



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 NOV 17 PM 4: 24

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Claudia Cappio
Assistant City Administrator

SUBJECT: Settlement of Payment Dispute with
the Oakland Private Industry Council

DATE: November 15, 2016

City Administrator Approval

Date:

11/17/16

RECOMMENDATION

Adopt A Resolution Authorizing And Directing The City Administrator To Settle A Payment Dispute With The Oakland Private Industry Council, Inc., Under The Prompt Payment Ordinance For \$150,000.

EXECUTIVE SUMMARY

On March 13, 2015, the Oakland Private Industry Council (OPIC) submitted a reimbursement request for \$160,983 in penalty payments under the Prompt Payment Ordinance for alleged late payments of grant funds from July, 2010, to March, 2013. The City Administrator's Office denied the request on March 24, 2015, on the basis that the request sought penalties for payments prior to the effective date of the amendment to the Ordinance extending the prompt payment policy to cover grant payments, which was passed in November, 2014. On June 1, 2016, OPIC sent a letter reiterating its position that the Ordinance should apply and threatening to pursue legal remedies if its request for payment was not resolved. The attached resolution would settle the matter for a payment of \$150,000, as directed by the City Council. Under the terms of this settlement, OPIC must agree to release the City from further claims and is barred from seeking further penalties on the same late payments. The settlement will further stipulate that neither the City nor OPIC are admitting any liability.

FISCAL IMPACT

If Council approves the Resolution, the proposed settlement payment of \$150,000 would be paid from undesignated General Funds.

Item: _____
City Council
November 29, 2016

PUBLIC OUTREACH / INTEREST

None other than publication of this staff report.

COORDINATION

Review of this prompt payment request for payment was coordinated among the Department of Economic & Workforce Development, the Office of the City Attorney, the City Administrator's Office and its Contracts and Compliance Division, the Controller's Office, and the City Council.

ACTION REQUESTED OF THE CITY COUNCIL

Adopt A Resolution Authorizing And Directing The City Administrator To Settle A Payment Dispute With The Oakland Private Industry Council, Inc., Under The Prompt Payment Ordinance For \$150,000.

For questions regarding this report, please contact Claudia Cappio, Assistant City Administrator, at 510 238 6654.

Respectfully submitted,



Claudia Cappio
Assistant City Administrator

Attachments (#):

- A. Ordinance No. 13269 C.M.S. (Prompt Payment Amendment)
- B. March 13, 2015 letter and prompt payment complaint from OPIC
- C. March 24, 2015 letter from Contracts and Compliance Division to OPIC
- D. June 1, 2016 letter from OPIC

Attachment A

FILED
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OAKLAND

2014 OCT 16 PM 4:17

APPROVED AS TO FORM AND LEGALITY

[Signature]
CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

== 13269 ==
ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.06 TO ADD REQUIREMENTS TO MAKE PROMPT DISBURSEMENTS OF GRANT FUNDS TO GRANT RECIPIENTS

WHEREAS, the Oakland City Council enacted a prompt payment ordinance in January 15, 2008, now codified as Chapter 2.06 of the Oakland Municipal Code, which requires that local businesses contracted by the city for goods and services be timely paid by the City and pay their subcontractors and suppliers timely; and

WHEREAS, the Oakland City Council now wishes to enact similar requirements for its grant recipients requiring the City to make prompt disbursals of grant funds; and

WHEREAS, the City of Oakland is committed to supporting, maintaining and fostering the development of a healthy business and public service community in Oakland; and

WHEREAS, Oakland for profit and nonprofit contractors, subcontractors, grantees, and sub grantees receiving grant funds experience payment delays and related issues that may result in cash flow problems affecting the viability of those entities and result in delayed or poor performance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Oakland Municipal Code Chapter 2.06, *Prompt Payment*, is hereby amended and restated to impose prompt payment requirements for recipients of City grants, as follows (additions are noted as underlined text; deletions are noted as ~~strikeout text~~):

2.06.010 Definitions.

The following definitions apply to this chapter:

"City" as used in this chapter, means the City of Oakland as a municipal organization, city agencies or departments or city officials authorized by the City Council or City Administrator to enter into purchase contracts or grant agreements on behalf of the City of Oakland when acting in his/her official capacity.

"Claim" means a bill, invoice or written request for payment provided by the vendor. Written request includes "contract" as defined below.

"Claimant" means a Local Prime Contractor, Subcontractor or grant recipient that files a claim with the city for overdue payment or disbursement of funds and associated interest penalties.

"Contractor" as used in this chapter means a Local Prime Contractor, Subcontractor, or grant recipient.

"Disputed Invoice" means an improperly executed invoice, any invoice that contains errors or requires additional evidence of its validity, or any invoice that contains expenditures or proposed expenditures that are ineligible or that do not otherwise comply with reimbursement or disbursement requirements of the grant funding source. If an invoice is "disputed", the payment/disbursement shall not be subject to late penalties until the dispute is resolved.

