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9 **Sec. 70-431. – Timely payment of subcontractors and suppliers.**

10 (a) **Definitions.** For purposes of this section the following definitions shall apply:

11 (1) “Supplier” means a person who has supplied labor or materials to a contractor in
12 the execution of work provided for in a city contract.

13 (2) “Undisputed amount” means any amount owed by a contractor to a subcontractor
14 or supplier for work performed or materials supplied and for which there is no
15 good-faith defense to payment.

16 (b) **Prompt payment required.** Any person who contracts with the city or its agencies to
17 provide goods and services and is paid with city funds shall pay all subcontractors or
18 suppliers any undisputed amounts for which the contractor has been paid within 30 days
19 of receiving a progress or final payment from the city encompassing the subcontracted
20 work or supplies. The department administering the contract must respond to a
21 subcontractor or supplier within two business days and notify them of the dispute resolution
22 timeline and process as required under subsection (c).

23 (c) **Dispute resolution procedure.** Any person who contracts with the city or its agencies to
24 provide goods and services and is paid with city funds shall be deemed to agree to and
25 abide by the dispute resolution procedures set forth in this section to ensure the timely
26 payment of subcontractors or suppliers.

27 (1) If a contractor intends to not pay a subcontractor or supplier in full within the
28 required 30-day period for any reason, the contractor shall promptly notify the
29 subcontractor or supplier in writing and state the reason why payment is being

30 withheld, and shall provide a copy of such notice of nonpayment to the department
31 administering the contract.

32 (2) The subcontractor or supplier may notify in writing the department administering
33 the contract, and the office or supplier diversity if the subcontractor or supplier is a
34 certified disadvantaged business enterprise, if it does not receive payment timely or
35 otherwise disputes the basis for nonpayment reflected in the contractor's notice of
36 nonpayment. The subcontractor's or supplier's notice shall: (i) identify the
37 contractor, the project related to the disputed amount, and the amount in dispute;
38 (ii) provide detailed and itemized supporting documentation substantiating the
39 subcontractor's or supplier's entitlement to payment; and (iii) an explanation for
40 any dispute concerning payment by the contractor, if known.

41 (3) Within five business days of receipt of written notice from a subcontractor or
42 supplier, the department administering the contract shall contact the contractor in
43 writing to ascertain whether the amount withheld is an undisputed amount. If the
44 contractor fails to respond within five business days, or if the department decides
45 that a part or all of the amount withheld is an undisputed amount, the department
46 shall notify the contractor and subcontractor supplier in writing of its determination
47 of the undisputed amount, and shall instruct the contractor to pay the subcontractor
48 or supplier the undisputed amount within five business days.

49 (4) If the contractor fails to pay the subcontractor within five business days of receipt
50 of the department's notice of determination of the undisputed amount, the unpaid
51 subcontractor or supplier may notify the department administering the contract in
52 writing of the nonpayment. Within ten business days of receiving notice of

53 nonpayment of the undisputed amount, the department shall conduct a meeting with
54 the contractor and subcontractor or supplier to evaluate the reasons for nonpayment
55 and determine if the contractor is delinquent in payment of an undisputed amount.
56 At the discretion of the department, the meeting may be conducted in-person,
57 telephonically, or virtually. In advance of this meeting, the department shall furnish
58 copies of the bid documents submitted by the contractor and the signed contract to
59 the subcontractor or supplier. The department may require the parties to provide
60 any additional information that the department believes necessary to evaluate the
61 dispute.

62 (5) At the conclusion of the meeting described in the preceding paragraph, the
63 department administering the contract shall issue a final decision and shall notify
64 the parties and, if the subcontractor or supplier is certified as a disadvantaged
65 business enterprise, the office of supplier diversity, in writing of such decision.

66 (6) The contractor shall notify the department administering the contract upon payment
67 of any undisputed amount. If the contractor fails to pay all undisputed amounts
68 within ten business days of the department's final decision, the department shall
69 cease payments to the contractor until payment of the undisputed amounts to the
70 subcontractor or supplier is verified. In addition, the department may: (i) suspend
71 work under the contract based on the failure of the contractor to meet its obligations
72 under the contract; (ii) assess liquidated damages in an amount not exceeding \$100
73 per day from the date on which the undisputed payment was initially due pursuant
74 to subsection (b); and (iii) seek to enforce any available payment bond.

- 75 (d) *Appeals.* A contractor, a subcontractor, or a supplier may appeal the department’s final
76 decision issued pursuant to subsection (c). The process for appeals shall be established by
77 the chief administrative officer.
- 78 (e) *Cause of action.* No act, failure to act, or decision by any representative of the city in
79 carrying out the terms of this section shall give rise to a cause of action against the city by
80 a contractor, subcontractor, or supplier.
- 81 (f) *City contracting.* Each city contract shall include a provision requiring prompt payment to
82 subcontractors and suppliers in accordance with the terms and dispute resolution
83 procedures of this section.
- 84 (g) *Waivers.* Requests to waive any of these provisions shall be approved by the chief
85 administrative officer in writing.”

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS _____

PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON _____

APPROVED:

DISAPPROVED: _____

MAYOR

RETURNED BY THE MAYOR ON _____ **AT** _____

ASSISTANT CLERK OF COUNCIL

ROLL CALL VOTE:

YEAS:

NAYS:

ABSENT:

RECUSED: