,500, multiplied by the CPI Multiplier, rounded to the nearest \$100.

(ii) The maximum amount for purposes of § 17-1404(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.

(d) If a candidate (as defined in Section 20-1001, relating to political contributions and expenditures) for any City elective office contributes \$250,000 or more from his or her personal resources to his or her candidate political committee (regardless of the time period over which such contribution is made), then the maximum amounts set forth in § 17-1404(1)(a) and (b), as

they may be adjusted pursuant to subsection (c), shall double with respect to contributions to candidates for that same elective office.

(e) For any contract that satisfies both of the following criteria – (.1) it is awarded pursuant to the best value provisions of subsection 8-200(5) of the Home Rule Charter; and (.2) prior to the adoption of subsection 8-200(5), such contract would have been subject to the lowest responsible bidder requirements of subsection 8-200(1) of the Home Rule Charter – the provisions of this subsection (1) (“Determining Eligibility”) shall not apply to contributions made prior to June 1, 2017. This exclusion shall only apply to the provisions of this subsection (1).

(2) The attribution rules of § 17-1405 shall apply to determine the amount of contributions made by an individual or Business for purposes of subsection (1).

(3) Disclosure by Applicants for Financial Assistance.

(a) A Person seeking Financial Assistance shall file with the City Agency providing such assistance all disclosure forms that Applicants seeking Non-Competitively Bid City Contracts must file under § 17-1402(1)(b).

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

(c) No Financial Assistance shall be provided unless all required disclosure forms are completed, signed and filed with the City Agency providing such assistance and are on file with the Finance Director, and the Department of Records.

(d) If Council approval of the Financial Assistance is required by law, the ordinance approving such Financial Assistance must include as exhibits copies of all disclosure forms required by this subsection (3).

(e) Every recipient of Financial Assistance shall, for a period of five years after receiving such assistance, be subject to the provisions of § 17-1402(1)(e), requiring certain covenants and disclosures, as if such recipient were a Contractor executing a Non-Competitively Bid Contract. The City Agency providing the Financial Assistance shall enter into such agreements with the recipient of Financial Assistance as the City Solicitor deems necessary to carry out the purpose and intent of this subsection.

4.3. For purposes of § 17-1404, ineligibility is determined through the following process and procedures:

4.3.1. Apparent Ineligibility. If it appears that an Applicant or Contractor is ineligible for a Non-Competitively Bid Contract under Chapter 17-1400, or that there are grounds to initiate an investigation to determine whether an Applicant or Contractor is eligible, the Procurement Commissioner or designee (currently the Director of the Contract Legislation Unit in the Office of the Chief Administrative Officer) shall open an investigation to determine all material facts.

4.3.2. Notice of Investigation. The Applicant or Contractor shall be notified that an investigation pursuant to these regulations is being initiated and of the initial grounds for the investigation.

4.3.3. Response Period. The Applicant or Contractor shall respond promptly to any document or interview requests pursuant to the investigation. Failure to respond promptly may be used in the determination of ineligibility. See also paragraph (.9), below.

4.3.4. Notice of Intent to Determine Ineligibility. Following investigation, if it appears that the Applicant or Contractor is ineligible under § 17-1404, the Designee shall issue a written Notice of Intent to Determine Ineligibility (“Notice of Intent”) to the Applicant or Contractor. The Notice of Intent shall detail the following:

- a. The reasons supporting the proposed determination; and,**
- b. The Applicant’s or Contractor’s right to oppose the proposed determination and to submit written material to the Designee in support of any opposition.**

4.3.5. Applicant or Contractor’s Notice of Opposition. Within three (3) business days after the date of the Notice of Intent, the Applicant or Contractor may submit information in writing to the Designee opposing the proposed determination. The Designee will review any timely submitted information and, based on the information submitted, or based on the failure to submit any information, will either notify the Applicant or Contractor, in writing, that the Notice of Intent is withdrawn; or will issue and send to the Applicant or Contractor a Determination of Ineligibility. Such Determination of Ineligibility shall be effective immediately.

4.3.6. Appeal Meeting. Within three (3) further business days after the date of the Determination of Ineligibility, the Applicant or Contractor may request, in writing, an appeal meeting with representatives of the City who do not report to the Procurement Department designated by the Mayor to be responsible for such matters. If the Applicant or Contractor fails to submit its written request for a meeting with representatives from the City within the specified three (3) business days, then its right to such meeting shall be waived. The Applicant or Contractor shall not be eligible to be awarded or enter into any Non-Competitively Bid contract during the appeal period, unless and until the representatives of the City reverse or revise the Determination of Ineligibility.

