Legislation Details (With Text)

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File created:	12/21/2010	**In control:**	FINANCE & PERSONNEL COMMITTEE
On agenda:		**Final action:**	1/19/2011
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Title:	Substitute resolution relating to policies and procedures for expediting payments on invoices for City contracts and subcontracts.		
Sponsors:	ALD. DAVIS, ALD. HINES JR., ALD. BAUMAN, ALD. HAMILTON, James N. Witkowiak, ALD. WADE, ALD. COGGS, ALD. KOVAC, ALD. ZIELINSKI		
Indexes:	AGREEMENTS, PURCHASING PROCEDURES		
Attachments:	1. Proposed Substitute B, 2. Fiscal Impact Statement, 3. Hearing Notice List		

Date	Ver.	Action By	Action	Result	Tally
12/21/2010	0	COMMON COUNCIL	ASSIGNED TO		
1/10/2011	1	FINANCE & PERSONNEL COMMITTEE	HEARING NOTICES SENT		
1/10/2011	1	FINANCE & PERSONNEL COMMITTEE	HEARING NOTICES SENT		
1/10/2011	1	FINANCE & PERSONNEL COMMITTEE	HEARING NOTICES SENT		
1/13/2011	2	FINANCE & PERSONNEL COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
1/13/2011	1	FINANCE & PERSONNEL COMMITTEE	SUBSTITUTED	Pass	5:0
1/19/2011	2	FINANCE & PERSONNEL COMMITTEE	SUBSTITUTED	Pass	5:0
1/19/2011	3	FINANCE & PERSONNEL COMMITTEE	RECOMMENDED FOR ADOPTION	Pass	5:0
1/19/2011	2	COMMON COUNCIL	ADOPTED	Pass	15:0
1/19/2011	3	CITY CLERK	DRAFT SUBMITTED		
1/27/2011	2	MAYOR	SIGNED		

101137
Substitute 3

ALD. DAVIS, HINES, BAUMAN, HAMILTON, WITKOWIAK, WADE, COGGS, KOVAC AND ZIELINSKI
Substitute resolution relating to policies and procedures for expediting payments on invoices for City contracts and subcontracts.
The City's "Prompt Payment Policy" (Common Council File No. 900859, adopted October 16, 1990) states that it shall be City policy to strive to pay all invoices within 30 days after acknowledgement and that if the City fails to pay any properly completed invoice within 60 days after acknowledgement, simple interest at the rate of one percent per month shall be paid on the balance due from the 31st day after acknowledgement. It has also been the City's policy to require a prime contractor to pay its

subcontractors within 10 days of the prime contractor's receipt of payment from the City

This resolution rescinds File No. 900859 and replaces it, along with the 10-day subcontractor-payment policy, with the following policy for payment of invoices and/or contract payments for goods, services or construction contracts that are procured or let by the City:

1. All City departments with responsibility for administering City contracts shall make contract payments within 30 days of receipt of supporting payment documentation and invoices as appropriate, as well as all required contract documentation, including but not limited to documentation of compliance with emerging business enterprise program, residents preference program and prevailing wage requirements.

2. If the City fails to make any payment within 45 days after receipt of supporting payment documentation and an invoice as appropriate, as well as all required contract documentation, consistent with s. 66.0135(2), Wis. Stats., simple interest at the rate of one percent per month shall be paid on the balance due from the 31st day after receipt of the invoice, chargeable to the appropriation related to said invoice.

3. The interest-payment policy shall not apply to a contract under which the amount due is subject to a good faith dispute if, before the date on which payment is not timely, notice of the dispute is sent to the contractor by first-class mail personally delivered in or accordance with the procedure specified in the contract.

4. Consistent with s. 66.0135(3), Wis. Stats., all prime contractors shall pay subcontractors within 7 days of receipt of payment from the City or 7 days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the prime contractor fails to make payment within 7 days, the contractor shall pay simple interest at the rate of one percent per month, beginning with the 8th day.

The resolution also directs all City departments with responsibility for administering City contracts to communicate all of these policies as terms in all proposals and specifications for City contracts.

In addition, this resolution directs all City departments with responsibility for administering City contracts to monitor their respective contracts to ensure that prime contractors comply with the requirement to pay subcontractors within 7 days. The Department of Administration shall provide assistance to contracting City departments in carrying out this monitoring requirement with respect to subcontractors that participate in the City's Emerging Business Enterprise Program.

