



**AGENDA**  
**CUYAHOGA COUNTY PUBLIC WORKS, PROCUREMENT & CONTRACTING**  
**COMMITTEE MEETING**  
**WEDNESDAY, APRIL 6, 2016**  
**CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS**  
**C. ELLEN CONNALLY COUNCIL CHAMBERS – 4<sup>TH</sup> FLOOR**  
**10:00 AM**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENT RELATED TO THE AGENDA**
- 4. APPROVAL OF MINUTES FROM THE MARCH 30, 2016 MEETING**
- 5. MATTERS REFERRED TO COMMITTEE**
  - a) R2016-0063: A Resolution authorizing a First Amendment to Agreement of Sublease with Ohio Department of Rehabilitation and Correction and consented to by Ohio Public Facilities Commission pertaining to the financing of a portion of the cost of the Cuyahoga County Community-based Correctional Facility Project, by changing the aggregate amount of project costs to be paid for or reimbursed from the Adult Correctional Building Fund from \$10,800,000.00 to \$10,842,265.00; authorizing the County Executive to execute the amendment and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.
  - b) O2016-0006: An Ordinance enacting Chapters 507 and 508 of the Cuyahoga County Code to establish the County's Risk Management procedures and performance bond and insurance requirements, and

declaring the necessity that this Ordinance become immediately effective.

- c) O2016-0005: An Ordinance enacting Sections 503.02 to 503.07 of the Cuyahoga County Code to expand the Small Business Enterprise Program; and declaring the necessity that this Ordinance become immediately effective.
- d) O2016-0007: An Ordinance enacting Chapter 510 of the Cuyahoga County Code to establish the Cuyahoga County Business Economic Inclusion Program, and declaring the necessity that this Ordinance become immediately effective.

**6. MISCELLANEOUS BUSINESS**

**7. OTHER PUBLIC COMMENT**

**8. ADJOURNMENT**

*\*Complimentary parking for the public is available in the attached garage at 900 Prospect. A skywalk extends from the garage to provide additional entry to the Council Chambers from the 5<sup>th</sup> floor parking level of the garage. Please see the Clerk to obtain a complimentary parking pass.*

*\*\*Council Chambers is equipped with a hearing assistance system. If needed, please see the Clerk to obtain a receiver.*



## **MINUTES**

### **CUYAHOGA COUNTY PUBLIC WORKS, PROCUREMENT & CONTRACTING COMMITTEE MEETING**

**WEDNESDAY, MARCH 30, 2016**

**CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS**

**C. ELLEN CONNALLY COUNCIL CHAMBERS – 4<sup>TH</sup> FLOOR**

**10:00 AM**

#### **1. CALL TO ORDER**

**Chairman Germana called the meeting to order at 10:04 a.m.**

#### **2. ROLL CALL**

**Mr. Germana asked Deputy Clerk Carter to call the roll. Committee members Germana, Miller and Greenspan were in attendance and a quorum was determined. Committee members Conwell and Simon were in attendance after the roll call was taken. Councilmember Jones was also in attendance.**

#### **3. PUBLIC COMMENT RELATED TO THE AGENDA**

**Mr. Russell O'Rourke addressed the Committee regarding Ordinance No. O2016-0006, an Ordinance enacting Chapters 507 and 508 of the Cuyahoga County Code to establish the County's Risk Management procedures and performance bond and insurance requirements.**

**Mr. Christopher Nance addressed the Committee regarding Ordinance No. O2016-0007, an Ordinance enacting Chapter 510 of the Cuyahoga County Code to establish the Cuyahoga County Business Economic Inclusion Program.**

#### **4. APPROVAL OF MINUTES FROM THE MARCH 23, 2016 MEETING**

**A motion was made by Mr. Greenspan, seconded by Mr. Miller and approved by unanimous vote to approve the minutes of the March 23, 2016 meeting.**

5. MATTERS REFERRED TO COMMITTEE

- a) R2016-0063: A Resolution authorizing a First Amendment to Agreement of Sublease with Ohio Department of Rehabilitation and Correction and consented to by Ohio Public Facilities Commission pertaining to the financing of a portion of the cost of the Cuyahoga County Community-based Correctional Facility Project, by changing the aggregate amount of project costs to be paid for or reimbursed from the Adult Correctional Building Fund from \$10,800,000.00 to \$10,842,265.00; authorizing the County Executive to execute the amendment and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.