"Goods" means products, goods, materials, equipment or other tangible items rendered pursuant to a purchase contract.

"Grant agreement" means any enforceable City of Oakland agreement executed expressly to provide grant funding to any nonprofit or for profit entity or individual to support the grant recipient's provision of services to members of the public or the community at large, whether the original source of such funding is the City or some other source. Notwithstanding the above, "grant agreement" as used in this chapter shall not include loan agreements, or agreements to provide support for the purchase, improvement, or development of real property. Grant agreements must be approved and executed in accordance with all applicable contracting requirements of the City of Oakland. Claimants shall not be entitled to relief hereunder, for payment delays that occur prior to the proper execution of a grant agreement.

"Grant recipient" means a for-profit or nonprofit entity or individual that is awarded grant funding pursuant to a grant agreement approved by the City Council.

"Invoice" means a bill or claim that requests payment for goods and/or services rendered to the municipal organization pursuant to a city purchase contract by a Local Prime Contractor or by a Subcontractor, or bill or claim that requests disbursement of grant funds for services, art or other products, goods and materials rendered to

residents, businesses and other third parties pursuant to a grant agreement or by any grant recipient.

"Local Business" as used in this chapter and in accord with the City of Oakland Local and Small Local Business Enterprise Program means a for-profit or nonprofit business, including but not limited to local artists: (a) with a substantial presence in the City of Oakland's geographic boundaries, (b) with a full operation conducting business for at least twelve (12) consecutive months in the City of Oakland, (c) with a valid City of Oakland business tax certificate or exemption from City of Oakland business tax, and (d) that is an independent business headquartered in Oakland. Individuals contracted for services to the municipal organization have to be businesses to establish they are Local Businesses.

"Local Prime Contractor" means a "Local Business" as defined above that is in direct or in privity of contract with the City of Oakland.

"Managers and Operators" means a non-profit or for-profit business that is contracted by the City of Oakland to operate and/or manage city programs, programs open to the public on City of Oakland property, city facilities or concession businesses on City of Oakland property.

"Purchase contract" as used in this chapter means any enforceable City of Oakland agreement executed expressly for the purchase, lease or rental of goods and/or services, including purchase orders, sub-purchase orders, delegated purchase orders, service agreements or subcontracts. Purchase contracts must be approved and executed in accordance with all purchasing requirements of the City of Oakland. Claimants shall not be entitled to relief, hereunder, for payment delays that occur prior to the proper execution of a purchase contract.

"Services" means any and all services rendered pursuant to a purchase contract or grant agreement including, but not limited to, professional, scientific or technical services benefitting the municipal organization, and services benefitting members of the public, or the creation or development of cultural or artistic work.

"Subcontractor" means a subcontractor, supplier, vendor, sub-grantee or any business or organization, other than the prime contractor, that delivers goods and/or services in connection with a purchase contract or grant agreement.

"Undisputed Invoice" means an invoice properly executed by the claimant for goods and/or services rendered in connection with a purchase contract or grant agreement for which additional evidence is not required to determine its validity. Undisputed invoices include:

1. A once disputed invoice which has been corrected or for which additional evidence of its validity has been provided and received by the city, the prime contractor or subcontractor or grant recipient responsible for issuing payment.
2. An improper invoice whether goods and/or services have been received by the city, the prime contractor or subcontractor responsible for issuing payment, but

the city, the prime contractor or subcontractor or grant recipient responsible for issuing payment fails to notify the claimant that the invoice is improper within fifteen (15) working days of receipt of the invoice.

2.06.020 Purpose.

The purpose of this Prompt Payment Ordinance is to establish policies and procedures to assure that local contractors and grant recipients and all subcontractors working on City of Oakland purchase contracts or grant agreements receive prompt payment or disbursement of grant funds, and to enhance and increase local business contracting and community service opportunities with the City of Oakland by establishing: (1) shortened payment requirements for City of Oakland businesses and all subcontractors and grant recipients, regardless of location, that provide goods and/or services in connection with a City of Oakland purchase contract or grant agreement, and (2) a City Liaison to serve as a single point of contact to address payment and disbursement delays and other issues relative to City of Oakland purchase contracts or grant agreements. The city and grant recipients are exempt from any provisions of this chapter that conflict with requirements of the grant funding source.