Finally, this resolution provides that all City departments responsible for administering City contracts may impose all legally permissible penalties, including debarment from future City contracts, in the event that a prime contractor fails to pay a subcontractor within the 7-day time frame stipulated by this resolution.
Whereas, On December 7, 2010, the D. Wilson Consulting Group, LLC, completed a draft final report for the project entitled "Disparity Study for the City of Milwaukee"; and

Whereas, The D. Wilson Consulting Group, LLC, presented a summary of the findings and recommendations of this study to the Common Council's Community & Economic Development Committee on December 20, 2010; and

Whereas, The study found that a number of minority- and women-owned business enterprises have

voiced concerns regarding delayed payments for work performed under contract with the City; and

Whereas, Delayed payments result in cash-flow problems for many of these businesses, which are generally small and often lack the cash reserves or access to cash necessary to maintain their business operations when they do not receive payments in a timely manner; and

Whereas, The City's practices with respect to timely payment of (prime) contractors is based on Common Council File Number 900859 (known as the "City of Milwaukee Prompt Payment Policy"), adopted October 16, 1990, which states that it shall be City policy to strive to pay all invoices within 30 days after acknowledgement and that if the City fails to pay any properly completed invoice within 60 days after acknowledgement, simple interest at the rate of one percent per month shall be paid on the balance due from the 31st day after acknowledgement; and

Whereas, It has also been the City's policy to require a prime contractor to pay its subcontractors within 10 days of the prime contractor's receipt of payment from the City; and

Whereas, The Disparity Study noted that, in contrast to the City of Milwaukee's policy of paying its prime contractors within 60 days and requiring that prime contractors pay subcontractors within 10 days (maximum payment time for subcontractors of 70 days), the Milwaukee Metropolitan Sewerage District ("MMSD") has a policy of paying its prime contractors within 30 days of receiving invoices, and requires its prime contractors to make payment to subcontractors for work performed within 7 days of receipt of their payments from MMSD (for a maximum payment time of 37 days)

Whereas, The Disparity Study recommends that the City consider adopting MMSD's payment policies for both City payments to prime contractors and prime contractor payments to subcontractors; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that Common Council File Number 900859, the City of Milwaukee - Prompt Payment Policy, is rescinded; and, be it

Further Resolved, That all City departments with responsibility for administering City contracts shall make contract payments within 30 days of receipt of supporting payment documentation and invoices as appropriate, as well as all required contract documentation, including but not limited to documentation of compliance with emerging business enterprise program, residents preference program and prevailing wage requirements; and, be it

Further Resolved, That it shall be the policy of the City of Milwaukee that if the City fails to make any payment within 45 days after receipt of supporting payment documentation and an invoice as appropriate, as well as all required contract documentation, consistent with s. 66.0135(2), Wis. Stats., simple interest at the rate of one percent per month shall be paid on the balance due from the 31st day after receipt of the invoice, chargeable to the appropriation related to said invoice; and, be it

Further Resolved, That this interest-payment policy shall not apply to a contract under which the amount due is subject to a good faith dispute if, before the date on which payment is not timely, notice of the dispute is sent to the contractor by first-class mail personally delivered in or accordance with the procedure specified in the contract; and, be it

Further Resolved, That, consistent with s. 66.0135(3), Wis. Stats., it shall further be the policy of the City to require all prime contractors to pay subcontractors within 7 days of receipt of payment from the City or 7 days from receipt of a properly submitted and approved invoice from the subcontractor,

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whichever is later, and that if the prime contractor fails to make payment within 7 days, the contractor shall pay simple interest at the rate of one percent per month, beginning with the 8th day; and, be it

Further Resolved, That all City departments with responsibility for administering City contracts shall communicate all of these policies as terms in all proposals and specifications for City contracts; and, be it

Further Resolved, That all City departments with responsibility for administering City contracts shall monitor their respective contracts to ensure that, upon receipt of payment from the City, prime contractors make payment to any subcontractors within 7 days of receipt of payment from the City or 7 days from receipt of a properly submitted and approved invoice from the contractor, whichever is later; and, be it

Further Resolved, That the Department of Administration shall provide assistance to contracting City departments in carrying out this monitoring requirement with respect to subcontractors that participate in the City's Emerging Business Enterprise Program; and, be it

Further Resolved, That the Department of Administration shall develop and implement, in coordination with other contracting City departments, a system for performing this monitoring responsibility and shall provide a report to the Common Council on the monitoring system and on compliance with the subcontractor-payment policy within 6 months of the date of adoption of this resolution; and, be it

Further Resolved, That all City departments responsible for administering City contracts may, in the event that a prime contractor fails to pay a subcontractor within the 7-day time frame stipulated by this resolution, impose all legally permissible penalties, including debarment from future City contracts.

LRB124377-5
JDO
01/18/2011