**No legislative action was taken on Resolution No. R2016-0063.**

- b) R2016-0065: A Resolution making an award on RQ35947 to The C. A. Agresta Construction Co. in the amount not-to-exceed \$1,188,333.50 for 2016 Operations Resurfacing Program – Group 1, located in various municipalities; authorizing the County Executive to execute the contract and all other documents consistent with said award and this Resolution; authorizing the County Engineer, on behalf of the County Executive, to make an application for allocation from County Motor Vehicle \$7.50 License Tax Funds in said amount to fund said contract; and declaring the necessity that this Resolution become immediately effective:
- 1) Eddy Road from St. Clair Avenue to Interstate 90 in the City of Cleveland.
  - 2) East 152<sup>nd</sup> Street from Coit Avenue to Woodworth Avenue in the City of East Cleveland.

**Mr. Michael Dever, Director of the Department of Public Works, addressed the Committee regarding Resolution No. R2016-0065. Discussion ensued.**

**Committee members and Councilmembers asked questions of Mr. Dever pertaining to the item, which he answered accordingly.**

**On a motion by Mr. Germana with a second by Mr. Miller, Resolution No. R2016-0065 was considered and approved by unanimous vote to be referred to the full Council agenda with a recommendation for passage under second reading suspension of the rules.**

- c) R2016-0066: A Resolution making an award on RQ36083 to Chagrin Valley Paving, Inc. in the amount not-to-exceed \$1,194,726.75 for 2016 Operations Resurfacing Program – Group 3, located in various municipalities; authorizing the County Executive to execute the contract

and all other documents consistent with said award and this Resolution; authorizing the County Engineer, on behalf of the County Executive, to make an application for allocation from County Motor Vehicle \$7.50 License Tax Funds in said amount to fund said contract; and declaring the necessity that this Resolution become immediately effective:

- 1) Emery Road from Warrensville Center Road to Northfield Road in the Village of North Randall.
- 2) Miles Road from Interstate 480 to North Randall East Corporation Line in the Village of North Randall.
- 3) Solon Road from Bedford Heights West Corporation Line to Bedford Heights East Corporation Line in the City of Bedford Heights.

**Mr. Dever addressed the Committee regarding Resolution No. R2016-0066. Discussion ensued.**

**Committee members and Councilmembers asked questions of Mr. Dever pertaining to the item, which he answered accordingly.**

**On a motion by Mr. Germana with a second by Mr. Miller, Resolution No. R2016-0066 was considered and approved by unanimous vote to be referred to the full Council agenda with a recommendation for passage under second reading suspension of the rules.**

- d) O2016-0004: An Ordinance enacting Sections 503.01(A) to 503.01(D) of the Cuyahoga County Code to expand the Small Business Enterprise Program to Allow Small Business Set Asides, and declaring the necessity that this Ordinance become immediately effective.

**Mr. Germana introduced a proposed substitute to Ordinance No. O2016-0004. Discussion ensued.**

**Mr. Michael King, Special Counsel; Mr. Joseph Boatwright, Chief Corporate Counsel; and Ms. Lenora Lockett, Director of the Office of Procurement & Diversity, addressed the Committee regarding Ordinance No. O2016-0004. Discussion ensued.**

**Committee members and Councilmembers asked questions of Mr. King, Mr. Boatwright and Ms. Lockett pertaining to the item, which they answered accordingly.**

**A motion was made by Mr. Germana and seconded by Mr. Miller to accept the proposed substitute.**

**A motion was then made by Mr. Miller, seconded by Ms. Conwell and approved by unanimous vote to amend Ordinance No. O2016-0004 by deleting “April 1, 2017” and inserting “April 1 of each year, starting in 2017,” in Section 503.08(E).**

**On a motion by Mr. Germana with a second by Mr. Miller, Ordinance No. O2016-0004 was considered and approved by unanimous vote to be referred to the full Council agenda for second reading, as substituted and amended.**

- e) O2016-0005: An Ordinance enacting Sections 503.02 to 503.07 of the Cuyahoga County Code to expand the Small Business Enterprise Program; and declaring the necessity that this Ordinance become immediately effective.

**No legislative action was taken on Ordinance No. O2016-0005.**

- f) O2016-0006: An Ordinance enacting Chapters 507 and 508 of the Cuyahoga County Code to establish the County’s Risk Management procedures and performance bond and insurance requirements, and declaring the necessity that this Ordinance become immediately effective.

