

City of Philadelphia



(Bill No. 030097)

AN ORDINANCE

Amending Title 17 of The Philadelphia Code, entitled “Contracts and Procurement,” by adding a new Section 17-109, entitled “Local Bidding Preferences,” providing for the establishment of a bidding preference on City contracts for Philadelphia businesses, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 17 of The Philadelphia Code is hereby amended to read as follows:

TITLE 17. CONTRACTS AND PROCUREMENT.

CHAPTER 17-100. PROCUREMENT CONTRACTS.

* * *

§17-109. Local Bidding Preferences.

(1) Legislative findings.

(a) Local businesses that seek to enter into contracts with the City labor under a competitive disadvantage with businesses from other areas because of the higher administrative costs of doing business in the City (e.g., higher taxes, higher rents, higher wages and benefits for labor, higher insurance rates, etc.).

(b) The public interest would be served by encouraging businesses to locate and remain in Philadelphia through the provision of a preference to local businesses in the award of City contracts.

(c) The bid preference will serve the public interest because the growth and development of local 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 businesses 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.

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(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.*

(b) *“Commissioner” shall mean the Procurement Commissioner.*

(c) *“Local Business Entity” shall mean any Business Entity certified pursuant to subsection (3).*

(3) *Certification. The Commissioner shall certify a Business Entity as a Local Business Entity if the Commissioner determines that the Business Entity, during the preceding 12 months, has filed a business privilege tax return with the City establishing that the contractor conducted business within the City within the calendar year preceding the filing of the return, and, during the preceding 6 months:*

(a) *Has continuously maintained a valid business privilege license;*

(b) *Has continuously occupied an office within the City, where business is conducted; and*

(c) *Satisfies at least one of the following requirements:*

(.1) *More than half of the Business Entity’s full-time employees work in the City at least sixty percent of the time;*

(.2) *More than fifty of the Business Entity’s full-time employees work in the City at least sixty percent of the time;*

(.3) *More than half of the Business Entity’s officers work in the City at least sixty percent of the time; or*

(.4) *The Business Entity’s principal place of business is located in the City.*

(4) *Term of Certification. A certification by the Commissioner pursuant to subsection (3) shall be valid for a term of three years, or for such other period as the Commissioner shall prescribe by regulation. To maintain its certification during the three-year term, the Local Business Entity must:*

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(a) Provide to the Commissioner, every year by the anniversary of the certification, a sworn affidavit affirming that the Local Business Entity continues to comply with subsection 3(a), subsection 3(b), and at least one of the requirements identified in subsection 3(c); and

(b) Promptly notify the Commissioner 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.

(5) Award of City Contracts.

(a) On any contract for which the City secures competitive bids pursuant to Section 8-200(1) of the Home Rule Charter, the Commissioner shall award a five percent bid preference to any Local Business Entity that submits with its bid:

(.1) A current certification from the Commissioner as a Local Business Entity;

(.2) The Local Business Entity's most recent annual affidavit under subsection 4(a);

(.3) A certification by the Local Business Entity that, throughout the entirety of the contract:

(A) The Local Business Entity or a subcontractor will perform the majority of any work on the subject contract within the geographic limits of the City;

(B) The Local Business Entity or a subcontractor will maintain within the City a majority of the inventory or equipment that will be used on the contract; and

(C) The Local Business Entity will satisfy subsection 3(a), subsection 3(b), and at least one of the requirements identified in subsection (3)(c).

(.4) If the Local Business Entity relies upon a subcontractor to meet the requirements in subparagraph (a)(.3)(A) or (a)(.3)(B) of this subsection:

(A) a current certification from the Commissioner that the subcontractor itself is a Local Business Entity; and

(B) the subcontractor's most recent annual affidavit provided to the Commissioner pursuant to subsection 4(a).

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(b) In determining the lowest responsible bidder on any such contract, the Commissioner shall subtract five percent from the bid of any Local Business Entity awarded such a preference, or shall implement the bid preference otherwise pursuant to regulations promulgated by the Commissioner.

(c) The terms of the certification required under subparagraph (a)(.3) of this subsection shall be deemed to be incorporated into any contract for which a bid preference is awarded. If the Commissioner determines that a Business Entity fails to comply with these terms at any time during the term of the contract, that Business Entity shall be deemed to be in breach of such contract, shall be required to pay liquidated damages of ten percent of the bid, and may be debarred by the Commissioner for up to three years. If the Commissioner determines to issue a debarment order, the Commissioner shall give the Business Entity written notice thereof and an opportunity to present evidence at a hearing in opposition to the intended debarment. After any such hearing, the Commissioner or such hearing panel as he or she may designate shall issue a written determination stating the grounds for its decision.

(6) Waiver. The Commissioner may determine not to award a bid preference if the Commissioner certifies that such a preference would result in the loss of federal, state or similar funds or grants. The Commissioner shall transmit a copy of any such determination to the Mayor, the President of City Council, and the Chief Clerk of City Council no later than one (1) week following the contract award.

(7) Regulations. The Procurement Department shall promulgate such regulations as it may deem necessary to aid in the administration and enforcement of the provisions of this Section, and shall submit any such regulations to the Mayor, the President of City Council, and the Chief Clerk of City Council when it submits the regulations to the Department of Records under Section 8-407(a) of the Home Rule Charter.

(8) Inspections. The Commissioner shall have the authority to inspect and monitor all premises, business practices, and operations of any Local Business Entity as may be necessary or appropriate to ensure compliance with this Section.

(9) Annual Report. Not later than February 1 of each year, the Commissioner shall issue a report in writing to the Mayor, the President of City Council, and the Chief Clerk of City Council identifying, with respect to the time period between January 1 and December 31 of the preceding year:

(a) the types of contracts in which a bid preference was awarded;

(b) the number of each type; and

(c) the name of all Local Business Entities in breach of contract pursuant to subsection 5(c).

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SECTION 2. This Ordinance shall become effective ninety (90) days after adoption of an amendment to the Philadelphia Home Rule Charter permitting local bidding preferences.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 1, 2003. The Bill was Signed by the Mayor on May 15, 2003.



Patricia Rafferty
Chief Clerk of the City Council