2.06.030 Local business, and subcontractor and grant recipient payment liaison.

- A. The city will appoint a single point of contact (Liaison) to address invoice payment or other issues raised by City of Oakland Local Prime Contractors, Subcontractors, or grant recipients in connection with City of Oakland purchase contracts for goods and/or services or grant agreements, or invoice payment issues raised by a subcontractor in connection with a City of Oakland Manager/Operator contract. The Liaison position will be assigned to perform duties within the Office of Contracts and Compliance. The Liaison will be the city's central point of contact for Local Prime Contractors, and Subcontractors and grant recipients, and will be responsible for coordinating the actions required to resolve issues with city agencies and departments and Manager/Operators.
- B. The Office of Contracts and Compliance will establish a city-wide procedural mechanism to identify local contractors, will inform such businesses of the program through electronic means as well as through existing and ongoing training programs and workshops, and will issue a statement of the requirements of this ordinance with bid notices and requests for proposals/qualifications.

2.06.040 Local prime contractors and grant recipients, contractor retention.

- A. Local Prime Contractors. The City of Oakland shall pay all Local Prime Contractors for goods and/or services rendered pursuant to a purchase contract within twenty (20) business days after receipt of an undisputed invoice. In the event an invoice is disputed, the city shall notify the subcontractor and Liaison in writing within five (5) business days of receiving the disputed invoice that there is a bona fide dispute, in

which case the city may withhold the disputed amount but shall pay the undisputed amount.

- B. Retention. The city shall not withhold any monies as project retention associated with the rendering of goods under a purchase contract.
- C. Grant Recipients. The City of Oakland shall issue disbursements of grant funds to grant recipients within twenty (20) business days after receipt of an undisputed invoice. In the event an invoice is disputed, the city shall notify the grant recipient and Liaison in writing within five (5) business days of receiving the disputed invoice that there is a bona fide dispute, in which case the city shall withhold the disputed amount and may withhold the full amount if the grant funding source requires that the disputed expenditures be fully resolved prior to any disbursement of grant funds. The foregoing notwithstanding, this chapter shall not apply to grant payments/disbursements when the original funding source for the grant is eliminated, until and unless the city identifies and appropriates funds from an alternative source for the grant. If an outside funding source for a grant agreement requires its review and approval before payments are made to a grant recipient, this period shall be suspended for any period of review by said outside funding source.

2.06.050 Subcontractor payment, retention, mobilization fees.

- A. Prompt Payment. All Manager/Operators, city prime contractors and subcontractors and grant recipients shall pay their subcontractors for goods and/or services rendered in connection with a purchase contract or grant agreement within twenty (20) business days of receipt of the subcontractor's undisputed invoice. In the event an invoice is disputed, Manager/Operators, prime contractors and subcontractors and grant recipients shall notify the Liaison in writing within five (5) business days of receiving the disputed invoice that there is a bona fide dispute, in which case the prime contractor or subcontractor or grant recipient may withhold the disputed amount but shall pay the undisputed amount, provided that grant recipients may withhold the full amount if the grant funding source requires that the disputed expenditures be fully resolved prior to any disbursement of grant funds. The foregoing notwithstanding, this chapter shall not apply to grant payments/disbursements when the original funding source for the grant is eliminated, until and unless the city identifies and appropriates funds from an alternative source for the grant.
- B. If a subcontractor files a claim for all or a portion of a disputed invoice pursuant to Section 2.06.080 below, Manager/Operators or contractors or grant recipients shall be required to post with the city cash, a certified check, or a bond in an amount sufficient to cover the disputed amount and penalty. Upon the Liaison's determination that the invoice is valid, the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor or grant recipient the cash, certified check or bond shall be returned to the contractor. If the Manager/Operator or contractor fails or refuses to post security, the Liaison may withhold funds from the next progress payment sufficient to cover the claim, or if the claim is made under a grant agreement from the next disbursement provided, it is allowed by the grant funding source.

- C. Affidavit Reporting Subcontractor Payments. Contracts in which subcontracting is used shall require the prime contractor or subcontractor or grant recipient, within five (5) business days following receipt of a payment from the city, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.
- D. Retention.
1. Manager/Operators, prime contractors and subcontractors and grant recipients shall not withhold any monies for project retention associated with the rendering of goods; and
 2. Manager/Operators, prime contractors and subcontractors and grant recipients shall release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within five (5) business days of payment.
 3. The retention and release requirements in this subsection shall not apply to grant recipients to the extent they conflict with requirements of the grant recipients' grant funding source.
- Manager/Operators, prime contractors and sub-contractors and grant recipients shall file notice with the city within five business days of release of retention.
- E. Mobilization Fee. Prime contractors and subcontractors and grant recipients shall pay subcontractors that will render goods and/or services their portion of mobilization fees within five (5) business days of being paid such fees. Prime contractors and subcontractors and grant recipients shall file notice with the city within five business days of payment of mobilization fees to a subcontractor.
- F. Website Posting. Information regarding the city's retention release and payment of mobilization fees shall be posted on the city's website within five (5) business days of such payment or release. Information regarding Manager/Operators, prime contractor and subcontractor and grant recipient retention release and payment of mobilization fees, and affidavits reporting subcontractor payments shall be posted on the website within five (5) business days of the filing of such notices and affidavits with the city.