**Mr. King addressed the Committee regarding Ordinance No. O2016-0006.  
Discussion ensued.**

**Committee members and Councilmembers asked questions of Mr. King pertaining to the item, which he answered accordingly.**

**Mr. Germana introduced a proposed substitute to Ordinance No. O2016-0006.  
Discussion ensued.**

**A motion was made by Ms. Simon, seconded by Mr. Miller and approved by unanimous vote to accept the proposed substitute.**

**A motion was then made by Ms. Simon, seconded by Ms. Conwell and approved by unanimous vote to amend Ordinance No. O2016-0006 by inserting “*from County Council*” in Section 207.03(A)(2).**

**Mr. David Wondolowski, Executive Secretary of the Cleveland Building and Trades Council; Ms. Darlene White, Deputy Director of Risk Management; and Mr. Boatwright addressed the Committee regarding Ordinance No. O2016-0006.  
Discussion ensued.**

**Committee members and Councilmembers asked questions of Mr. Wondolowski, Ms. White and Mr. Boatwright pertaining to the item, which they answered accordingly.**

**No further legislative action was taken on Ordinance No. O2016-0006.**

- g) O2016-0007: An Ordinance enacting Chapter 510 of the Cuyahoga County Code to establish the Cuyahoga County Business Economic Inclusion Program, and declaring the necessity that this Ordinance become immediately effective.

**No legislative action was taken on Ordinance No. O2016-0007.**

6. MISCELLANEOUS BUSINESS

**Mr. Dever and Ms. Nichole English, Transportation Planning Engineer, addressed the Committee regarding the County's Capital Improvements Road and Bridge Program. Discussion ensued.**

**Committee members and Councilmembers asked questions of Mr. Dever and Ms. English pertaining to the item, which they answered accordingly.**

**Mr. Germana announced that the next Public Works, Procurement & Contracting Committee meeting will be held on Wednesday, April 6, 2016 at 10:00 a.m.**

7. OTHER PUBLIC COMMENT

**No public comments were given.**

8. ADJOURNMENT

**With no further business to discuss, Chairman Germana adjourned the meeting at 12:19 p.m., without objection.**

# County Council of Cuyahoga County, Ohio

## Resolution No. R2016-0063

Sponsored by: <b>County Executive Budish/Department of Public Works</b>	<b>A Resolution</b> authorizing a First Amendment to Agreement of Sublease with Ohio Department of Rehabilitation and Correction and consented to by Ohio Public Facilities Commission pertaining to the financing of a portion of the cost of the Cuyahoga County Community-based Correctional Facility Project, by changing the aggregate amount of project costs to be paid for or reimbursed from the Adult Correctional Building Fund from \$10,800,000.00 to \$10,842,265.00; authorizing the County Executive to execute the amendment and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, the County Executive/Department of Public Works has recommended a First Amendment to Agreement of Sublease with Ohio Department of Rehabilitation and Correction and consented to by Ohio Public Facilities Commission pertaining to the financing of a portion of the cost of the Cuyahoga County Community-based Correctional Facility Project, by changing the aggregate amount of project costs to be paid for or reimbursed from the Adult Correctional Building Fund from \$10,800,000.00 to \$10,842,265.00; and

WHEREAS, pursuant to Board of County Commissioners Resolution No. 083668 dated 8/21/2008, the County obtained funding in the amount of \$10,800,000.00 for the construction of an adult correctional facility known as the Nancy R. McDonnell Community Based Correctional Center (the "Center"), located at 3540 Croton Avenue, Cleveland; and

WHEREAS, it was necessary for the County to enter into a certain sublease agreement (the "Sublease") with the Ohio Department of Rehabilitation and Correction in order to receive such funding; and

WHEREAS, the County applied for and was awarded additional funding in the amount of \$42,265.00 for building repairs to the Center and it is necessary to execute an amendment to the Sublease in order to draw down the funds; and

WHEREAS, the primary goal of this project is to complete infrastructure upgrades to the Nancy R. McDonnell Community Based Corrections Facility (CBCF), located at 3540 Croton Avenue, Cleveland; and

WHEREAS, it is necessary that this Resolution become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** That the Cuyahoga County Council hereby authorizes a First Amendment to Agreement of Sublease with Ohio Department of Rehabilitation and Correction and consented to by Ohio Public Facilities Commission pertaining to the financing of a portion of the cost of the Cuyahoga County Community-based Correctional Facility Project, by changing the aggregate amount of project costs to be paid for or reimbursed from the Adult Correctional Building Fund from \$10,800,000.00 to \$10,842,265.00.

