

CITY OF BETHLEHEM

City Council Memorandum

SUBJECT: Proposed Ordinance Establishing Responsible Contracting Law
TO: Members of Council
FROM: Grace Crampsie Smith, Member of Council
DATE: December 11, 2020

My fellow Council Members and Mayor:

One of the primary and vital functions of City Council and City administration is the enactment of contract agreements relative to construction within our City. As approval requests for contracts above the \$50,000 threshold appear before us at Council meetings, I often think, “do I have enough information on the credentials of the contract provider to make an informed and responsible decision.”

As representatives of the good citizens of our community, we must ensure we are fiscally responsible, accountable, and transparent in our allocation of taxpayer funds. To that end, I am proposing a Responsible Contractor Ordinance. This ordinance will further ensure transparency, accountability, and efficiency with our limited taxpayer funds.

Both counties that encompass our City have recently passed this legislation, so our passage of this ordinance will ensure consistency and uniformity in contract requirements at the local level.

The purpose of this legislation is to require all contractors and subcontractors to verify compliance with key performance criteria to ensure they are reputable, qualified firms which have the capabilities and resources to successfully complete the designated project. This ordinance will provide an additional layer of quality control measures to our existing procurement process.

The following are some key factors in considering this ordinance:

1. Capital construction projects represent some of the largest, most complex, and inherently high-risk investments undertaken by public bodies.
2. Most bidding processes focus on the “lowest bidder” criteria. With the Responsible Contractor Ordinance, it is not just the lowest bidder, but the lowest QUALIFIED bidder.
3. The ordinance specifically defines qualifications and performance standards that bidders must meet to perform public projects and establishes proper oversight and enforcement procedures to ensure compliance. Amongst other things, the certification process ensures that companies are devoid of tax delinquencies, unpaid bills, wage or other violations, and history of failed projects. Contractors must also participate in Class A apprenticeship programs.

4. This ordinance minimizes the time and resources needed by our administration by streamlining the administrative process and imposing most of the burden of qualifying on the prospective contractors. Bidders must submit the Contractor Responsibility Certification with supporting documentation.

A vital component of the Responsible Contractor Ordinance is participation in Class A Apprenticeship programs. Every day, the shortage in the skilled trades becomes more acute. According to numbers from the National Electrical Contractors Association, 7,000 electricians join the field each year, but 10,000 retire. A Deloitte study found that the skilled labor gap may leave an estimated 2.4 million positions unfilled between 2018 and 2028, with a potential economic impact of \$2.5 trillion. Contractors agree that apprenticeship programs and opportunities for advancement are ways to recruit more workers - particularly those under the age of 30 - into commercial construction.

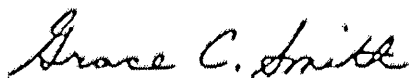
Since there are approximately 300 Apprenticeship programs within the state, firms should already meet this requirement, and if not, they can readily partner with an existing apprenticeship program.

The apprenticeship component will promote workforce development for now and the future. This provides an opportunity to promote training, hiring, and retention of local skilled labor. The positive impact on our community is infinite and pervasive. Our younger citizens will be afforded a sustainable career, will be able to remain in their hometown, and will contribute to our local economy.

I'm certain we all agree that it is our due diligence to ensure taxpayer funds are allocated as efficiently as possible, while concurrently ensuring contractors meet qualifications necessary to ensure successful project completion.

I respectfully request your support for the Responsible Contractor Ordinance. I appreciate your attention to this crucial topic, and as always, please feel free to contact me should you have any questions or wish to further discuss this proposal. I would ask the Members of Council to please consider the attached ordinance at the December 15, 2020 City Council meeting. An associated resolution is also attached.

Sincerely,



Grace Crampsie Smith, Member Council

CC: R. Donchez, Mayor

BILL NO. _____-2020

ORDINANCE NO. 2020-_____

AN ORDINANCE OF THE CITY OF BETHLEHEM,
COUNTIES OF LEHIGH AND NORTHAMPTON, COMMONWEALTH OF
PENNSYLVANIA, PROVIDING FOR THE ADOPTION OF CERTAIN
PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF
PUBLIC CONTRACTS WITHIN THE CITY OF BETHLEHEM; PROVIDING
FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS;
PROVIDING FOR CERTIFICATION REQUIREMENTS FOR
SUBCONTRACTORS TO PUBLIC CONTRACTS; PROVIDING FOR
PUBLIC CONTRACT REVIEW PROCESSES; REPEALING
INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES;
CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN
EFFECTIVE DATE; AND ESTABLISHING ARTICLE 131 OF THE CODIFIED
ORDINANCES TITLED “RESPONSIBLE CONTRACTING PROCEDURES”