2.06.060 Interest penalty.

- A. If any amount due by the city to a Local Prime Contractor for goods and/or services rendered pursuant to a purchase contract not timely paid in accordance with this chapter, the Local Prime Contractor is entitled to interest penalty in the amount of ten (10%) percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the Local Prime Contractor agrees to release the city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Local Prime Contractors that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.
- B. If any amount due by a Manager/Operator to a claimant for goods and/or services rendered pursuant to a Manager/Operator purchase contract is not timely paid in accordance with this chapter, the claimant is entitled to interest penalty in the

amount of ten ~~(10%)~~ percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the Manager/Operator and city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Claimants that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.

- C. If any amount due by the city to be disbursed to a grant recipient pursuant to a grant agreement is not timely paid in accordance with this chapter, the grant recipient is entitled to interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the grant recipient agrees to release the city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Grant recipients that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.
- D. If any amount due by a prime contractor or subcontractor or grant recipient to any claimant for goods and/or services rendered in connection with a purchase contract or grant agreement is not timely paid in accordance with this chapter, the prime contractor or subcontractor or grant recipient shall owe and pay to the claimant interest penalty in the amount of ten ~~(10%)~~ percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor or grant recipient from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.
- E. For grant agreements, payment of interest penalties shall come from city general purpose funds if and to the extent the source of the grant funding does not permit the use of grant funds to pay such penalties.

2.06.070 Bid solicitations, request for proposals/qualifications, contracts.

- A. All notices inviting bids, requests for proposals/qualifications and city contracts for the purchase of goods and/or services, and grant agreements, and requests for proposals/qualifications and contracts for Manager/Operators as defined in Section 2.06.010, above, shall contain the following or substantially equivalent language:

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the contractor or its subcontractor and claimant, in which case the contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison and, and upon the filing of a complaint, contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If contractor or its subcontractor fails or refuses to deposit security, the city will withhold an amount sufficient to cover the claim from the next contractor progress payment. The city, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the city.

For the purpose of posting on the city's website, contractors, grant recipients and ~~its~~ subcontractors are required to file notice with the city of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and contractor or grant recipient is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) business days following receipt of payment from the city. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

- B. Any contractor or subcontractor or grant recipient that delivers goods and/or services, pursuant to a purchase contract or grant agreement, shall include the same or similar provisions as those set forth in this Section in their subcontracts.

2.06.080 Complaint and investigation.

- A. Any claims made pursuant to Sections 2.06.040 and 2.06.050 above are subject to investigation and notice of violation and demand for payment and interest penalties by the Liaison. A Local pPrime cContractor, or sSubcontractor or grant recipient who alleges violation of any provision of this chapter may report such acts to the Liaison.
- B. Complaints shall be handled as follows:
 - 1. The claimant shall submit a completed complaint form and copies of invoices or billing documents that have been submitted to the city, to a city purchase contractor or grant recipient or to a Manager/Operator. To expedite investigation, the claimant shall also submit any documents in their possession showing that his/her goods and/or services or other deliverables have been rendered to and inspected or reviewed and accepted by the city or grant recipient or Manager/Operator in connection with the claim.

2. The Liaison shall collect a security deposit in the form of cash, certified check, or bond in an amount sufficient to cover the claim from the Manager/Operator or contractor or grant recipient that has disputed the invoice. If a Manager/Operator or contractor or grant recipient that is required to post security fails or refuses to do so, the Liaison may withhold funds from the next progress payment sufficient to cover the claim, except that in the case of grant recipients such withholding shall be done only if it is not in conflict with requirements of the grant recipient's grant funding source. Upon the Liaison's determination that the invoice is valid the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor the cash, certified check or bond shall be returned to the contractor or grant recipient.
3. The Liaison shall contact the city agency, department, Manager/Operator or contractor or grant recipient responsible for payment within five (5) business days of receipt of the complaint form to investigate the claim. The Liaison's determination of whether an invoice is valid shall be based on the following:
 - (i) Whether the invoice conformed to requirements defined in Section 2.06.020 of this chapter, at the time of submission to the contractor,
 - (ii) Whether there is a discrepancy between the invoice or claimed amount and the provisions of the purchase contract,
 - (iii) Whether there is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of goods and/or services to the city or the community at large, or the city's acceptance of such goods and/or services,
 - (iv) Whether the city agency, prime contractors, ~~or subcontractors~~ or grant recipient responsible for payment provided timely notice of the disputed invoice as required under 2.06.050 (A), and
 - (v) Whether additional evidence supporting the validity of the invoice or claimed amount must be provided by the claimant, and
 - (vi) Whether the expenditures or other claims set forth in the invoice submitted by the grant recipient complies with the requirements of the grant funding source.
4. There shall be no appeal of the Liaison's determination in favor of the complainant. If, however, the Liaison determines that the complainant's invoice provides insufficient evidence for payment, the complainant shall be advised of the additional information required for payment and given an opportunity to provide the same.
5. When the Liaison determines that a violation of this chapter has occurred, the Liaison shall assess interest penalties at the rate provided in Section 2.06.060 of this chapter and issue a demand to the city employee responsible for administering the related purchase contract or grant agreement, the Manager/Operator, the prime contractor, ~~or the subcontractor~~ or grant recipient responsible for the late payment. The city shall issue a check for the amount of the undisputed claim and interest penalties assessed by the Liaison to the Local Prime Contractor or grant recipient within (5) five business days of the date of the Liaison determination. The city may seek review by the City Administrator