4.3.7. Appeal Meeting with City Representatives. If timely requested pursuant to Regulation 4.3.6, City representatives shall meet with the Applicant or Contractor, at which meeting the Applicant or Contractor may present information opposing the Determination of Ineligibility orally and in writing.

4.3.8. Post-Appeal Determination by the City. Upon review of the available information, including documents submitted and arguments presented by the Applicant or Contractor at an appeal meeting, the City shall make a written Post-Appeal Determination following the appeal meeting, and shall provide the Applicant or Contractor with a copy. If the Post-Appeal Determination confirms the Applicant’s or Contractor’s ineligibility

pursuant to § 17-1404(1), the Post-Appeal Determination shall state the findings on which it is based, and the period of ineligibility.

4.3.9. Records to Be Made Available. During the appeal process, the Applicant or Contractor shall make available, in the City of Philadelphia, all relevant documents, records and information to the Designee or other investigating authority. Failure to comply fully with this requirement shall entitle the City to draw adverse inferences in determining ineligibility and may be sufficient grounds for initiating debarment proceedings pursuant to the City’s Policy and Procedure for the Debarment and Suspension of Vendors and Contractors. The City representatives conducting the appeal (or the Designee conducting the underlying investigation) shall seek the assistance of the Law Department should the representatives (or the Designee) need to compel the production of any documents or other evidence as part of the representatives’ (or Designee’s) investigation.

4.3.10. Disposition Agreement. At any time before the City issues its Determination of Ineligibility or its Post-Appeal Determination, the City may, in its discretion, permit an Applicant or Contractor to enter into a Disposition Agreement relating to the disputed determination of ineligibility. No Disposition Agreement shall be effective unless it is in writing and signed by the Applicant or Contractor; the City Solicitor; and the individual designated by the Mayor to be responsible for such matters.

Regulation 5. Attribution Rules; Supplemental

§ 17-1405. Attribution Rules.

The following attribution rules shall apply throughout this Chapter to determine what contributions shall be considered to be contributions of an Applicant, Consultant, Contractor or Person seeking Financial Assistance:

(1) Contributions made by a member of an individual’s Immediate Family shall be considered to be contributions made by the individual, but only if such contribution exceeds the maximum amount specified in § 17-1404(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.

5.1. For purposes of § 17-1405(2)(b), reimbursement by a Business shall include reimbursement by any Person whose contributions would be attributed to such Business.

(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;

5.2. For purposes of § 17-1405(2)(d), a political action committee shall be considered controlled by the Business if it is controlled by any Person whose contributions would be attributed to the Business.

(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.

5.3. The registration statement referenced in § 17-1405(3) is a statement filed pursuant to section 1624 of the Election Code (25 P.S. § 3244).

(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 fund-raising event, then any contributions raised at such event shall be considered to be contributions by such Business.

5.4. For the purposes of determining attribution pursuant to § 17-1405(5):

5.4.1. If a Person agrees to sponsor a fundraising event, or otherwise permits a campaign to use such Person's name in connection with a fundraising event, any contributions made at, or in connection with, such fundraising event shall be attributed to such Person, but only to the extent such contributions were made or pledged after the use by the campaign of such Person's name. Contributions shall be presumed to be made in connection with a fundraising event if they are made or pledged at or around the time of, or in response to, an invitation to a fundraising event, regardless of whether the contributor attends the fundraising event and regardless of whether the fundraising event takes place.

5.4.2. Absent compelling evidence to the contrary, a Person will be presumed to have agreed to sponsor a fundraising event, or otherwise permitted a campaign to use such Person's name in connection with a fundraising event, upon the occurrence of any of the following:

a. A campaign lists a Person as a sponsor of a fundraising event or otherwise uses a Person's name in connection with a fundraising event and the Person does not promptly request a retraction.

b. A campaign asks a Person to become a sponsor of a fundraising event or otherwise to permit the campaign to use the Person's name in connection with a fundraising event; and, at or around the time of such request, the Person makes or pledges a contribution to the campaign in an amount equal to or more than the amount necessary to become a sponsor or to have one's name used in connection with a fundraising event; and the Person does not clearly and contemporaneously disclaim to the campaign any authorization to use such Person's name.

