

# County Council of Cuyahoga County, Ohio

## Ordinance No. O2012-0019

Sponsored by: <b>County Executive FitzGerald/Department of Public Works and Councilmembers Miller, Germana, Schron, Rogers, Gallagher and Jones</b>	<b>An Ordinance</b> amending Ordinance No. O2011-0039, as amended, which established procedures governing the use by the County of alternate construction project delivery methods, including construction manager-at-risk, design-build and general contracting project delivery methods for public construction projects; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, the Cuyahoga County Council adopted Ordinance No. O2011-0039, as amended, to establish alternate construction delivery methods; and,

WHEREAS, it is necessary to amend Ordinance No. O2011-0039 to clarify certain provisions in the Ordinance, to remove the cap on the County's ability to use general contracting, to enable the County to utilize a 1-step design build process on non-complex projects, and to empower the Director of Public Works to make the initial decisions on the choice of construction delivery methods.

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

**SECTION 1.** Ordinance No. O2011-0039, as amended, is hereby amended as per the attached exhibit (deletions are stricken out; additions are underlined and bolded).

**SECTION 2.** It is necessary that this Ordinance become immediately effective in order that critical services being provided by Cuyahoga County can continue without interruption, and to continue the usual daily operation of the County. Provided that this Ordinance receives the affirmative vote of eight members of Council, this Ordinance shall become immediately effective upon the signature of the County Executive.

**SECTION 3.** It is found and determined that all formal actions of this County Council meeting relating to the adoption of this ordinance were adopted in an open meeting of the County Council and that all deliberations of this County Council and any of its committees that resulted in such formal actions took place 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 Mr. Schron, seconded by Mr. Miller, the foregoing Ordinance was duly enacted.

Yeas: Simon, Greenspan, Miller, Brady, Germana, Gallagher, Schron, Conwell, Jones, Rogers and Connally

Nays: None

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

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

\_\_\_\_\_  
Deputy Clerk of Council                      Date

First Reading/Referred to Committee: July 10, 2012  
Committee(s) Assigned: Economic Development & Planning Committee

Second Reading: August 14, 2012

Additional Sponsorship Requested on the Floor: August 28, 2012

Journal CC007  
August 28, 2012

# EXHIBIT A

## County Council of Cuyahoga County, Ohio

### Ordinance No. O2011-0039

Sponsored by: <b>Councilmembers Schron, Miller, Germana, Jones, Conwell, Simon, Gallagher, Connally and Greenspan and County Executive FitzGerald</b>	<b>An Ordinance</b> establishing procedures governing the use by the County of alternate construction project delivery methods, including construction manager-at-risk, design-build and general contracting project delivery methods for public construction projects; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, Article 3, Section 9, Subsections 4 and 9 of the Cuyahoga County Charter empowers the Cuyahoga County Council to establish procedures governing the making of County contracts and to establish the procedures for making public improvements; and

WHEREAS, procedures used for contracting and procurement should enable Cuyahoga County to be efficient, flexible, and transparent.

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

**SECTION 1:** Notwithstanding the competitive bidding procedures or any other procedures or requirements provided for **in the Ohio Revised Code, including, but not limited to** Chapter 153 and Sections 307.86 through 307.921 of the Ohio Revised Code, **the Ohio Administrative Code, or any other law or regulation, pursuant to the County's home rule powers,** the policies and procedures of Cuyahoga County, Ohio relating to construction contracts employing alternate project delivery methods are established as follows:

**Section 1.** As used in Sections 1 to 13, inclusive, the following words shall have the following meanings unless indicated otherwise or unless the context in which they are used requires a different meaning:

**(a)** "Architect of record" means the professional design firm that serves as the final signatory on the plans and specifications for a design-build project.

**(b)** "Board of Control" means the Cuyahoga County Board of Control.

**(c)** "Building project" means the design, construction, reconstruction, improvement, alteration, installation, demolition or repair of any public building or improvement, **including, but not limited to, roadway, bridges, and sewerage.**

**(d)** "Consultant Selection Committee" means the Cuyahoga County Department of Public Works' Consultant Selection Committee.