of Liaison determinations for claims submitted by Local Prime Contractors or grant recipients.

2.06.090 Administrative procedures and regulations.

The City Administrator shall develop administrative procedures and regulations for determining city, Manager/Operator, prime contractor, and subcontractor and grant recipient compliance with, and full implementation of, this chapter including, but not limited to, establishment of an interest penalty scheme and investigation procedures.

2.06.100 Exemptions.

City and Manager/Operator purchase contracts and city grant agreements are exempt from this chapter when:

- A. Issued in response to a local disaster or emergency, provided: (i) the emergency or disaster is acknowledged by a public declaration of emergency or disaster of the United States, State of California, County of Alameda, Oakland City Council or City Administrator, (ii) the purchase contract is issued without advertising or competitive bid pursuant to the City Administrator's emergency authority in Oakland Municipal Code Chapter 2, Sections 2.04.020 (G) or (H), and (iii) the purchase contract or grant agreement is completed within the declared period of emergency or disaster.
- B. State or Federal laws preempt the local or other regulation of the purchase or grant funding, in which case State or Federal mandates shall take precedence.

2.06.110 Applicable to new contracts.

Except for procurement or construction contracts for which fixed, sealed bids were required on a date prior to the date of final adoption of this chapter set forth below, the provisions of this chapter shall apply to any purchase contract or Manager/Operator contract, or amendment, extension, change order or modification of such contracts, entered into or consummated after the effective date of the ordinance codified in this chapter, or, in the case of grant agreements, to any grant agreement, or amendment, extension or modification of such grant agreement, entered into or consummated after the effective date of the ordinance amending this chapter to cover such grant agreements.

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

1495688

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 18, 2014

PASSED BY THE FOLLOWING VOTE:

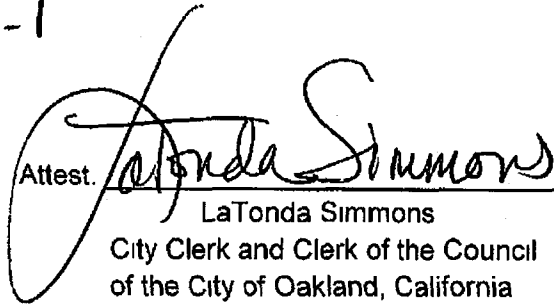
AYES - BROOKS, GALLO, ~~GIBSON McELHANEY~~, KALB, KAPLAN, REID, SCHAAF AND
PRESIDENT KERNIGHAN - 7

NOES - 0

ABSENT - Gibson McElhaneey - 1

ABSTENTION - 0

Attest.


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date
NOV 05 2014

Date of Attestation 11/19/14

**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER
2.06 TO ADD REQUIREMENTS TO MAKE PROMPT DISBURSEMENTS
OF GRANT FUNDS TO GRANT RECIPIENTS**

NOTICE AND DIGEST

This Ordinance amends and restates Chapter 2.06 to the Oakland Municipal Code, the Prompt Payment Ordinance, to add requirements for prompt payment of grant funds to grant recipients under City grant agreements.



OAKLAND PRIVATE INDUSTRY COUNCIL, INC.

March 13, 2015

Deborah Lusk-Barnes
Director, Contracts & Compliance
Office of the City Administrator
250 Frank Ogawa Plaza, Suite 3341
Oakland, Ca. 94612

Dear Ms. Lusk-Barnes:

In accordance with the City of Oakland's Prompt Payment Ordinance, I am writing to request payment of one hundred sixty thousand nine hundred eighty-three (\$160,983) dollars to the Oakland Private Industry Council. Our records show that the City of Oakland did not reimburse several of OPIC invoices within twenty (20) working days during the period from July, 2010 to March, 2013, as required by the ordinance. According to the City of Oakland's Prompt Payment Policy, OPIC is entitled to receive penalty payments for the late reimbursements. I have enclosed the following supportive documentation:

- Prompt Payment Complaint & Investigation Form
- A list of the late reimbursement requests
- A copy of a page from the State of California 2012/13 fiscal and procurement monitoring report. Finding number four in the State PY 2012/13 monitoring report is about the late reimbursements to the Oakland Private Industry Council. Note that there was a similar finding by the State for PY 2011/12.