WHEREAS, The City of Bethlehem (the “City”) is duly empowered to enact certain laws needed to protect its proprietary and financial interests relating to major investments made by the City, as well as those relating to the public health, safety, and welfare for the citizens of the City; and

WHEREAS, the City has particular concerns regarding the challenges it faces in planning and executing public works construction projects, especially those relating to its ability to ensure the use of properly qualified contractors and subcontractors and adequate numbers of craft personnel who have industry recognized training in the respective skills and trades needed for future projects; and

WHEREAS, Bethlehem City Council has resolved by resolution No. _____, to address the above-referenced challenges through appropriate procurement and contracting legislation as embodied in this ordinance and wishes to incorporate the terms of this resolution in their entirety as material terms of this ordinance.

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1.

Article 131 of the Codified Ordinances of the City of Bethlehem, titled “Responsible Contracting Procedures,” is hereby established and shall read as follows:

131.01. Purpose

(a) The City recognizes that there is a need to ensure that all work on public construction and maintenance contracts is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully perform public contracts in a timely, reliable and cost-effective manner.

(b) To effectuate the purpose of selecting responsible contractors for public contracts and to protect the City's investments in such contracts, prospective contractors and subcontractors, should be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, including requirements and criteria concerning technical qualifications, competency, experience, adequacy of resources, including equipment, financial and personnel resources, and satisfactory records regarding past project performance, safety, law compliance and business integrity.

(c) Further, due to the critical impact that skilled construction craft labor has on public works projects, and due to the limited availability of skilled construction craft labor and imminent craft labor skill shortages, it is necessary to require contractors and subcontractors to participate in established, formal apprenticeship training programs as a condition of bidding, for the purpose of both promoting successful project delivery and ensuring future workforce development.

(d) Therefore, the City shall require compliance with the provisions of this ordinance by business entities seeking to provide services to the City as specified herein. The requirements of this ordinance are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by law, public policy or contracting documents. However, in the event that any of the provisions of this ordinance conflict with any law, public policy or contracting documents of the City, this act shall prevail.

131.02. Responsible Contractor Requirements

(a) This ordinance shall apply to public works projects undertaken by the City for the construction, demolition, alteration, renovation, modernization, service or maintenance of buildings, structures or facilities valued at \$100,000 or more. All contractors and subcontractors that perform on such projects, regardless of the value of individual contracts or subcontracts, shall satisfy the requirements of this ordinance in all respects.

(b) All firms engaged in contracts covered by this ordinance shall be qualified, responsible contractors or subcontractors that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged, including the necessary experience, equipment, technical skills and qualifications and organizational, financial and personnel resources. Firms bidding on public contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity and business ethics.

131.03. Contractor Responsibility Certifications

(a) As a condition of performing work on a public works contract subject to this ordinance, a general contractor, construction manager or other lead or prime contractor seeking award of a contract shall submit a Contractor Responsibility Certification.

(b) The Contractor Responsibility Certification shall be completed on a form provided by the City and shall reference the project for which a bid is being submitted by name and contract or project number.

(c) In the Contractor Responsibility Certification the construction manager, general contractor or other lead or prime contractor shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:

(1) The firm and its employees have all valid, effective licenses, registrations or certificates required by federal, state, City, or local law, including, but not limited to, licenses, registrations or certificates required to: (a) do business in the designated locale; and (b) perform the contract work it seeks to perform. These shall include, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the firm proposes to self-perform.

(2) The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications and any insurance requirements, as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance.

(3) The firm has not been debarred or suspended by any federal, state or local government agency or authority in the past three (3) years.

(4) The firm has not defaulted on any project in the past three (3) years.

(5) The firm has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three (3) years.

(6) The firm and its Principals/owners have not been convicted of any crime relating to the contracting business in the past ten (10) years.

(7) The firm has not within the past three (3) years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, prevailing wage laws, environmental laws or others, where the result of such violation was the payment of a fine, back pay damages or any other type of penalty in the amount of \$5,000 or more.

(8) The firm will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.