**SECTION 2.** That the County Executive is authorized to execute the First Amendment to Agreement of Sublease and all other documents consistent with this Resolution.

**SECTION 3.** That the proper officers of the County, as appropriate, are each authorized and directed to execute and deliver any additional certificates, documents or instruments and to take such further actions which are necessary or appropriate to effect the intent and purposes of this Resolution and the First Amendment to Agreement of Sublease.

**SECTION 4.** It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 5.** It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.



# County Council of Cuyahoga County, Ohio

## Ordinance No. O2016-0006

Sponsored by: <b>County Executive Budish/Department of Law and Councilmembers Brady, Brown, Conwell, Hairston and Jones</b>	<b>An Ordinance</b> enacting Chapters 507 and 508 of the Cuyahoga County Code to establish the County's Risk Management procedures and performance bond and insurance requirements, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, the Department of Law's Risk Management Division has been working on developing risk management practices, including performance bond requirements, to simultaneously promote the County's interest in contracting with small businesses and protect the County against risk; and

WHEREAS, it is necessary to enact legislation to deviate from the rigid performance bond requirements under state law and to provide the Law Department with the flexibility to make performance bond and insurance determinations as appropriate for each individualized case; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by the County can continue; and

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Chapters 507 and 508 of the Cuyahoga County Code are hereby enacted to read as follows:

### **Chapter 507: Risk Management Procedures**

The Law Department, through its Risk Management Division, in coordination with the Office of Procurement and Diversity, shall determine the appropriate risk management protections for county contracts, including but not limited to, all insurance and performance bond requirements. All such risk management protections shall be subject to the review and approval of the contract approval authority that has jurisdiction over the award of the contract. Unless otherwise provided in the Cuyahoga County Code, insurance and bonding requirements shall be determined as set forth in Chapter 508 of the Cuyahoga County Code.

### **Section 507.01: Small Business Considerations**

In formulating the appropriate risk management protections applicable to County contracts, the Law Department, through its Risk Management Division, shall give deference to the County's interest in contracting with small businesses without causing undue risk to the County or the small businesses. The County shall establish a process to pre-qualify contractors and vendors that are certified Small Business Enterprises and Cuyahoga County Based Businesses for Performance Bond Waivers under Section 508.02 of the Cuyahoga County Code. For the purposes of this Section, "Cuyahoga County Based Business" shall have the same meaning as in Section 502.02 of this Code.

### **Chapter 508: County's Performance Bond and Insurance Requirements**

#### **Section 508.01: Performance Bond Requirements**

Notwithstanding any provisions in the Ohio Revised Code, Ohio Administrative Code, or any other law or regulation to the contrary, the County hereby asserts its home rule powers to determine bonding requirements in formulating the appropriate risk management measures for County contracts.

#### **Section 508.02: When Performance Bonds Are Not Required**

##### **(A) Performance Bond Waivers on Construction Contracts**

Unless otherwise prohibited by federal, state or local law, or as a condition of funding or unless otherwise provided in the Cuyahoga County Code, Performance and Payment Bond requirements for construction contracts in the amount of \$150,000.00 or less may be waived for contractors or vendors who pre-qualify. This waiver does not include projects that include federal funding.

##### **(B) Performance Bond Waivers for Construction Contracts with Federal Funds**

Unless otherwise prohibited by federal, state or local law, or as a condition of funding, Performance and Payment Bond requirements for construction contracts in the amount of \$150,000.00 or less which involve federal funds may be waived for contractors and vendors who pre-qualify.

##### **(C) Performance Bond Waivers for Non-construction Projects**

Performance and Payment Bond requirements for non-construction contracts may be waived at the discretion of the Law Department, through its Risk Management Division, as set forth herein.

**(D) Reserve Coverage for Performance Bond Waivers**

The County shall reserve or budget such funds as are necessary to mitigate the potential costs of non-performance and/or non-payment on contracts on which performance or payment bonds are waived pursuant to this Section. The amount reserved or budgeted for this purpose shall be determined annually by the Law Department, through its Risk Management Division, and shall be submitted to Council through the budget process.