Hard copies of the reimbursement requests referenced in this letter are on file at our office for your review, if needed.

Please let me know when this matter will be resolved. I can be reached at (510) 768-4423 or vchumbe@oaklandpic.org for any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Victor Chumbe".

Victor Chumbe
Director of Fiscal Services

Enclosures



1212 Broadway, Suite 300, Oakland, CA 94612 (510) 768-4400 (510) 839-3766 Fax
www.oaklandpic.org

A member of the EASTBAY Works career center system





Prompt Payment Complaint & Investigation Form

Department of Contracting and Purchasing (DC&P)

Section A CONTACT INFORMATION

1) Person Making Complaint (Name) Victor Chumbe			1a) Complaint Against (Name) Oakland Workforce Investment Board		
2) Company Name Oakland Private Industry Council, Inc.			2a) Company Name City of Oakland		
3) Address 1212 Broadway, Suite 300			3a) Address 150 Frank Ogawa Plaza, Suite 6353		
4) City Oakland	State CA	Zip Code 94612	4a) City Oakland	State CA	Zip Code 94612
5) Phone 510-768-4423			5a) Phone 510-238-6440		
6) Email Address vchumbe@oaklandpic.org			6a) Email Address jbailey@oaklandnet.com		
7) Authorize the following person(s) to handle complaint on my behalf: Richard de Jauregui, 510-768-4476 Robln Raveneau, 510-768-4402					

Section B PROJECT INFORMATION

1) Project No. N/A		2) Project Name/Title One Stop Comprehensive Center			
3) Amount Paid on Contract To Date: 0	4) Balance Remaining: \$160,983	5) Amount of Retainage Withheld: 0	6) Date Work Started 7/10/10	7) Date Completed 6/30/13	
8) Contract Date 7/1/10 - 6/30/13		9) Describe briefly the scope of the work for which you were contracted (i.e. painting, plumbing, concrete etc.) Please attach copy of contract. Ten percent (10%) penalty payment request for invoices that the City of Oakland did not reimburse within twenty (20) days.			
10) Total Contract Amount \$160,983					

Section C Reason for Dispute

Describe in detail. Use extra sheets if necessary.

During the period from July 2010 to May 2013, the City of Oakland did not reimburse OPIC within twenty (20) working days from the date invoices were submitted for reimbursement; therefore, OPIC is claiming 10% penalty for the invoices that were paid late. Please see spreadsheet attached.

Remedy Requested

Description of proposed remedy: Use extra sheets if necessary.

The proposed remedy is payment in full in the amount of \$160,983 for penalties incurred.



Department of Contracting and Purchasing (DC&P)

Prompt Payment Complaint & Investigation Form

Section D

Additional Information

- 1 Have you made any attempts to contact the City/Contractor/Operator/Manager? Yes No
- 2 Have you notified the City/Contractor/Operator/Manager in writing? If so attach a copy of the correspondence. Yes No

NOTE:

- 1 The City of Oakland collects this information in order to follow up on your complaint.
- 2 Possible Disclosure of Personal Information: The City of Oakland will make every effort to protect the personal information you provide us. In order to follow up on your complaint, however, we may need to share the information you give us with the business you complained about or with other governmental agencies.
- 3 The information you provide may also be disclosed under the following circumstances:
 * In response to a Public Records Act request as allowed by the Information Practices Act.
 * To another governmental agency as required by state or federal law.
 * In response to a court or administrative order, a subpoena, or a search warrant.
- 4 Contact Information: For questions regarding the above, contact the Prompt Payment Business Liaison, Department of Contracting & Purchasing, 250 Frank Ogawa Plaza, Suite 3341, Oakland, CA 94612, 510-238-6261
- 5 I declare under penalty of perjury that the information contained on this Complaint Form is true and correct to the best of my knowledge and that this declaration was signed at (city) Oakland, (state) California on (date) March 11, 2015.
- 6 I will assist in the investigation, and will, if necessary, attend hearings and testify to facts.

Date: March 11, 2015

Signature: 

For Office Use Only	Date Received _____	Complaint Number _____	DC&P Staff: _____
	Project Type PS/CS/Other _____	Initiating City Agency _____	City Project Manager _____
	Remedy/Resolution _____		
	Status _____	Closure Letter Date _____	Date Mailed _____

OPIC
Interest Penalty Payment Request
Submitted to the City of Oakland
March 12, 2015