Example: A candidate for City Council sends a vendor an invitation to a fundraising event, and the invitation says that contributions of more than \$2,000 shall entitle the contributor to be listed as an Event Sponsor. The vendor sends the candidate's campaign a check for \$2,000, along with a note saying, "Please do not list or identify me as a Sponsor." Contributions raised at the event will not be attributed to the vendor.

c. A communication received and reviewed by a Person's staff shall be deemed to have been received and reviewed by the Person. A communication received by a Person or a Person's staff will be presumed to have been reviewed by the Person or Person's staff.

(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

Regulation 6. Exceptions; Supplemental

§ 17-1406. 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 § 17-1402(1)(a), (1)(c) and (1)(e)(i), and the provisions of § 17-1404, 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 § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(3) The provisions of § 17-1402(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 § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(4) The provisions of § 17-1402(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 § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(5) The provisions of § 17-1402(1)(a) and (1)(c) shall not apply to:

(a) 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 established by the Procurement Commissioner and designed to maximize competition without imposing an administrative burden more costly than appropriate given the size of the contract.

(b) Non-Competitively Bid Contracts in an amount less than the amount set forth in Section 8-200(2.1)(a) of the Charter (relating to local business contracts), as such amount is adjusted from time to time, provided that:

(.1) The contract is awarded to a Local Business Entity (as that term is used in § 17-109).

(.2) All applicants are required to submit, with their applications, all of the material required by Code § 17-109(5)(a) (“Award of City Contracts”), including, but not limited to, certification that the majority of the work will be performed, and inventory will be maintained, in the City.

(.3) Such contracts are awarded only after the contracting agency conducts a competitive process established by the Procurement Commissioner and designed to maximize competition without imposing an administrative burden more costly than appropriate given the size of the contract.

(5.1) The provisions of § 17-1402(1)(h) (relating to amendments) also shall not apply to contracts excepted under subsection (5), above (relating to small dollar value contracts), provided that no amendment shall increase the total amount owing under the contract to an amount that would have made the contract ineligible for the exception that was used pursuant to subsection (5). All other provisions of this Chapter shall apply to such contracts, except that the

disclosures required by § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

6.1. If the amount expected to be realized by a Contractor through the Contract exceeds the exemption amount set forth in § 17-1406(5), this exception does not apply regardless of the value of the Contract. See Reg. 4.1 and Example.

(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, or to Financial Assistance provided to such agencies or corporations, except that all such contracts and provisions of Financial Assistance shall be included in the reports required by § 17-1403. 136

(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 § 17-1402(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 Intellectual Disability Services, 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 § 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

6.2. The exemption provided in § 17-1406(8) applies to the following agencies, or their successor agencies.

(.1) Division of Housing and Community Development of the Department of Planning and Development,

(.2) Department of Human Services,

(.3) Department of Public Health,

(.4) Department of Parks and Recreation,

(.5) Office of Homeless Services,

(.6) Office of Behavioral Health and Intellectual disAbility Services,

(.7) Mayor’s Office of Community Empowerment and Opportunity,

(.8) Department of Prisons,

(.9) Commission on Disabilities,

(.10) Commission on Aging,

(.11) Office of the District Attorney.

(9) The provisions of this Chapter shall not apply to a Non-Competitively BidContract if the City Solicitor certifies that it is for a service the primary purpose of which is creative expression

or entertainment, including public speakers, artists and musicians, except that all such contracts shall be included in the reports required under Section 17-1403.

(10) The provisions of this Chapter, other than the reporting requirements of Section 17-1403, shall not apply to a Non-Competitively Bid Contract for the services of a rating agency in connection with bond or similar financing; or for the purchase of liability insurance (City as named insured).

(11) The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract awarded by the Law Department, the District Attorney's Office or counsel for a City-Related Agency, whether awarded directly or through outside counsel, for the procurement of an expert opinion for purposes of litigation, except that all such contracts shall be included in the reports required under Section 17-1403 except to the extent inclusion in a report would disclose privileged material or jeopardize the City's or the agency's litigation interests.

(12) The provisions of § 17-1402(1)(a), (b) and (c) but not (d) except subsections (d)(i), (ii), and (iii) shall not apply to the following forms of renewal of a Non-Competitively Bid Contract:

(a) A renewal pursuant to an option to renew contained in a Non-Competitively Bid Contract.

(b) A renewal of a Non-Competitively Bid Contract, which contract contains an option to renew, so long as the City Solicitor certifies that the renewal is on substantially similar terms to those set forth in the contract prior to the renewal.

