

BILL NO. ____ – 2021

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF BETHLEHEM,
COUNTIES OF LEHIGH AND NORTHAMPTON,
COMMONWEALTH OF PENNSYLVANIA, ADOPTING NEW
SECTION 121.13 OF THE CODIFIED ORDINANCES,
ENTITLED BID PREFERENCES.

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

SECTION 1: That the following text comprising a new Section 121.13, entitled “Bid Preferences,” be added to Article 121 (Finance) of the Codified Ordinances of the City of Bethlehem, as follows:

121.13 Bid Preferences.

121.13.1 Purpose and Declaration of Policy.

The City Council of the City of Bethlehem finds that:

- A. The interests of City taxpayers would be better served by encouraging locally-owned businesses, and especially those locally-owned businesses that are minority, veteran and women-owned, located in the City of Bethlehem to benefit from City projects.
- B. We recognize that operating a business within the City can be a disadvantage due to the higher costs associated with owning and operating a business within the City.
- C. A bid preference for, locally-owned businesses, and especially those locally-owned businesses that are minority, veteran, and women-owned, will serve the public interest, because growing and developing local businesses, and providing open and equitable opportunities in the contracting process for diverse and disadvantaged businesses, will have a significant positive impact on the economic health of the City by, among other things, the creation of local jobs and increased tax revenue.
- D. The bid preference will serve the goal of rewarding those business which contribute the most to the local economy.
- E. The bid preference, in affording local businesses a competitive advantage when bidding on City contracts, does not exclude any potential contractor.

121.13.2 Definitions. For purposes of this section, the following definitions apply:

- A. Business Entity – shall mean any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in a business or commercial enterprise, as well as any organization defined in paragraphs D, F, G, and H of this subsection 121.13.2.
- B. Bureau –shall mean the Purchasing Bureau.
- C. Local Business Entity – shall mean any Business Entity certified pursuant to subsection 121.13.3.
- D. Minority-owned business – shall mean a for-profit business which is at least 51% owned and controlled by one or more individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders. The term includes a corporation in which at least 51% of the stock is owned by one or more individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders. (As defined in the Commonwealth Procurement Code 74 Pa.C.S.A. 2201.)
- E. Third-party certifying organization – shall mean an organization that certifies a small business, minority-owned business, women-owned business or veteran-owned small business as a diverse business. The term includes:
 - (1) The National Minority Supplier Development Council.
 - (2) The Women's Business Development Enterprise National Council.
 - (3) The Small Business Administration.
 - (4) The Department of Veterans Affairs.
 - (5) The Pennsylvania Unified Certification Program. (As defined in Pennsylvania statute 74 Pa.C.S.A. 303.)
- F. Veteran-owned small business – shall mean a business owned and controlled by a veteran or veterans. (As defined in the Pennsylvania Military and Veterans Code 51 Pa.C.S.A. 9601.)
- G. Veteran - an individual who served in the United States Armed Forces, including a reserve component or the National Guard, and who was discharged or released from service under conditions other than dishonorable. (As defined in the Pennsylvania Military and Veterans Code 51 Pa.C.S.A. 9601.)
- H. Women-owned business - a business owned and controlled by a majority of individuals who are women. (As defined in the Commonwealth Procurement Code 74 Pa.C.S.A. 2201.)

121.13.3 Certification.

- A. A business entity that seeks to be certified as a Local Business Entity (“LBE”) shall make application to the Purchasing Bureau on a form provided by the Bureau. Such application shall not be considered by the Bureau unless the Business Entity files with the Bureau a written certificate that the Business Entity is not delinquent in the payment of any City or School district taxes, charges, fees, rents or claims, or that the Business Entity has entered into an agreement to pay any such delinquency and is abiding by the terms of such agreement.
- B. The Bureau shall certify a Business Entity as a Local Business Entity if the Bureau determines:
 - 1. That the Business Entity, during the preceding twelve (12) months, has filed a business income and tax return with the City establishing that the contractor conducted business within the City within the calendar year preceding the filing of the return;
 - 2. Has continuously maintained a valid commercial/business license and all necessary licenses and permits necessary to conduct business within the City; and
 - 3. Has continuously occupied, staffed and conducted business in an office within the City as its principal place of business.

121.13.4 Term of Certification.

- A. A certification by the Bureau pursuant to subsection 121.13.3 shall be valid for a term of three (3) years, or for such other period as the Bureau may prescribe by regulation. To maintain its certification during the three (3) year term, the Local Business Entity must:
 - 1. Provide the Bureau, every year by the anniversary of the certification, an updated certificate and a sworn affidavit affirming that the Local Business Entity continues to comply with the regulations of this Section 121.13; and
 - 2. Promptly notify the Bureau if there is a material change to the ownership or control of the Local Business Entity, or if there is a change in address or phone number, or if there is any other change in the operations of the Local Business Entity that would cause the Local Business Entity no longer comply with the provisions of this Section 121.13.

121.13.5 Award of City Contracts.

- A. On any contract for which the City secures competitive bids pursuant to City and State law, the Bureau shall award a bid preference as set forth in subsection 121.13.5(C) to any Local Business Entity that submits with its bid:
1. A current certification from the Bureau as a Local Business Entity.
 2. The Local Business Entity's most recent affidavit as required in this Section.
 3. A certification by the Local Business Entity that, throughout the entirety of the contract:
 - i. The LBE or a subcontractor will perform the majority of any work on the subject contract within the geographic limits of the City; and/or
 - ii. The LBE or subcontractor will maintain within the City a majority of the inventory or equipment that will be used on the contract.
 4. If a LBE relies upon a subcontractor to meet any of the requirements of 121.13.5(A)(3)(i) or 121.13.5(A)(3)(ii), the LBE must provide a current certification of the subcontractor as a Local Business Entity and the subcontractors most recent affidavit provided to the Bureau pursuant to this Section.
- B. In determining the lowest responsible bidder on any such contract, the City shall subtract the amount set forth in subsection 121.13.5(C) from the bid of any LBE awarded such a preference.
- C. The amount of the bid preference shall be as follows:
1. For all bids of \$250,000 or less, four (4%) percent.
 2. For all other contracts, three (3%) percent.

121.13.6 Additional Preference.

Any local business entity awarded a bid preference pursuant to Section 121.13.5 that is also a minority-owned, veteran-owned, and/or women-owned business, as certified by a third-party certifying organization, shall be awarded a maximum of one (1) additional bid preference, as follows: for all bids of \$250,000 or less, four (4%) percent, for all other contracts, three (3%) percent. In determining the lowest responsible bidder on any such contract, the City shall subtract the amount

set forth in this subsection 121.13.6 in addition to the amount set forth in subsection 121.13.5(C) from the bid of any LBE awarded such a preference.

121.13. 7 Waiver. The City may determine not to award a bid preference if the City certifies that such a preference would result in the loss of federal, state or similar funds or grants.

121.13. 8 Regulations. The Administration shall promulgate such regulations as it may deem necessary to ensure the implementation of this Section 121.13.

SECTION 2. That all Ordinances and parts of Ordinances inconsistent herewith be, and the same are hereby repealed.

Sponsored by _____

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

President of Council

ATTEST:

City Clerk

This Ordinance APPROVED this _____ day of _____, 2021.

Mayor