

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);

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;

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);

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;

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;

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 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);

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-IIOI (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);

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;

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);

WHEREAS, research from both government and industry underscores 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

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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);

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);

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.

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

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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