(9) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10-hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

(10) The firm will employ craft employees in all classifications and individual trades required to successfully perform the work related to this project.

(11) The firm participates in a Class A Apprenticeship Program for the past three (3) years, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project. This apprenticeship requirement helps ensure that workers employed on the project are participants in or graduates of bona fide apprenticeship training programs in each trade or craft in which their services are utilized, as evidenced by the fact that the program is registered with federal or state government and has been in continuous existence for no fewer than five (5) years prior to the project relating to the certification. For purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three (3) of the past five (5) years. This may be an apprenticeship program that is subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”), or a non-ERISA program. To demonstrate compliance with this section, the firm shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program.

(12) The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.

(13) The firm will maintain all qualifications, resources and capabilities referenced in this certification throughout the duration of the project.

(14) The firm shall notify the City within seven (7) days of any material changes to all matters attested to in this certification.

(15) The firm understands that the Contractor Responsibility Certification required by this section shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, and/or Unsworn Falsification to Authorities, that the information submitted is true, complete and accurate.

(d) Execution of the Contractor Responsibility Certification required by this ordinance shall not establish a presumption of contractor responsibility and the City may require any additional information it deems necessary to evaluate a firm’s status as a responsible contractor, including technical qualifications, financial capacity or other resources and performance capabilities. The City may require that such information be included in a separate Statement of Qualifications and Experience or as an attachment to the Contractor Responsibility Certification.

(e) The submitting firm shall stipulate in the Contractor Responsibility Certification that, if it receives a Notice of Intent to Award Contract, it will provide a Subcontractor List and required subcontractor information as specified in Section 131.05 of this ordinance.

(f) If the submitting firm has ever operated under another name, or is controlled by another company or business entity, or in the past five (5) years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relation, it shall attach a separate statement to its Contractor Responsibility Certification that explains in detail the nature of any such relationship. Additional information may be required from such an entity if the relationship in question could potentially impact contract performance.

(g) If a firm fails to provide a Contractor Responsibility Certification required by this section, it shall be disqualified from bidding. No action of any nature shall lie against the City because of its refusal to accept a bid for failing to provide information required by this section.

131.04. Notice of Intent to Award Contract

(a) After it has received bids for a project, the City shall issue a Notice of Intent to Award Contract to the firm offering the lowest responsible bid.

(b) Such Notice shall be issued immediately or as soon as practicable after bids are opened and Notice of Intent to Award Contract is issued. The Notice shall stipulate that the contract award is conditioned on the issuance of a written Contractor Responsibility Determination, as required by Section 131.05 and any other conditions deemed appropriate by the City.

131.05. Subcontractor Lists, Subcontractor Responsibility Certifications

(a) A prospective awardee shall submit to the City a Subcontractor List containing the names of any subcontractors that will be used for the referenced project, their addresses, and a description of the work each listed subcontractor will perform on the project.

(b) At the time a prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications for all listed subcontractors to the City. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the City and shall contain the same information and representations required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by Section 131.03(c)(11), for each trade or classification of craft workers it will employ on the project.

(c) Subcontractor Responsibility Certifications shall be executed by a person having sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury and/or Unsworn Falsification to Authorities, that all information submitted is true, complete and accurate.

131.06. Contractor Responsibility Review and Determination

(a) After a Notice of Intent to Award Contract has been issued, the City shall undertake a review process to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this ordinance and other applicable laws and regulations and has the resources and capabilities to successfully perform the contract. The time of the review process shall be as determined necessary by the City.

(b) As part of this review process, the City shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility Certifications, as required by this ordinance, have been submitted and properly executed.

(c) The City may conduct any additional inquiries to verify that the prospective awardee and its subcontractors have the technical qualifications and performance capabilities necessary to successfully perform the contract and that the firms have a sufficient record of law compliance and business integrity to justify the award of a public contract. In conducting such inquiries, the City may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.

(d) If at the conclusion of the review process the City determines that all responsibility certifications have been properly completed and executed and if it concludes that the qualifications, background and responsibility of the prospective awardee and the firms on its Subcontractor List are satisfactory, it may issue a formal written Contractor Responsibility Determination verifying that the prospective awardee is a qualified, responsible contractor. In the event a firm is determined to be non-responsible, the City shall proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project.