**(e)** "Construction management-at-risk" or "construction management-at-risk services" means a construction method wherein a construction management-at-risk firm provides a range of preconstruction services and construction management services that may include cost estimating and consultation regarding the design of the building project, scheduling, the preparation and coordination of bid packages, cost control, value engineering, detailing the subcontractor scope of work, prequalifying and evaluating subcontractors, and holding the subcontracts.

**(f)** "Construction manager-at-risk" or "Construction management-at-risk firm" means an individual, corporation, partnership, sole proprietorship, joint venture, limited liability company or other legal entity that provides construction management-at-risk services.

**(g)** "Construction manager-at-risk contract" means a contract between the County and a construction manager-at-risk that obligates the construction manager-at-risk to provide construction management-at-risk services for a guaranteed maximum price.

~~"Contracts and Purchasing Board" means the Cuyahoga County Contracts and Purchasing Board.~~

**(h)** "County's project manager" means an individual, corporation, partnership, sole proprietorship, joint venture, limited liability company or other legal entity engaged to provide project management services on behalf of the County for the design and construction of a building project. The County's project manager may be an employee of the County whose assigned responsibility is the management of design and construction of a building project.

**(i)** "Criteria architect or engineer" means the professional design firm retained by the County to prepare conceptual plans and specifications **or a design professional who is an employee of the County**, to assist the County in connection with the establishment of the design criteria for a design-build project, and, if requested by the County, to serve as the representative of the County and provide, during the design-build project, other design and construction administration services on behalf of the County, including but not limited to, confirming that the design prepared by the design-build firm reflects the original design intent established in the design criteria package.

**(j)** "Design-build contract" means a contract between the County and a design-build firm that obligates the design-build firm to provide design-build services ~~for a guaranteed maximum price.~~

**(k)** "Design-build firm" means any individual, corporation, partnership, sole proprietorship, joint venture, limited liability company or other legal entity that provides design-build services.

**(l)** "Design-build services" means services that form an integrated delivery system for which a design-build firm is responsible to the County for both the design and construction, demolition, alteration, repair, or reconstruction of a building project.

**(m)** "General contracting" means a construction method wherein a general contracting firm is responsible for constructing and managing a building project under the award of a single aggregate lump sum or guaranteed maximum price contract.

**(n)** "General contracting firm" means a person that provides general contracting services.

**(o)** "Guaranteed maximum price" or "GMP" means the agreed maximum dollar amount to be paid by the County for the building project, including the cost of the work, the general conditions, agreed construction contingency and the fees charged by the construction management-at-risk firm, design-build firm or general contracting firm.

**(p) "non-complex building project" means a building project (1) which has limited opportunity for innovation; (2) where work is within the existing right of way or requires minimal temporary right of way on road or bridge projects; (3) for simple maintenance of traffic; (4) for general refurbishing of building space, including, but not limited to, painting, carpeting, addition of walls and doors and minor electrical and venting; or (5) for the rehabilitation of existing sewer lines.**

**(q) "one-step design build process" means a construction delivery method in which the County procures the entirety of the design build services in one step using a single request for bidding ("RFB") or request for proposals ("RFP") evaluated by the Department of Public Works' Consultant Selection Committee.**

**(r)** "Professional design firm" shall have the same meaning as set forth in Section 153.65 of the Ohio Revised Code.

**(s)** "Subcontractor" means any individual, corporation, partnership, sole proprietorship, joint venture, limited liability company, or other legal entity that undertakes to provide any part of the labor, equipment or material of a building project under a contract with the construction management-at-risk firm, design-build firm or general contracting firm.

(t) "two-phase selection process" means a procurement process in which the first phase consists of creating a short list of prequalified firms as determined by responses to a request for qualifications and the second phase consists of inviting firms prequalified in the first phase to submit responses to a request for proposals or a request for bids.

**Section 2.** For each contract for ~~the construction, reconstruction, improvement, alteration, installation, demolition or repair of~~ any building project, ~~the Contracts and Purchasing Board, upon the recommendation of the~~ Director of Public Works; may elect to use the construction management-at-risk delivery method, pursuant to Sections 3 to 6, inclusive.

**Section 3.** (a) ~~The Contracts and Purchasing Board~~ **Director of Public Works** shall utilize a two-phase selection process as provided in this section to select a construction management-at-risk firm to provide construction management-at-risk services.