**Section 508.03: County’s Insurance Requirements**

The Law Department, through its Risk Management Division, shall determine the County’s insurance needs and requirements, including all insurance requirements related to County contracts.

Notwithstanding any provisions in the Ohio Revised Code, Ohio Administrative Code, or any other law or regulation to the contrary, the County shall have the discretion to determine the appropriate insurance requirements, as well as the amount of the insurance coverages, on a contract-by-contract basis, including all construction contracts, in formulating the appropriate risk management measures for county contracts.

**Section 508.04: Updates to County’s Insurance Requirements**

The Law Department, through its Risk Management Division, shall continually update the County’s insurance requirements as necessary to protect the County’s interests.

**SECTION 2.** Section 207.03 is hereby enacted to read as follows:

**Section 207.03 Diversity and Inclusion Advisory Committee**

(A) There is hereby established a Cuyahoga County Diversity and Inclusion Advisory Committee to provide advice and recommendations regarding Cuyahoga County’s diversity and inclusion programs and initiatives, including but not limited to the policies codified in Chapters 503, 508, and 509 of the Cuyahoga County Code, as these chapters exist now or hereafter amended. The committee shall submit its advice and recommendation to the Director of the Office of Procurement and Diversity. The committee shall consist of the following members:

- (1) One representative appointed by the County Executive;
- (2) One representative from County Council appointed by the President of Council;

- (3) One representative appointed by the Executive Director of the Cleveland Building and Construction Trade Council;
- (4) One representative appointed by the Executive Director of the Construction Employers Association or its delegate; and
- (5) One representative jointly appointed by the County Executive and the President of Council who is not affiliated with the Cleveland Building and Construction Trade Council or the Construction Employers Association or its delegate.

(B) The Diversity and Inclusion Advisory Committee shall elect its own chairperson and shall hold regular meetings at least once per quarter. The committee may establish one or more advisory subcommittees.

**SECTION 3.** It is necessary that this Ordinance become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 4.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

\_\_\_\_\_  
County Council President

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Date

First Reading/Referred to Committee: February 9, 2016  
Committee(s) Assigned: Public Works, Procurement & Contracting

Journal \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2016-0005

Sponsored by: <b>County Executive Budish/Office of Procurement and Diversity and Councilmembers Brady, Brown, Conwell, Hairston, Jones and Miller</b>	<b>An Ordinance</b> enacting Sections 503.02 to 503.07 of the Cuyahoga County Code to expand the Small Business Enterprise Program; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, Article VII, Section 701 of the Cuyahoga County Charter mandates that the County “shall develop and implement policies, programs and activities for the expansion and enhancement of economic activity in the County so as to create and preserve jobs and employment opportunities for and available to residents of the County”; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by the County can continue; and

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Section 503.02 of the Cuyahoga County Code is hereby enacted to read as follows:

### **Section 503.02**

The Small Business Enterprise Program is hereby expanded to allow the Cuyahoga County Office of Procurement and Diversity (“OPD”) to set aspirational Minority Business Enterprise and /or Women Business Enterprise subcontractor participation goals for every Request for Bid, Request for Proposal, and Request for Qualifications issue by the County based upon available information including, but not limited to, the disparity study.

“Minority Business Enterprise” or “MBE” means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American or Asian-Indian American; and whose management and daily business operations are controlled by one or more of these owners as determined by OPD.

“Women Business Enterprise” or “WBE” means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more women and whose management and daily business operations are controlled by one or more of these owners as determined by OPD.

### **Section 503.03**

In consideration of the right and privilege to submit a bid or proposal on construction projects and other contracts with Cuyahoga County, at the time of submitting a proposal or bid, each participant shall be required to present appropriate documentation. The documents described below must be completed and signed by each Participant before a proposal or bid can be considered responsive:

