

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2007 DEC -6 PM 5:42

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Department of Contracting and Purchasing
DATE: December 11, 2007

RE: **A Supplemental Report on the Ordinance Establishing a Prompt Payment Policy for Purchase of Goods and/or Services Applicable to 1) the City With Respect to Contracts Let Directly to Local Businesses, 2) to Non-Profit and For-Profit Entities Contracted to Manage or Operate City Facilities or Public Programs or Concessions on City-Owned Property, and 3) to City Contractors with Respect to their Subcontractors, to be Codified at Oakland Municipal Code Title2, Chapter 2.06**

SUMMARY

This is a supplemental report to the November 27, 2007 report submitted to the Finance and Management Agency Committee by Council Member Brooks. The committee asked staff to prepare responses to comments and submit those responses in time for the December 11, 2007 Finance and Management Committee.

Comments posed by the City Council's Finance and Management Committee included: “ (a) An analysis of both the full scope of the problems and the cost to implement a Prompt Payment Policy; (b) How will the City fund the Business Liaison Position? ; (c) A phase-in process of the new fines with a 30 day start and to work toward the 15 day requirement while also looking into the prompt payment policy strategies for other cities; (d) Set up systems to pay invoices electronically, direct deposit, and other alternative options to pay subcontractors promptly; (e) How long will it take to comply and/or implement the 15 day policy while also evaluating all the dates and timelines; (f) What are the reporting requirements and/or guidelines of undisputed invoices including a clear definition; (g) Include language for a staff evaluation when the city pays the 10% fine; and (h) Look into alternative percentage fines.”

Recommended modifications to the policy include:

- 20 business days for payments to prime contractors
- 10% per year interest penalty to be paid to the contractor for late payments
- Implementation of electronic billing/payments
- All instances in the Ordinance calling for a three day turnaround will be changed to a 5 day turnaround.
- The Business Liaison position will be funded from citywide salary savings. The position will be added at the mid-cycle budget review for Council's consideration.
- Implementation will take place immediately and be in full effect no later than February 1, 2008

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FISCAL IMPACTS

Business Liaison Position (1.00 FTE) - A preliminary review of job duties, required knowledge, skills and abilities suggest a classification comparable to the existing position of Urban Economic Analyst / Business Services IV. Funding for this position will come from citywide salary savings. The position will be added at the mid-cycle budget review for Council's consideration. The proposed base salary for this position is estimated at \$82,887. Other costs such as leave, retirement and benefits are estimated to bring the full cost of the position to \$131,326.

- Implementation Costs, Internal and External Training - Approximately \$7,500 will cover one-time start up cost to include computer hardware, software and licenses, printing, land line, outreach materials. An estimated \$5,000 is recommended to cover duplication of documents, announcements, advertisements and other outreach efforts. Total one-time costs are estimated at \$12,500. In the first year, the full cost of this initiative is anticipated at roughly \$144,000. In the following years the cost is estimated at \$131,326.

Interest Penalty Payments – Full fiscal impact may not be determined until the policy has been implemented and then tracked for at least a 12 month period.

KEY ISSUES AND IMPACTS

The questions posed at the Finance and Management Committee and staff's responses are as follows:

A. Analysis of both the full scope of the problems and the cost to implement a Prompt Payment Policy –

Staff will come back after one year to report the results of a full analysis.

In order to assist the City Council in its deliberations, staff downloaded an invoice payment report with "remit to Oakland" addresses only for the period July 1, 2006 to June 30, 2007. The report was based on 16,432 invoices paid, the invoice date, and the date the check was issued. The report did not identify local contractors specifically because this feature does not exist in the current accounts payable system's configuration. Rather, the report extracted from the system all vendors with "remit to Oakland" addresses, after eliminating the County of Alameda, East Bay Municipal Utilities District, and City employees.

The summary results based on the above parameters are as follows: (1) 0 to 15 days – 52%; (2) 16 to 30 days – 25%; and (3) Over 30 days – 23%. The report also shows that it takes the Finance and Management Agency Accounting Division an average of 2.9 days to process a payment once it receives an undisputed invoice.

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It should be noted that while the discussion at the Finance Committee on the issue of prompt payment centered primarily around payments to subcontractors on construction contracts, it is estimated that less than 1,000 of the 16,432 invoices considered in the above-cited analysis are associated with construction contracts. Staff will return to Council with an annual report where more details will be provided.

B. How to fund an Ombudsman person (Business Liaison).

Staff proposes to fund this position from citywide salary savings. The position will be added at the mid-cycle budget review for Council's consideration.

C. A phase-in process of the new fines with a 30 day start and to work towards the 15 day requirement while also looking into the prompt payment policy strategies for other cities;

Staff recommends a 20 business day cycle to facilitate payment of invoices. An evaluation will be conducted at the end of the first year of implementation to determine whether it is feasible to continue with this timeline. Interest will be paid on the amount of the unpaid invoice at a rate of 10% annually (.833% per month) prorated over the time that the invoice remains unpaid. Staff will return to Council at the mid-cycle budget review with a full report on the accrual and collection of penalties as a result of policy implementation. After the first full year staff will be able to provide specific cost impacts relative to penalties.