(b) Before issuing a request for qualifications, hereinafter called RFQ, the ~~Contracts and Purchasing Board~~ **Director of Public Works** shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted by a construction manager-at-risk to the RFQ. The prequalification committee shall be comprised of the Consultant Selection Committee, one (1) representative of the professional design firm, the County's project manager if the project manager is not a member of the Consultant Selection Committee, and any additional representatives of the County as may be deemed appropriate by the **Director of Public Works** ~~Contracts and Purchasing Board~~.

(c) The first phase of the two-phase selection process shall begin once the County gives public notice of the building project and solicits responses to an RFQ from construction management-at-risk firms. The public notice and solicitation section shall be advertised in a newspaper of general circulation in the County or on the County's website. The public notice and solicitation shall be given not less than two (2) weeks before the deadline for submitting responses to the RFQ. The public notice and solicitation shall include:

- (1) the time and date of the deadline for receipt of responses to the RFQ and the address of the office to which the responses are to be delivered;
- (2) a general description of the project and key factors important to the final selection of the construction management-at-risk firm;
- (3) a general description of the scope of services expected of the selected construction management-at-risk firm during the design, pre-construction, ~~and~~ **and post construction** phases of the project;

- (4) a general description of the anticipated schedule and estimated construction cost for the building project; and
  - (5) the criteria for the selection of the construction management-at-risk firm, including minimum experience, requirements for presentations/interviews, and the schedule for the selection process.
- (d) The County shall require interested construction management-at-risk firms to submit a statement of qualifications in response to the RFQ. The statement of qualifications shall include the following:
- (1) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other potential qualified responders;
  - (2) completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and financial statement;
  - (3) a list of all convictions or fines assessed against the construction manager-at-risk firm or any of its officers or directors for violations of state or federal law;
  - (4) submission of a project organization chart with specific information on key project personnel or consultants;
  - (5) a letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the building project;
  - (6) submission of information on the firm's safety record including its workers' compensation experience modifier for the prior three (3) years;
  - (7) submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
  - (8) submission of information regarding the firm's experience on similar projects including contact information of the architects and owners of the projects;
  - (9) submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy; and
  - (10) any other relevant information that the County determines desirable.
- (e) The prequalification committee established pursuant to Subsection (b) of this section, shall evaluate each statement of qualifications submitted by the construction management-at-risk firms. The evaluation shall take into account the following

factors: (i) competence to perform the required construction management-at-risk services as indicated by the technical training, education, and experience of the construction management-at-risk firm's personnel and key consultants, especially the technical training, education, and experience of the employees and consultants of the construction management-at-risk firm who would be assigned to perform the services; (ii) ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required preconstruction and construction services competently and expeditiously; (iii) past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines; and (iv) any other relevant factors as determined by the County. The prequalification committee shall select a minimum of three (3) qualified construction management-at-risk firms to receive the request for proposals, unless less than three (3) firms responded to the RFQ, in which event the prequalification committee may select less than three (3) qualified construction management-at-risk firms to receive the request for proposals. The decision of the prequalification committee shall be posted on the County's web site. Once posted on the County's web site, the decision of the prequalification committee is final and shall not be subject to appeal except to the Board of Control on grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Clerk of the Board of Control during business hours on a working day no later than five (5) calendar days of the posting of the prequalification committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County Administration Building is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Clerk of the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

**Section 4.** (a) Before issuing a request for proposals, hereinafter referred to as RFP, the **Director of Public Works** ~~Contracts and Purchasing Board~~ shall establish a selection committee for the purpose of reviewing and evaluating responses submitted to the RFP. The selection committee shall be comprised of the Consultant Selection Committee, one (1) representative of the professional design firm, the County's project manager if the project manager is not a member of the Consultant Selection Committee, and any additional representatives of the County as may be deemed appropriate by the **Director of Public Works** ~~Contracts and Purchasing Board~~. Nothing herein shall prohibit the County from appointing the same individuals who served as the prequalification committee to serve as the selection committee.