Month	Drawdown Amount	Date Drawdown submitted to City	Date Check received by OPIC	# of business days invoice was outstanding	10% Penalty according to City Ordinance Number 12857	Total amount of penalty due OPIC
1 April, 2011	137,739.64	6/10/2011	7/28/2011	34	\$13,773.96	\$13,773.96
2 May, 2011	173,840.31	7/19/2011	9/19/2011	43	17,384.03	17,384.03
3 June, 2011	267,805.19	8/8/2011	9/19/2011	35	26,780.52	26,780.52
4 July, '10-June, '11	47,114.74	4/26/2012	6/27/2012	43	4,711.47	4,711.47
5 July, '11-Dec, '11	57,205.34	4/26/2012	6/27/2012	43	5,720.53	5,720.53
7 January, 2012	123,632.83	3/29/2012	5/31/2012	44	12,363.28	12,363.28
8 February, 2012	70,738.97	4/10/2012	5/24/2012	31	7,073.90	7,073.90
9 February, 2012	129,222.48	4/10/2012	6/27/2012	55	12,922.25	12,922.25
10 March, 2012	56,894.08	4/24/2012	6/20/2012	39	5,689.41	5,689.41
11 March, 2012	115,071.84	4/24/2012	6/27/2012	44	11,507.18	11,507.18
12 April, 2012	98,460.12	5/9/2012	6/27/2012	34	9,846.01	9,846.01
13 April, 2012	31,038.66	5/9/2012	6/27/2012	34	3,103.87	3,103.87
14 Jan.2012-Apr.2012	35,264.53	5/24/2012	6/27/2012	23	3,526.45	3,526.45
16 June, 2012	59,691.76	7/17/2012	8/24/2012	27	5,969.18	5,969.18
17 June, 2012	45,481.65	7/17/2012	9/6/2012	36	4,548.17	4,548.17
18 June, 2012	82,115.33	7/17/2012	9/12/2012	40	8,211.53	8,211.53
19 May - June, 2012	19,703.48	7/24/2012	9/6/2012	31	1,970.35	1,970.35
20 January, 2012	6,972.94	7/24/2012	9/6/2012	31	697.29	697.29
21 July - Sept., 2012	17,664.96	10/15/2012	12/21/2012	47	1,766.50	1,766.50
22 Nov, 2012	7,210.35	12/21/2012	2/1/2013	26	721.04	721.04
23 Nov, 2012	1,620.03	12/21/2012	2/5/2013	28	162.00	162.00
24 Oct - Dec, 2012	13,233.91	1/10/2013	2/14/2013	24	1,323.39	1,323.39
25 Jan - Mar, 2013	12,109.54	4/16/2013	5/16/2013	21	1,210.95	1,210.95
Total	1,609,832.68				\$160,983.27	160,983.27

Mr. John R. Bailey
November 7, 2013
Page eight

This is an excerpt from the State of California 2012/13 fiscal and procurement review of the City of Oakland:

charges. No documentation was provided detailing how the timesheets identify each actual activity, such as WIA adult, dislocated worker, or youth, program or administrative charges, direct or allocated, or other WIA or non-WIA related charges. Until then, this finding remains open and has been assigned CATS number 13126.

FINDING FOUR

Requirement: 2 CFR 225 Appendix A (A)(2)(a) states, in part, that:

- Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.
- Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.
- Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

The City of Oakland Directive 01-11 states, in part, that the City will send the check within 20 working days of the reimbursement request, in accordance to the City's Prompt Payment Policy.

Observation: We observed that the City of Oakland did not reimburse their subrecipient, OPIC, within 20 working days from the date invoices were submitted for reimbursement. Specifically, we reviewed 27 payment requests received from OPIC and 11, or 40 percent, were not paid by the 20-day requirement. The payment dates ranged from 25 to 92 days.

There was a similar finding in PY 2011-12.

Recommendation: We recommended that the City of Oakland provide CRO with a CAP, including a timeline, to ensure that, in the future, all invoices are processed promptly and within the time period listed in its policy.

dph:3093:3094

Attachment C

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 3341 • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Contracts & Compliance Division

(510) 238-3970
FAX (510) 238-3363
TDD (510) 238-2067

March 24, 2015

Mr. Victor Chumbe,
Director of Fiscal Services
Oakland Private Industry Council, Inc.
1212 Broadway, Suite 300
Oakland, CA 94612

RE: City of Oakland Prompt Payment Ordinance (PPO)

Dear Mr. Chumbe:

This correspondence is in response to the Private Industry Council's Prompt Payment complaint filed with the office of the City Administrator, Contracts and Compliance Division, on March 13, 2015.

As you know, the effective date of the revised Ordinance was November 2014 and applies to grants moving forward from that effective date. As was the case with the original Prompt Payment Ordinance, the November 2014 revisions do not apply retroactively.

A review of the list of invoices submitted as supportive documentation reveals that all noted invoices are dated during the period from July, 2010 to March, 2013 and precede the effective date of the revised Ordinance. As such, your claim covers a period of time that is not covered by the revised Ordinance and is therefore not applicable.