Regarding prompt payment policies in other cities, staff reviewed entities that currently have a prompt payment policy with written documentation to guide the standards of operation. The attached matrix provides an at-a-glance view of the cities addressed in the previous report, as well as the prompt payment policy of the Bay Area Rapid Transit (BART) System.

D. Set up systems to pay invoices electronically, direct deposit, and other alternative options to pay subcontractors promptly;

Staff reports that the City can further automate the invoice and payment processes with the current Oracle software iSupplier Portal and Accounts Payable (AP). This function will interface with Oracle, can be accomplished internally, and will be covered in a separate report at a later date.

E. How long will it take to comply and/or implement the 15 day policy while also evaluating all the dates and timelines?

Staff proposes to temporarily appoint an existing staff person to begin policy implementation until a full recruitment process can be completed. The temporary staff person has been involved in the implementation of the Living Wage and Equal Benefits Ordinances. This person is also familiar with certifications, non-compliance investigations, standardized contract training and is

familiar with monitoring construction and professional services projects. This will allow for a more rapid implementation period.

Implementation will take place immediately and be in full effect no later than February 1, 2008. In those instances in the Ordinance where a three-day timeline is indicated, it is believed that a five day timeline is more feasible.

F. What are the reporting requirements and/or guidelines of undisputed invoices, including a clear definition.

Currently, vendors submit an invoice or progress payment in which the exact accounting of services rendered and subcontractors are listed.

An “undisputed” invoice is any written request for payment by a vendor where the City finds that the deliverable for which payment is requested is fully responsive to the terms, conditions and requirements of the originating City agreement. The project manager, contract administrator, or responsible department manager shall be responsible for determining whether an invoice is “disputed” or “undisputed”.

G. Include language for a staff evaluation when the city pays the 10% fine;

The City Administrator will take appropriate actions to implement performance measures that reflect the directives of the Ordinance.

H. Look into alternative percentage fines.

The attached matrix summarizes the penalties of other jurisdictions that have active prompt payment programs. Those having penalties apply them after at least a thirty day period. Those with a fifteen day cycle do not charge penalties. Staff recommends a 10% per year (.833% monthly) penalty for invoices paid late.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council receive the supplemental report.

Respectfully submitted,



Bill Noland, Agency Director
Finance and Management Agency

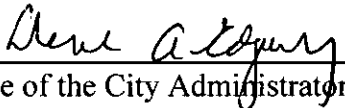


Mike Neary, Deputy Director
Community and Economic Development



Deborah Lusk-Barnes, Director
Department of Contracting Purchasing

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE



Office of the City Administrator

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MATRIX- PROMPT PAYMENT POLICIES

ATTACHMENT A

| Buyer | Legislation/ Reference | General Prompt Payment Policy | Payment Cycle | Charge Interest Penalties ? | | Affects Buyer/Primes/S ubs/Certified? | Other Unique Factors | Single Point of Contact |
|---------------------------------|--|--|---|-------------------------------------|--|---|---|-------------------------------------|
| | | | | Y/N and Rate | How Calculated ? | | | |
| 1 State of California | Gov. Code Sec. 927 | State departments are required to pay properly submitted undisputed supplier invoices within 45 calendar days of receipt | 30 Days to file a claim, or process payment within 45 days if paying by revolving fund | YES / 1% and .25% per year for SBEs | 1% above "Pooled Money Investment Acct" rate from prior year | Buyer | Departments must pay penalties with out request | |
| 2 County of Los Angeles | Los Angeles County Code Chapter 2.204 | It is the intent of the County that Certified Local SBE's will receive prompt payment for goods and/or services they provide to County departments. | 15 Calendar Days | NO | N/A | Applies to Certified SBEs | | Small Business Payment Liaison |
| 3 Bay Area Rapid Transit (BART) | DBE Program, Public Contract Code Section 20209.10(c) | Unless otherwise approved in writing by the District, the contractor shall, within 10 days after receipt of the payment made to BART, pay to each of its immediate subcontractors for satisfactory performance | 30 Days | NO | N/A | Applies to and includes all POs and contracts between the county and a Local certified SBE. | | |
| 4 New York, New York | Chapter 59 of City Charter | The City must pay bills within 30 days after receipt of approved invoice | 30 Days and 60 Days for changes | YES/ 5.75 % | 5.75% interest shall be the maximum amount allowed by law or such lower uniform interest rate as may be set jointly by the Comptroller | | Policy Board | |
| 5 City/County San Francisco | San Francisco Admin. Code Chapters 14B and 21.03 | "The City shall pay LBE's (certified by HRC) within 30 days of the date on which the City receives an invoice for work performed for and accepted by the City". | For construction contracts - 15 Business Days Otherwise within 30 days of date of invoice receipt. | NO | N/A | | Vendor must be notified (by city) of disputes within 7 calendar days. | Single Point of Contact for Vendors |
| 6 City of Oakland** | Ordinance | The City will employ a 20 business day cycle to facilitate payment of undisputed invoices | 20 business days | YES/ 10% per year | N/A | Applies to all payments to local and small local primes and subs | | Business Liaison |

** Proposed