(b) The County shall issue an RFP to each construction management-at-risk firm selected to receive an RFP pursuant to Section 3. The RFP shall include:

(1) the date, time and place for submission of proposals;



- (2) a clear description of the submission requirements including separate price and technical components;
  - (3) the small business enterprise inclusion goals and workforce inclusion goals for the building project, if applicable;
  - (4) the form of construction management-at-risk contract; and
  - (5) any other relevant information that the County determines desirable.
- (c) The RFP shall require the submission of separate price and technical components as part of the proposal submitted in response to the RFP.

(1) The price component shall include: (i) the fee for preconstruction services with appropriate detail, (ii) the fee for construction services with explanation of the basis, (iii) the estimated cost of general conditions with appropriate detail, and (iv) the estimated construction contingency requirements regarding development of the GMP.

(2) The technical component shall include: (i) a detailed project approach, including preconstruction services, (ii) supplemental relevant project references, (iii) the project team members with position descriptions and relevant time commitments and billing rates of said team members during the project, and (iv) the construction management plan indicating their approach to controlling cost, schedule, quality, documents and claims.

Upon receipt of the responses to the RFP, the selection committee shall evaluate all proposals and rank firms based on the selection committee's evaluation of each firm's pricing proposal and qualifications. If the selection committee elects to conduct an interview with a construction management-at-risk firm who submits a proposal in response to the RFP, then the selection committee shall conduct interviews with each construction management-at-risk firm that submits a proposal to the RFP. The decision of the selection committee shall be posted on the County's web site. Once posted on the County's web site, the decision of the selection committee is final and not subject to appeal except to the Board of Control on the grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Clerk of the Board of Control during business hours on a working day no later than five (5) calendar days of the posting of the selection committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County Administration Building is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Clerk of the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

(d) The selection committee shall commence negotiations with the highest ranked construction management-at-risk firm. If the selection committee determines that negotiations with the highest ranked construction management-at-risk firm will not result in a contract acceptable to the County, then the selection committee shall terminate negotiations with the highest ranked construction management-at-risk firm and shall commence negotiations with the next highest ranked construction management-at-risk firm. The process shall continue until the selection committee has reached an acceptable contract with one of the prequalified construction management-at-risk firms. The list and ranking of proposed construction management-at-risk firms shall be certified by the County's project manager and made available as a public record after the contract award.

**Section 5.** (a) Each contract for a building project procured pursuant to Sections 3 to 6, inclusive, shall utilize a cost-plus, not-to-exceed guaranteed maximum price form of contract in which the County shall be entitled to monitor and audit all project costs.

(b) In establishing the schedule and process for determining a guaranteed maximum price, the contract between the County and the construction management-at-risk firm shall comply with the following:

(1) The guaranteed maximum price shall be based on design documents that are no less developed than a percentage determined by the Director of Public Works Contracts and Purchasing Board;

(2) The guaranteed maximum price shall be agreed to as an amendment to the contract between the County and the construction management-at-risk firm;

(3) The guaranteed maximum price amendment shall be executed before the commencement of any construction work; except that the County, before the execution of the guaranteed maximum price amendment, may commence construction, so long as the County executes a separate amendment to the contract with the construction manager-at-risk detailing the scope of work selected to commence before execution of the guaranteed price amendment, and provided that each subcontractor performing work shall provide a payment and performance bond in the amount of its subcontract, which bond shall name the County and the construction manager-at-risk as co-obligees. The separate amendment shall state the sum for the scope of work, which shall include the cost of the work, the general conditions and additional fee, if any, for the construction manager-at-risk; but, any class of work included in the scope of work selected to commence before the execution of the guaranteed maximum price amendment shall be subject to the subcontractor selection process set forth in Section 6. If a guaranteed maximum price cannot be successfully negotiated between the County and the construction manager-at-risk, then any subcontractor agreement between the construction manager-at-risk and a subcontractor for work selected to commence before execution of the

guaranteed maximum price amendment may be assigned to the County or to another construction manager-at-risk designated by the County, without the assent of the subcontractor, and the County or the designated construction manager-at-risk and the subcontractor shall be bound by the terms of the subcontractor agreement; and

(4) The guaranteed maximum price amendment to the contract between the County and the construction management-at-risk firm shall include a detailed line item cost breakdown by trade, including any cost for work selected to commence before the execution of the guaranteed maximum price amendment; dollar amounts for the construction management-at-risk firm's construction contingency; dollar amounts for the general conditions and fees, including any amounts related to work selected to commence before the execution of the guaranteed maximum price amendment; a list of all the drawings, specifications and other information on which the guaranteed maximum price is based; a list of allowances and statement of their basis; a list of any assumptions or clarifications on which the guaranteed maximum price is based; the dates for substantial and final completion on which the guaranteed maximum price is based; and a schedule of applicable alternates and unit prices.