(e) A Contractor Responsibility Determination may be issued after the conclusion of the review process under Section 131.05. A Responsibility Determination may be revoked or revised in any manner at any time if the City obtains relevant information warranting any such revocation or revisions.

131.07. Subcontractor Responsibility Review Requirements

(a) A construction manager, general contractor or other lead or prime contractor shall not be permitted to use a subcontractor on any work performed for the City unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 131.05.

(b) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from City and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.

(c) In the event that the City determines that a prospective subcontractor listed by the apparent low bidder does not meet the responsibility standards of this Section, it may, after informing the prospective awardee, exercise one of the following options:

(1) permit the awardee to substitute a qualified, responsible, subcontractor in accordance with the requirements of this section;

(2) require the awardee to self-perform the work in question if the firm has the required experience, licenses and other qualifications to perform the work in question; or

(3) disqualify the prospective awardee.

(d) In the event that a subcontractor is disqualified under this ordinance, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of contractual claim against the City on the basis of a subcontractor disqualification.

131.08. False or Misleading Responsibility Certifications

(a) If the City determines that a Contractor or Subcontractor Responsibility Certification contains false or misleading material information that was provided knowingly or with reckless disregard for the truth, or omits material information knowingly or with reckless disregard of the truth, the firm for which the certification was submitted shall be prohibited from performing work for the City for a period of three (3) years, and shall be subject to any other penalties and sanctions, including contract termination, available to the City under law. A contract terminated under these circumstances shall further entitle the City to withhold payment of any monies due to the firm as damages.

131.09. Execution of Final Contract

(a) A contract subject to this ordinance shall not be executed until all requirements of this ordinance have been fulfilled and until Contractor and Subcontractor Responsibility Certifications have been issued by the City under Section 131.06(d). Upon completion of all requirements under this ordinance, the City may execute a final contract based upon the Notice of Intent.

(b) Prior to the execution of a final contract under this Section, the City shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists and Contractor Responsibility Determination on the City website for public inspection for a period of five (5) calendar days after the issuance of the Contractor Responsibility Determination.

SECTION 2.

The terms, conditions and provisions of this ordinance are hereby declared to be severable, and, should any portion, part or provision of this ordinance be found by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, City Council hereby declares its intent that the ordinance shall have been enacted without regard to the invalid, unenforceable or unconstitutional portion, part or provision of this ordinance.

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SECTION 3.

This ordinance shall become effective twenty (20) days after enactment.

SECTION 4.

Any and all other ordinances or parts of ordinances in violation or in conflict with the terms, conditions and provisions of this ordinance are hereby repealed to the extent of such irreconcilable conflict.

Sponsored by: _____

PASSED finally in Council on this _____ day of _____, 2021.

President of Council

ATTEST:

City Clerk

This Ordinance approved this this _____ day of _____, 2021.

Mayor

RESOLUTION NO. _____

Responsible Contracting Procedures

WHEREAS, many states and local jurisdictions in the U.S., face critical contracting needs, including those for infrastructure projects, that must be addressed and will require them to plan, manage and oversee major capital investments in both the short and long term; see President’s Council of Economic Advisors, Economic Benefits and Impacts of Expanded Infrastructure Investment 3, (2018) (estimating \$4.6 trillion in infrastructure investment is needed between 2016 and 2025); and

WHEREAS, in undertaking its infrastructure and other public works projects, the City of Bethlehem (the “City”) seeks to utilize efficient procurement procedures that will help ensure that its projects are delivered with reasonable certainty and in a safe, timely manner, in accordance with applicable industry codes and standards and quality specifications that represent the best overall value; and

WHEREAS, securing successful delivery of projects in the construction industry is particularly difficult due to the unique, complex, unpredictable and inherently dangerous nature of the industry, wherein errors in project planning or execution can result in serious health and safety risks to project workers and/or the general public, significant and avoidable cost overruns, flawed or inferior projects, and disruptions in performance schedules that delay the availability and use of critical government facilities; Maureen Conway & Allison Gerber, Aspen Institute, Workforce Strategic Initiatives, Construction Pre-Apprenticeship Programs: Results from a National Survey 6-7 (2009) (discussing complicating factors in successful delivery of construction projects and the risks of using poorly trained workers); and

WHEREAS, to protect its financial and proprietary interests in these projects, and to offset performance risks inherent to public works contracting, the City must utilize efficient procurement procedures that adequately protect and promote these interests, including clearly defined, pre-established evaluation criteria to address the unique challenges of capital construction and result in the selection of qualified, reputable contractors and subcontractors that are committed the City’s goals of safe, timely, cost effective project delivery; and