(c) A renewal of a Non-Competitively Bid Contract, so long as (i) the Director of Finance certifies that the City is working diligently pursuant to this Chapter to award a contract for similar services or materials and that the renewal is for no longer than necessary to complete such award; and (ii) the contracting agency certifies that the renewal will enable the City to continue to provide or receive important services or materials. A renewal pursuant to this subparagraph (c) should generally be for no longer than three months, and, absent a determination by the Director of Finance of extraordinary circumstances, shall be for no longer than six months.

(d) A renewal of a Non-Competitively Bid Contract, so long as (i) the City Solicitor certifies that the renewal is on substantially similar terms to those set forth in the contract prior to the renewal; and (ii) the Director of Finance certifies that the renewal is necessary to enable the other party to the contract to complete ongoing work on a discrete project and that changing the contractor prior to completion of the ongoing work would cause substantial hardship to the City. A renewal pursuant to this subparagraph (c) shall be for no longer than one year.

Regulation 7. Material Misstatement; Policies and Procedures

§ 17-1407. Prohibited Conduct; Penalties; Remedies.

- (1) A contract made in violation of § 17-1404 shall be voidable at the City's option.
- (2) No Applicant shall make a material misstatement or omission in the disclosures required by § 17-1402(1)(b); and no Contractor shall make a material misstatement or omission in the

disclosures required by § 17-1402(1)(e); and no Person seeking Financial Assistance shall make a material misstatement or omission in the disclosures required by § 17-1404(3)(a). If an Applicant makes material misstatements or omissions in the disclosures required by § 17-1402(1)(b), or if a Contractor makes material misstatements or omissions in the disclosures required by § 17-1402(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 as provided for in Chapter 20-1300 (“Penalties For Campaign Finance-Related And Ethics-Related Violations”).

7.1.. Material misstatement or omission

7.1.1. In the case of a misstatement or omission that, in the City’s sole discretion, is not determined to be material (as that term is defined at subparagraph (.b), below), the Applicant or Contractor may be provided a one-time opportunity to cure the misstatement or omission. The errors shall be remedied within ten (10) business days from when the Applicant or Contractor receives written notice from the Director of Finance or a designee of the misstatement or omission, or such shorter period of time as the Director of Finance or designee determines appropriate under the circumstances.

7.1.2. Every misstatement or omission is not “material.” A misstatement or omission is “material” if the matter that was misstated or omitted either:

a. Would have made the Applicant or Contractor ineligible for the contract; or

b. Is of such number, degree or kind that, had it not been misstated or omitted, could have caused reasonable people, based on all the facts and circumstances, to question the integrity of the contract selection or contract administration process. Facts and circumstances can include, among other things, the number and amount of any misstated or omitted contributions; the recipients of such contributions; and the reasons why the Applicant or Contractor misstated or omitted the information, including whether the Applicant or Contractor believed that the misstated or omitted matter could have caused people to question the integrity of the contract selection process.

(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. Upon determination of a material misstatement or omission, the Finance Director shall refer the matter to the Board of Ethics for imposition of such fines as the Board deems appropriate.

(4) 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 § 17-1402(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.

7.2. Policies and procedures for investigations of a material misstatement or omissions are as follows:

7.2.1. Material Misstatements or Omissions in Disclosure Forms Required by §17-1402(1)(b) and §17-1402(1)(e).

a. If there are grounds to initiate an investigation to determine whether an Applicant or Contractor made a material misstatement or omission in the disclosure forms required by §17-1402(1)(b) or §17-1402(1)(e), respectively, the Director of Finance or designee (currently the Director of the Contract Legislation Unit of the Office of the Chief Administrative Officer) shall open an investigation to determine all facts relevant to this issue.

b. The Applicant or Contractor shall be notified that an investigation pursuant to these regulations is being initiated and of the initial grounds for the investigation.

c. The Applicant or Contractor shall respond promptly to any document or interview requests pursuant to the investigation.

d. Where it appears that an Applicant or Contractor has made a material misstatement or omission in the required disclosure forms, the Designee may propose debarment of the Applicant or Contractor pursuant to the City's Policy and Procedure for the Debarment and Suspension of Vendors and Contractors ("Debarment Policy"), Sections VI and VII.

7.2.2. Publication of Written Determination by Hearing Panel.

a. In the case of a finding of debarment, a copy of the written determination issued by the Debarment Hearing Panel will be provided to the Department of Records and shall be published in the manner established by § 17-1407(3) by the Department of Records and on the City's official website.

b. The matter shall be referred to the Philadelphia Board of Ethics for it to consider any action seeking the imposition of fines under subsection § 17-1407(2).

§ 17-1408. 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 § 17-1406(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.