- (1) Covenant of Non-Discrimination: Each Participant must submit a duly executed and attested Covenant of Non-Discrimination (MBE/WBE-1) on a form prescribed by OPD. This written instrument shall contain promises, declarations and/or affirmations made by the Participant. The completed document must contain an original signature and date of signature.
- (2) MBE/WBE Subcontractor Participation Plan: Each Participant must submit a duly executed, affirmed, and certified Subcontractor Participation Plan (MBE/WBE-2) on a form prescribed by OPD for each MBE/WBE subcontractor proposed. Copies and/or facsimiles of MBE/WBE-2 submitted with bids/proposals are acceptable BUT all required signatures must be dated as indicated. Also, please note the following:
  - (a) Certified MBE/WBEs who are bidding as prime contractors **MUST** complete and submit the top portion of Form MBE/WBE-2 to guarantee MBE/WBE credit.
  - (b) MBE/WBEs with multiple geographical locations shall enter the Cuyahoga County address and contact information on Form MBE/WBE-2.
  - (c) Prime vendors are **PROHIBITED** from using MBE/WBE(s) with whom the prime vendor has a familial relationship, joint or co-ownership, common partners, officers, or a shareholder relationship to meet the MBE/WBE Participation Goal. Hence, on Cuyahoga County projects/contracts, any portion of work subcontracted to a MBE/WBE vendor by a prime vendor that meets the above-mentioned criteria will **NOT** count towards the achievement of the established MBE/WBE Participation Goal.

Use of 2<sup>nd</sup> Tier Subcontractors: In the event that a subcontractor portions out work and utilizes the services of a sub-subcontractor or vendor, the prime contractor shall be required to report this use to OPD. For reporting purposes, the prime

contractor shall report statistical data for the sub-subcontractor or sub-vendor, including race, gender, business size, area of specialization, dollar value, description of services or products purchased, and contact information. No MBE/WBE subcontractor will be permitted to subcontract more than 25% of their subcontract work (based on dollar value) without prior approval by OPD.

Other Information and Data: OPD may request additional information and data prior to a contract award. This information may include, but is not limited to, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, location, size, and area of specialization and structure of the identified businesses.

Aggressive “Good Faith Efforts” to include MBE/WBEs in the procurement process are required of all Participants. These Good Faith Efforts should be in addition to the Participant’s regular and customary solicitation process of contact with potential subcontractors and/or vendors.

Written Notice to MBE/WBEs: To demonstrate good faith efforts, a Participant shall deliver written or electronic notice to potential, MBE/WBEs. MBE/WBEs should be contacted not less than one (1) week before the bid or proposal due date. Names, addresses, and telephone numbers for available MBE/WBEs may be obtained by contacting OPD or reviewing the database on the website at <http://opd.cuyahogacounty.us/>.

The written or electronic notice sent to potential subcontractors or vendors shall contain the following:

- (1) Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation. This should include information about the work which will be subcontracted or the goods which will be obtained from subcontractors and suppliers;
- (2) A contact person knowledgeable of the project scope documents, within the Participant’s office, to answer questions about the conditions of the contract;
- (3) Information as to the Participant’s bonding requirements; and
- (4) The deadline for price quotations.

Evaluation of Good Faith Efforts: In evaluating good faith efforts, OPD will determine whether the Participant has made reasonable good faith efforts to obtain MBE/WBE participation as part of its bid or proposal. OPD may evaluate not only the different kinds of efforts made by a Participant, but also the quantity and intensity of those efforts. One method of evaluation will be whether the MBE/WBE goal has been met. Prime Contractors and any Participant herein shall be required to affirm and certify that information is correct in their

bid/proposal and that they will meet or exceed the MBE/WBE Subcontractor Plan submitted with their bid/proposal. Prime Contractors also shall be required to report statistical data for its employees and proposed subcontractors that include race, gender, business size, area of specialization, dollar value, description of services or products purchased and contact information. Such information shall be certified and affirmed by the Prime Contractor when it submits the bid/proposal.

OPD will consider a completed Good Faith Effort Certification (MBE/WBE-3) as evidence of a Participant's good faith in trying to obtain MBE/WBE participation in a bid or proposal.

Required Documentation: To demonstrate good faith efforts, Participants shall keep detailed records of all correspondence and responses thereto, logs of all telephone calls made and received regarding the project or contract, confirmation receipts for fax transmissions, receipts from registered or certified mail, copies of advertisements in publications and other media, and other relevant papers required by this Program.

Good Faith Effort Certification: Participant must submit a completed Good Faith Certification (MBE/WBE-3) ONLY if the MBE/WBE Participation Goal is not met. In the MBE/WBE-3 form, Participant must certify that it interviewed and seriously considered MBE/WBEs and provide supporting documentation of that fact. Additional documentation demonstrating a good faith effort must accompany this document. The completed document must contain an original signature, notarizations, and date of signature.