Secondly with regard to the reference to "FINDING FOUR" dated November 7, 2013 and labeled as "EDD Monitoring" and as it appears to be addressed to Mr. John Bailey and is one page of an eight page document, please note that the City's Prompt Payment Ordinance did not apply to grants at that time.

While Prompt Payment does not apply, the above does not excuse the matter of late payments. A response is warranted. Because this is a matter between EDD/State and the City's Workforce Investment Board, the matter of "FINDING FOUR" has been forwarded to WIB for a response.

Page 2

Please note that any responses in the future regarding this matter will be separate from the Division of Contracts and Compliance as the prompt payment complaint file relative to the applicability to the November 2014 revised Ordinance has been closed.

Should you have any questions or concerns please do not hesitate to contact Vivian Inman, Prompt Payment Compliance Officer by telephone at (510) 238-6261 or vinman@oaklandnet.com or me by telephone at (510) 238-7325 or by email at sdarensburg@oaklandnet.com.

Shelley Darensburg
Sincerely,

Shelley Darensburg, Sr. Compliance Officer
Contracts and Compliance

CC: John Flores, City Administrator
Donna Hom, Interim Assistant City Administrator
Dan Rossi, Attorney to WIB
John Bailey, Executive Director, WIB
D. Barnes, Director, Contracts and Compliance

RLC
OAKLAND PRIVATE INDUSTRY COUNCIL, INC.

VIA EMAIL AND HAND DELIVERY

June 1, 2016

Sabrina Landreth
City Administrator
One City Hall Plaza
Oakland, CA 94612

Dear Ms. Landreth:

I am writing as a follow up to the meeting with you in late April which was also attended by Council Members Reid and Kaplan, and by PIC's planning director Richard deJauregui. At the meeting we covered a range of issues and missteps related to the City's administration of the federally funded Workforce Investment Act system, including the failure of the City to abide by its Prompt Payment Ordinance in past undisputed reimbursements to this organization. We have maintained consistently that the RPO, adopted in 2007, contains no language which would exclude grant-funded programs from its coverage. In fact, the author of the Ordinance has affirmed our interpretation and in November 2014 clarified for the record her original intent.

Attached is our request for payment submitted in March 2015, along with the City's response. We are again requesting payment with penalties in an amount now calculated to reflect the actual date of payment.

As you know, we have attempted to resolve this matter informally by following the City's prescribed process. If we are unable to achieve resolution, we will engage our attorney (copied on this letter) to pursue further legal remedies. As long-time partners with the City, we are looking forward to an amicable solution.

Sincerely,
Gay Platt Cobb
Gay Platt Cobb
Chief Executive Officer

1411 Franklin Avenue, Suite 1000, Oakland, CA 94612 (510) 756-9400 (877) 639-3766 fax

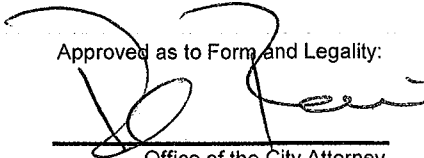
www.opicalliance.org
Member of the EASTBAY WORKFORCE INVESTMENT BOARD

EASTBAY PIIC

7/2016/16

Attachment D

2016 NOV 17 PM 4:24

Approved as to Form and Legality:

Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ADMINISTRATOR TO SETTLE A PAYMENT DISPUTE WITH THE OAKLAND PRIVATE INDUSTRY COUNCIL, INC., UNDER THE PROMPT PAYMENT ORDINANCE FOR \$150,000

WHEREAS, the City Council enacted a Prompt Payment Ordinance (codified at OMC Chapter 2.06) on January 15, 2008; and

WHEREAS, the Prompt Payment Ordinance requires the City to pay a penalty for late payments to contractors; and

WHEREAS, the City Council enacted an ordinance on November 18, 2014 (Ordinance No. 13269 C.M.S.) amending the Prompt Payment Ordinance to extend the prompt payment policy to grant contracts; and

WHEREAS, on March 13 2015, the Oakland Private Industry Council, Inc., submitted a request to the City Administrator for payment of \$160,983 in penalties under the Prompt Payment Ordinance for alleged late payments under certain grant contracts with the City; now, therefore, be it

RESOLVED: That the City Council hereby authorizes and directs the City Administrator to settle said payment dispute with the Oakland Private Industry Council, Inc., for a payment in the amount of \$150,000; and be it further

RESOLVED: That the City Council authorizes the City Administrator or designee to appropriate \$150,000 from fund balance for the settlement payment within the General Purpose Fund (1010), Workforce Development (85311), Settlement: Claims (53412), Workforce Program (SC03); and be it further

RESOLVED: That, pursuant to OMC Section 2.06.060.C, said settlement payment shall be conditioned on agreement by the Oakland Private Industry Council, Inc., to release the City from any and all further claims for penalties with respect to the alleged late payments.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, and PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California