(5) The construction management-at-risk firm shall provide all required performance and payment bonds in the amount of the guaranteed maximum price within five (5) business days after the execution of the guaranteed maximum price amendment.

(c) If a guaranteed maximum price cannot be successfully negotiated between the County and the construction management-at-risk firm, then the selection committee may commence negotiations with an additional proposer starting with the next highest ranked proposer. If a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked proposer, then the County shall terminate the procurement process and may instead procure the building project under any other project delivery method permitted by law.

**Section 6.** (a) Each construction manager-at-risk with a construction manager-at-risk shall include terms that require the following procedures to be observed in connection with the award of subcontracts under the construction manager-at-risk:

(1) Prior to the award of any subcontract with an estimated subcontract value, selected by the Contracting and Purchasing Board at the time of approving the use of the alternate construction delivery method, the construction manager-at-risk shall submit to the County for approval the qualifications that a subcontractor must have in order to perform the work of the subcontract and a list of at least three (3) subcontracting firms that the construction manager-at-risk believes meets the qualifications. The County may eliminate from the list persons or firms that the County believes are not qualified, **based on the criteria mentioned in the scope of services**, or to which the County has other reasonable objections.. The construction

manager-at-risk shall revise the list- in accordance with the County's eliminations. The County shall inform the construction manager-at-risk of its elimination of any persons or firms proposed by the construction manager-at-risk, within ten (10) working days after the County's receipt of the list. If the County disapproves of a proposed bidder, the written notice to the construction manager-at-risk shall set forth the County's objections of the proposed bidder(s). The construction manager-at-risk shall not solicit bids or proposals from any person or firm to whom the County has made objections.

(2) The County's elimination of any proposed bidder(s) under Section 6(a)(1) herein is final and not subject to appeal except to the Board of Control on grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Clerk of the Board of Control during business hours on a working day no later than five (5) calendar days of the construction manager-at-risk's receipt of the County's objections. If the fifth calendar day falls on a weekend or a legal holiday on which the County Administration Building is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Clerk of the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

(3) After the construction manager-at-risk and the County have agreed upon an acceptable list of potential subcontractors, the construction manager-at-risk shall solicit at least three (3) competitive bids or proposals (including design-assist bids or proposals) from subcontractors on the list of approved subcontractors. All bids or proposals submitted shall be sealed and shall not be opened before the bid opening date set forth in the solicitation.

(4) On the date set forth in the solicitation, the construction manager-at-risk shall open, in the presence of the County, all bids or proposals. The County shall have the right to be present at all post-opening scope review meetings of the construction manager-at-risk and the proposed subcontractors.

(5) Giving consideration to the price and the qualifications of each person or firm submitting a bid or proposal, the construction manager-at-risk shall recommend for award the subcontractor whose bid or proposal represents the best value, and such recommendation shall be submitted to the County with a written report setting forth the reasons supporting the recommendation. The County shall have the right to object to the proposed award if it determines that the person or firm proposed does not represent the best value. If the County objects to the proposed award, it shall do so by sending written notice of such objection within ten (10) days after the County's receipt of the construction manager-at-risk's recommendation report, and such written notice shall set forth the County's reasons for objecting. If the County does not

disapprove the bidder recommended by the construction manger at risk, then the construction manager-at-risk shall award the subcontract to the recommended bidder.

(6) Notwithstanding the foregoing, subcontracts with an award value that does not exceed the threshold sum as identified in Subsection (a)(1) of this section, may be awarded by the construction manager-at-risk using any selection method selected by the construction manager-at-risk with the approval of the County.

(7) Regardless of any monetary thresholds, each subcontract shall expressly name the County as an intended third-party beneficiary with the right to sue and recover under said subcontract.