Award of Contract: Proposals/ bids may be rejected and projects re-submitted for the sole purpose of attaining goals where inadequate "good faith effort" has been demonstrated. Cuyahoga County reserves the right to determine the action to be taken on the contract if a goal is not met, including rejecting any or all bids or proposals. If an awarded contract is later amended for additional dollars, MBE/WBE subcontractor participation should still reflect the percentage of dollars originally contracted for.

When evaluating a bid to determine the lowest and best bid, the County may consider, in addition to all of the other factors, whether a bid is MBE/WBE compliant; provided, however, that such MBE/WBE compliance shall not be considered if the difference between the MBE/WBE-compliant bid and the lowest responsive bid is more than the price preference specified below.

Lowest Bid Received Range (\$)	Price Preference (%) & Limit	Price Preference (\$)
0 – 500,000	10%	0 – 50,000
500,001 – 1,000,000	10% up to max \$80,000 (10-8)	50,000 – 80,000
1,000,001 – 3,000,000	8% up to max \$210,000 (8-7)	80,000 – 210,000
3,000,001 – 5,000,000	7% up to max \$250,000 (7-5)	210,000 – 250,000
>5,000,000	\$250,000 maximum ( $\leq 5$ )	250,000 maximum

**Section 503.04**

All participants are subject to the Monitoring and Post-Award Reporting, Grievance Process, Sanctions and Penalties for Non-Compliance provisions of Cuyahoga County Code Section 503.01.

**Section 503.05**

Exclusions: This policy shall not apply to the following:

- (1) “Sole Source” procurements under the Cuyahoga County ordinances which by their very nature limit the source of supply to one vendor.
- (2) County purchases from political subdivisions/government entities;
- (3) County purchases off state contracts, off federal contracts, and from joint purchasing programs.
- (4) The acquisition of any interest in real property including lease holdings.
- (5) Direct and indirect employee payments including payroll expenditures, pensions and unemployment compensation and other employee-related expenditures;
- (6) Any other categories and subcategories of goods and services Cuyahoga County may from time to time establish as excluded contracts upon recommendation of the Director of the Office of Procurement & Diversity and approval by the Cuyahoga County Executive and Cuyahoga County Council.

Application for Waiver. If the Contractor, consultant, supplier or vendor does not meet the project goal, the bidder or offer or may seek a partial or total waiver of the project goal. The application for waiver of all or part of the project goal shall include full documentary evidence of the Participant’s good faith efforts to meet the project goal and why the request for waiver should be granted. The application shall be notarized and submitted as a part of the bid or offer. Additional explanation, affidavits, exhibits or other materials may be required by the MBE/WBE Program to substantiate good faith efforts. Waivers may also be granted by OPD for an acceptable explanation as to why the goals should be waived.

Waiver for Detriment to Public Health, Safety or Financial Welfare. The MBE/WBE goal may be waived if the same causes a detriment to public health, safety or the

financial welfare of the County. The MBE/WBE may also be waived by OPD in the event available MBE/WBEs provide price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cost, overhead and profit.

**Section 503.06**

OPD may prepare and/or amend forms to carry out the actions described herein. The forms shall be similar or the same as those that other governments, like the State and City of Cleveland, already have in place in an effort to make it simple and easy and encourage greater participation.

**Section 503.07**

The Director of the Cuyahoga County Office of Procurement and Diversity or designee reserves the right and discretion to reject any and/or all bids or proposals for any reason or no reason at all without incurring any liability.

**SECTION 2.** It is necessary that this Ordinance become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 3.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

\_\_\_\_\_  
County Council President

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Date

First Reading/Referred to Committee: February 9, 2016

Committee(s) Assigned: Public Works, Procurement & Contracting

Journal \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2016-0007

Sponsored by: <b>County Executive Budish/Office of Procurement and Diversity and Councilmembers Brady, Brown, Conwell, Hairston, Jones and Miller</b>	<b>An Ordinance</b> enacting Chapter 510 of the Cuyahoga County Code to establish the Cuyahoga County Business Economic Inclusion Program, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, Article VII, Section 701 of the Cuyahoga County Charter mandates that the County “shall develop and implement policies, programs and activities for the expansion and enhancement of economic activity in the County so as to create and preserve jobs and employment opportunities for and available to residents of the County”; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by the County can continue; and

**NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1.** Chapter 510 of the Cuyahoga County Code is hereby enacted to read as follows:

### **Chapter 510: Cuyahoga County Business Economic Inclusion Program**

#### **Section 510.01**

There is hereby created a Cuyahoga County Business Economic Inclusion Program.

