Amending Section 17-109 of The Philadelphia Code, entitled "Local Bidding Preferences," by establishing a new category of bid preference for businesses that are both local and small, and amending definitions, certification, goal setting and reporting requirements, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 17-109 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 17-100. PROCUREMENT CONTRACTS

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§ 17-109. Local Bidding Preferences.

(1) Legislative findings.

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(e) The bid preference, in affording local businesses a competitive advantage when bidding on City contracts, does not exclude any potential [contractor.] *contractor but creates a more level playing field for all businesses.*

(f) Small businesses are considered the backbone of the American economy, creating jobs and opportunities for wealth creation and economic mobility, but face competitive disadvantages in a public bidding process.

(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, and Department shall mean the Procurement Department.

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

(d) Small Business Entity shall mean any Business Entity certified as a Small Business Entity by the Office of Economic Opportunity or its designee.

(3) Certification.

(a) A Business Entity that seeks to be certified as a Local Business Entity shall make application to the Commissioner on a form provided by the Department. Such application shall not be considered [by the Commissioner] *for a bid preference* unless the Business Entity files with the Commissioner:

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(b) The Commissioner shall certify a Business Entity as a Local Business Entity if the Commissioner determines:

(.1) That the Business Entity, during the preceding *twelve (*12*)* months, has filed a business income and receipts 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) That during the preceding eighteen (18) months the Business Entity:

(.a) Has continuously maintained a valid commercial activity license and all other licenses and permits necessary to conduct business with the City;

(.b) Has continuously occupied, staffed and conducted business in an office within the City; and *either*

(i) The Business Entity's principal place of business is located in the City; or

(ii) The Business Entity continuously during the preceding eighteen (18) months satisfies at least two of the three following requirements:

(A) More than sixty percent (60%) of the Business Entity's full-time employees *who reside within the Commonwealth of Pennsylvania* are reported as Philadelphia Residents on the City of Philadelphia Annual Reconciliation of Employer Wage Tax;

(B) More than half of the Business Entity's full-time employees work in the City at least sixty percent (60%) of the time; or

(C) More than three quarters of the Business Entity's gross receipts are reported on the *Business* Entity's business and income receipts tax return as Philadelphia receipts.

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

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(5) Award of City Contracts.

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

(.1) A current certification from the Commissioner as a Local Business Entity *and, if applicable, certification from the Office of Economic Opportunity as a Small Business Entity*;

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(d) The amount of the bid preference *for a Local Business Entity* shall be as follows:

(.1) [For contracts certified by the Director of Finance or his designee as funded in whole in part with moneys received pursuant to the American Recovery and Reinvestment Act, Pub. L. 111-5 (Feb. 17, 2009): ten percent (10%);]

[(.2)] For all bids *more than five hundred thousand dollars ($500,000) but no more than* [of] one million dollars ($1,000,000) [or less]: ten percent (10%);

(.2) For all bids five hundred thousand dollars ($500,000) or less: fifteen percent (15%);

(.3) For all other [contracts] *bids*: five percent (5%).

(e) For bids submitted by a business entity certified as both a Local Business Entity and a Small Business Entity, the Commissioner shall subtract two percent (2%) from the bid, in addition to the Local bid preferences set forth above.

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(9) Annual Report and Goals. Not later than [February] *July* 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] *July* 1 and [December 31] *June 30* 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 identity of each Business Entity awarded a bid preference; and*

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

[(d)]*(e) Annual Goals.* Such report shall also establish [a] *annual* percentage [goal] *goals for Local Business Entities and Small Business Entities* [of] *that shall apply to* the total dollar value of contracts awarded *by the Department.* [to Local Business Entities, as] *Goals shall be* established by the Procurement Department or such other agency determined by the Mayor *and shall take into account availability data*.

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The report shall explain how the [goal] *goals* for the current year [was] *were* set and what plans and actions will be taken in furtherance of [that] *those* established [goal]*goals*, address whether the amount of contracts awarded fall short of the [goal]*goals* provided for that year in the previous report and, if so, outline the corrective actions to be undertaken to achieve the [goal] *goals* in the upcoming year.

[(e)]*(f)* In Fiscal Year [2022] *2027*, a goal shall be established by [July] *October* 1, *2027* [2021].

[(f)]*(g)* The information required in subsection [(d)] *(e)* shall be updated in the annual report and on August 1 of each year.

(10) Ineligibility.

(a) The Department, through regulations, shall provide for the ineligibility of a contractor for a local business preference for up to three years upon a finding of any intentional misstatements or noncompliance with any certification relating to [LBE] *Local Business Entity or Small Business Entity* status.

SECTION 2. Section 1 shall be effective upon certification of the election in which voters approve of the question placed on the ballot by Ordinance No. 260xxx.

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