WHEREAS, to establish efficient procurement procedures, the City specifically seeks to require that its public works contracts are performed by qualified “responsible” contractors and subcontractors that meet essential performance criteria, including: (a) satisfactory records of past performance, including compliance with applicable laws and industry regulations; and (b) adequate present performance capabilities, including contractor and subcontractor competency and availability of skilled craft personnel; and

WHEREAS, effective contracting procedures must recognize and address unique challenges relating to procurement in the construction industry, including the following:

(a) Construction is a transient industry, which requires a careful review of a firm’s past performance, as well as its current capabilities;

(b) construction is an inherently dangerous industry that requires craft personnel to receive proper safety training; National Institutes of Health, Accid An Prey., 39(6), Costs of Occupational Injuries in Construction in the United States Construction (2007), 1258-1266 (2008) (construction is a high risk industry and accounts for disproportionate share of work related injuries); Fatalities in the Construction

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Industry, Bureau of Labor Statistics, Monthly Labor Review (July 2014) (industry accounts for 40% of all fatal work-related falls;

(c) under virtually any market conditions, construction projects require assurances of a reliable supply of well-trained craft personnel because it is a highly skilled, labor intensive industry; and

(d) the construction industry is currently facing acute, worsening skill shortages and such conditions pose major risks to the planning and execution of capital construction projects; Construction Labor Market Analyzer, Construction Users RoundTable (CURT), The Long-Term Outlook for Construction, 6 (2017) (estimating an impending deficit of 1.5 million skilled workers through 2022 in the construction industry); David H. Bradley & Stephen A. Herzenberg, Construction Apprenticeship and Training in Pennsylvania 3 (2002) (describing “free rider” market failure that incentivizes employers to under-train construction workers in the absence of apprenticeship programs); and

WHEREAS, leading organizations in the construction industry, including trade associations representing project owners, such as CURT, have repeatedly issued strong recommendations to parties purchasing construction services for large capital projects that, due to shortages in the supply of skilled craft personnel, contractors and subcontractors should be required to prove their participation in skill training programs as a pre-qualification standard in order to protect the project owner’s financial and proprietary interests by ensuring that such firms provide skill training to construction craft personnel and have an adequate supply of trained, skilled construction workers to perform their projects; CURT, Skilled Labor Shortage Risk Mitigation, WP-1101 (January 2015) (recommending that, to address skill challenges, project owners require contractors to provide skills training as a condition of bidding projects); Matt Helmer & Dave Altstadt, Aspen Institute, Workforce Strategies Initiative, Apprenticeship: Completion and Cancellation in the Building Trades 8-9 (2013) (proposing a requirement that all contractors participating in publicly funded projects participate in registered apprenticeship programs); Robert Lerman et al., Benefits and Challenges of Registered Apprenticeship: Sponsors’ Perspective ii (2009) (finding that 97% of employer-sponsors of registered apprenticeship programs would recommend the program to others and that over 80% of sponsors cited filling the demand for skilled workers as a “very important” benefit of apprenticeship); CURT, Confronting the Skilled Workforce Shortage (June 2004) (recommending all owners prequalify contractors on the basis of craft training); and

WHEREAS, in seeking to ensure the adequate development of trained, skilled personnel for the construction industry, as well as other industries, the United States Congress passed the Fitzgerald Act, Pub. L. No. 75-308, 50 Stat. 664, H.R. REP. No. 75-945, which created a system in which workers could be properly trained in construction skills and safety procedures through organized, formally registered apprenticeship training programs that meet established quality, safety and performance standards and that such programs are approved and monitored by the U.S. Department of Labor and state labor agencies, including the Pennsylvania State Apprenticeship Council; and

WHEREAS, in recognizing the value created by apprenticeship training and the significant return-on-investment apprenticeship programs produce for employers, the Executive Branch has taken steps through Executive Orders and the creation of a task force devoted to apprenticeships to support and encourage the expansion of apprenticeship training programs nationwide in conjunction with private and public entities; Exec. Order No. 13845, 83 Fed. Reg. 35,099 (July 24, 2018) (creating a National Council for the American Worker to promote apprenticeship and training programs as a means of addressing the skills crisis facing the nation); Task Force on Apprenticeship Expansion, Final Report to the President of the United States 15 (2018) (estimating that every dollar spent by employers on apprenticeship programs yields a return of \$1.47); and