#### **Section 510.02**

For the purposes of Chapter 510 of the Cuyahoga County Code:

“Minority Business Enterprise” means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American or Asian-Indian American; and whose management and daily business operations are controlled by one or more of these owners as determined by the Cuyahoga County Office of Procurement and Diversity.

“Women Business Enterprise” means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more women and whose management and daily business operations are controlled by one or more of these owners as determined by the Cuyahoga County Office of Procurement and Diversity.

“Inclusive Business” means:

- A. An individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that demonstrated a commitment to utilizing Minority Business Enterprises and/or Women Business Enterprises as subcontractors on three projects within the past two years as determined by the Cuyahoga County Office of Procurement and Diversity; or
- B. An individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that demonstrated that it hired and employed a diverse workforce based on payroll records within the past two years as determined by the Cuyahoga County Office of Procurement and Diversity.

### **Section 510.03**

Unless otherwise prohibited by state, federal or local law, or condition of said funding, when the County has solicited bids and is determining the lowest price or the lowest evaluated price for purposes of awarding a purchase, agreement or a contract, and the lowest price or lowest evaluated price is submitted by a non-Inclusive Business, an Inclusive Business whose bid is within two (2) percent of the lowest bid submitted by a non-Inclusive Business shall be given the option to match the lowest bid. The option to match shall remain open for five (5) business days. If there is more than one bid from an Inclusive Business within the two (2) percent, the opportunity to match shall go to the lower priced bid by the Inclusive Business. If there is more than one bid from an Inclusive Business within the two (2) percent that are equal in price, the County shall allow all bidders to provide a new bid price within two (2) business days, and the evaluation will proceed based on the new pricing.

### **Section 510.04**

- A. The Office of Procurement and Diversity is directed to create a Cuyahoga County Business Economic Inclusion Program form, which shall be submitted by any entity desiring to participate in the Cuyahoga County Business Economic Inclusion Program. Where appropriate and applicable, the form shall be the same or similar to those that other governments, like the State and City of Cleveland, already have in place in an effort to make it simple and easy and to encourage greater participation.
- B. An entity desiring to participate in the Cuyahoga County Business Economic Inclusion Program must submit, with and at the time of the bid, proposal or

qualifications, a completed, signed and notarized Cuyahoga County Business Economic Inclusion Program form.

**Section 510.05**

The Director of the Office of Procurement and Diversity or designee is hereby authorized to investigate and verify any information submitted with the Cuyahoga County Business Economic Inclusion Program form and may reject the designation of an Inclusive Business if he or she believes the information on the form is inaccurate or the entity is ineligible to be designated as an Inclusive Business. The Director of the Office of Procurement and Diversity or designee may request additional information prior to approving or rejecting the Inclusive Business designation.

**Section 510.06**

If an Inclusive Business designation is denied by the Office of Procurement and Diversity, the entity may submit a written complaint or appeal to the Director of the Office of Procurement and Diversity who shall notify the SBE Grievance Hearing Board. The written complaint or appeal by the entity shall be made within five (5) days to the Director of the Office of Procurement and Diversity upon receipt of the Director of the Office of Procurement and Diversity's decision. The SBE Grievance Hearing Board shall make every effort to hold the hearing no more than twenty (20) days from the date of receipt of the written complaint or appeal from the entity.

**Section 510.07**

If an Inclusive Business designation is denied by the Office of Procurement and Diversity and/or the SBE Grievance Hearing Board, the entity cannot reapply for designation as an Inclusive Business for a period of one (1) year from the date of the notice of denial.

**Section 510.08**

The Director of the Cuyahoga County Office of Procurement and Diversity or designee reserves the right and discretion to reject any and/or all bids or proposals for any reason or no reason at all without incurring any liability.

**SECTION 2.** It is necessary that this Ordinance become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive

under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 3.** It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

\_\_\_\_\_  
County Council President

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Date

First Reading/Referred to Committee: February 9, 2016

Committee(s) Assigned: Public Works, Procurement & Contracting

Journal \_\_\_\_\_

\_\_\_\_\_, 20\_\_