**Section 7.** (a) For each contract for ~~the construction, reconstruction, improvement, alteration, installation, demolition or repair of~~ any building project, the **Director of Public Works** ~~Contracts and Purchasing Board~~ may elect to use the design-build delivery method, pursuant to Sections 7 to ~~13-12~~, inclusive.

(b) For every design-build contract, the County shall first obtain the services of a criteria architect or engineer by either contracting for the services consistent with Sections 153.65 to 153.70 of the Ohio Revised Code or by obtaining the services through a design professional who is an employee of the County. After the County has retained a criteria architect or engineer, the County shall develop with the assistance of the criteria architect or engineer a scope of work statement that defines the building project and provides prospective design-build firms with sufficient information regarding the County's objectives and requirements. The scope of work statement shall include criteria and preliminary design, general budget parameters, and general schedule requirements to enable prospective design-build firms to submit proposals in response to the RFP issued under Section 9. The criteria architect or engineer retained by the County for a building project shall not be eligible to participate in any way as a member of the design-build team competing for the award of the design-build contract for the building project.

**Section 8.** (a) **Except as provided in Section 12 hereof, The the Director of Public Works** ~~Contracts and Purchasing Board~~ shall utilize a two-phase selection process as provided in this section to select a design-build firm to provide design-build services.

(b) Before issuing a request for qualifications, hereinafter called RFQ, the **Director of Public Works** ~~Contracts and Purchasing Board~~ shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted by a design-build firm to the RFQ. The prequalification committee shall be comprised of the Consultant Selection Committee, one (1) representative of the criteria architect or engineer, the County's project manager if the project manager is not a member of the Consultant Selection Committee, and any additional representatives of the County as may be deemed proper by the **Director of Public Works** ~~Contracts and Purchasing Board~~.

(c) The first phase of the two-phase selection process shall begin once the County gives public notice of the building project and solicits responses to an RFQ from design-build firms. The public notice and solicitation required shall be advertised in a newspaper of general circulation in the County or on the County's website. The public notice and solicitation shall be given not less than two (2) weeks before the deadline for submitting responses to the RFQ. The public notice and solicitation shall include:

(1) the time and date of the deadline for receipt of responses to the RFQ and the address of the office to which the responses are to be delivered;

(2) a general description of the project and key factors important to the final selection of the design-build firm;

(3) a general description of the scope of services expected of the selected design-build firm during the design, pre-construction and construction phases of the project;

(4) a general description of the anticipated schedule and estimated construction cost for the building project; and

(5) the criteria for the selection of the design-build firm, including minimum experience, requirements for presentations/interviews, and the schedule for the selection process.

(d) The County shall require interested design-build firms to submit a statement of qualifications in response to the RFQ. The statement of qualifications shall include the following:

(1) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other potential qualified responders;

(2) completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and financial statement;

(3) a list of all convictions or fines assessed against the design-build firm or any of its officers or directors for violations of state or federal law;

(4) submission of a project organization chart with specific information on key project personnel or consultants, including the architect of record;

(5) a letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the building project;

- (6) submission of information on the firm's safety record including its workers' compensation experience modifier for the prior three (3) years;
- (7) submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
- (8) submission of information regarding the experience of the design-build firm and the architect of record on similar projects, including contact information of owners of the projects;
- (9) submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy; and
- (10) any other relevant information that the County determines desirable.

The prequalification committee established pursuant to Subsection (b) of this section shall evaluate each statement of qualifications submitted by design-build firms. The evaluation shall take into account the following factors: (i) competence to perform the required design-build services as indicated by the technical training, education, and experience of the design-build firm's personnel and key consultants, especially the technical training, education, and experience of the employees and consultants of the design-build firm who would be assigned to perform the services, including the proposed architect of record; (ii) ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design services or design-build services competently and expeditiously; (iii) past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines; and (iv) any other relevant factors as determined by the County. The prequalification committee shall select a minimum of three (3) qualified design-build firms to receive the request for proposals, unless less than three (3) firms responded to the RFQ, in which event prequalification committee may select less than three (3) qualified design-build firms to receive the request for proposals. The decision of the prequalification committee shall be posted on the County's web site. Once posted on the County's web site, the decision of the prequalification committee is final and shall not be subject to appeal except to the Board of Control on grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Clerk of the Board of Control during business hours on a working day no later than five (5) calendar days of the posting of the prequalification committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County Administration Building is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Clerk of the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