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WHEREAS, research from both government and industry underscore the need to expand the use of apprenticeship training across the economy, especially in construction, as a means for promoting skills training to address current and future workforce development needs; such reports include a joint report issued by various agencies of the federal government - U.S. Departments of Labor, Commerce, Educ., and Health and Human Res. What Works in Job Training: A Synthesis of the Evidence 8 (2014); Workforce Training and Educ. Coordinating Bd., Workforce Training Results 2015 5, 47-49 (2015) (showing that, compared to other worker training programs in one state, apprenticeship training was “very successful” and ranked first in: increased annualized earnings for workers, net participant benefits, net public benefits, and present value of net returns to taxpayers); U.S. Department of Commerce, Economics and Statistics Administration and Case Western Reserve University, The Benefits and Costs of Apprenticeship: A Business Perspective (showing apprenticeship programs are unanimously supported by participating employers and highly cost-effective due to numerous factors, including higher productivity of trained workers, improved safety, improved project quality, more reliable project staffing, and reduction in employee turnover); Council of Econ. Advisors, Addressing America’s Reskilling Challenge 7-8 (2018) (showing that Federal, state, and local governments in the U.S. spend “far less” on retraining and reskilling than other advanced economies); Federal Executive Order promoting greater use of apprenticeship programs to train the U.S. workforce: Exec. Order No. 13801, 82 Fed. Reg. 28,229 (June 20, 2017); and

WHEREAS, the courts have consistently recognized that states and local jurisdictions seeking to protect substantial financial and proprietary interests have the right to enact contracting and procurement legislation and/or to impose contract bid specifications designed to ensure the performance capabilities of prospective contractors and subcontractors and their employees, including apprenticeship training requirements and other craft labor qualifications; see *Bldg. & Const. Trades Council of the Metro. fist. v. Assoc. Builders & Contractors of Mass. and R.I., Inc.*, 507 U.S. 218 (1993); *Assoc. Builders a Contractors v. Much. Dep’t of Labor a Econ. Growth*, 543 F.3d 275 (6th Cir. 2008); *Hotel Emps. & Restaurant Emps. Union, Local 57 v. Sage Hospitality Res., LLC*, 390 F.3d 206 (3rd Cir. 2004); *Assoc. Builders & Contractors, Inc. v. New Castle County*, 144 F. Supp. 3d 633 (D. Del. 2015); and *Allied Constr. Indus. v. City of Cincinnati*, No. 16-4248, 2018 WL 283775 (6th Cir. 2018); and

WHEREAS, the City finds that apprenticeship training programs which are registered with and approved by federal or state agencies, and maintained in accordance with regulations issued pursuant to the Fitzgerald Act, provide the most reliable means for securing a reliable supply of qualified craft labor for capital projects, and further recognizes that essential levels of work quality, safety and cost-efficiency on its public works projects will be better achieved by requiring the use of contractors and subcontractors that participate in bona fide apprenticeship programs with a proven record of graduating apprentices and providing effective skill training in the construction industry; U.S. Dep’t of Labor Emp’t and Training Admin., Registered Apprenticeship Fact-Sheet 1 (2000) (workers that complete apprenticeships are more motivated, more productive, and have lower worker compensation costs because of training programs’ emphasis on safety); Paul M. Goodrum, Construction Industry Craft Training in the United States and Canada (2000) (finding that for a single capital construction project, each dollar invested in craft training yields a return of \$1.30 to \$3.00); Debbie Reed et. al, An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States xiv (2012) (finding that the social benefit of an individual completing an apprenticeship training program exceeds the social costs by \$49,000); and

WHEREAS, the City wishes to revise its procurement standards for public works construction to address these findings and considerations, limit project delivery risks and protect its financial and proprietary interests, and better ensure efficient procurement and successful delivery of these projects.

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NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Bethlehem, Counties of Lehigh and Northampton, Commonwealth of Pennsylvania, is committed to addressing the challenges it faces relating to public works projects by enacting necessary and appropriate procurement legislation to protect its proprietary and financial interests and create adequate safeguards to ensure the successful delivery of such projects to the fullest extent possible.

Sponsored by: _____

ADOPTED by Council this day of _____, 2021.

President of Council

ATTEST:

City Clerk