**Section 9.** (a) Before issuing a request for proposals, hereinafter referred to as RFP, the **Director of Public Works** ~~Contracts and Purchasing Board~~ shall establish a selection committee for the purpose of reviewing and evaluating responses submitted to the RFP issued pursuant to Subsection (b) of this section. The selection committee shall be comprised of the Consultant Selection Committee, one (1) representative of the criteria architect or engineer, the County's project manager if the project manager is not a member of the Consultant Selection Committee, and any additional representatives of the County as may be deemed appropriate by the **Director of Public Works** ~~Contracts and Purchasing Board~~. Nothing herein shall prohibit the County from appointing the same individuals who served as the prequalification committee to serve as the selection committee.

(b) The County shall issue an RFP to each design-build firm selected to receive an RFP pursuant to Section 8. The RFP shall include:

- (1) the date, time and place for submission of proposals;
  - (2) a clear description of the submission requirements including separate price and technical components;
  - (3) the design criteria produced by the criteria architect or engineer;
  - (4) the small business enterprise inclusion goals and workforce inclusion goals for the building project, if applicable;
  - (5) the form of design-build services contract; and
  - (6) any other relevant information that the County determines desirable.
- (c) The RFP shall require the submission of separate price and technical components as part of the proposal submitted in response to the RFP.

(1) The price component shall, **in a separate sealed submission**, include: (i) the fee for design services, including the fee of the architect of record, with appropriate detail, (ii) the fee for preconstruction services, with appropriate detail, (iii) the fee for design-build services with explanation of the basis, (iv) the estimated cost of general conditions, with appropriate detail, and (v) the estimated design and contingency requirements regarding development of the GMP.

(2) The technical component shall include: (i) a detailed project approach, including preconstruction and design services, (ii) supplemental relevant project references, (iii) the project team members with position descriptions and relevant time commitments and billing rates of said team members during the project, and (iv) the construction management plan indicating their approach to controlling cost, schedule, quality, documents and claims.



(d) Upon receipt of the responses to the RFP issued pursuant to Subsection (c) of this section, the selection committee shall evaluate all proposals and rank firms based on the selection committee's evaluation of each firm's pricing proposal and qualifications. If the selection committee elects to conduct an interview with a design-build firm who submits a proposal in response to the RFP, then the selection committee shall conduct interviews with each design-build firm that submits a proposal to the RFP. The decision of the selection committee shall be posted on the County's web site. Once posted on the County's web site, the decision of the selection committee is final and not subject to appeal except to the Board of Control on the grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Clerk of the Board of Control during business hours on a working day no later than five (5) calendar days of the posting of the selection committee's decision on the County's web site. If the fifth calendar day falls on a weekend or a legal holiday on which the County Administration Building is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Clerk of the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

(e) The selection committee shall commence negotiations with the highest ranked design-build firm. If the selection committee determines that negotiations with the highest ranked design-build firm will not result in a contract acceptable to the County, then the selection committee shall terminate negotiations with the highest ranked design-build firm and shall commence negotiations with the next highest ranked design-build firm. The process shall continue until the selection committee has reached an acceptable contract with one of the prequalified design-build firms. The list and ranking of proposed design-build firms shall be certified by the County's project manager and made available as a public record after the contract award.

**Section 10.** (a) Each contract for a building project procured pursuant to Sections 7 to ~~1342~~, inclusive, shall utilize a cost-plus, not-to-exceed guaranteed maximum price form of contract in which the County shall be entitled to monitor and audit all project costs.

(b) In establishing the schedule and process for determining a guaranteed maximum price, the contract between the County and the design-build firm shall comply with the following:

(1) The guaranteed maximum price shall be based on design documents that are no less developed than a percentage determined by the Director of Public Works ~~Contracts and Purchasing Board~~;

(2) The guaranteed maximum price shall be agreed to as an amendment to the contract between the County and the design-build firm;

(3) The guaranteed maximum price amendment shall be executed before the commencement of any construction work; except that the County, before the execution of the guaranteed maximum price amendment, may commence construction, so long as the County executes a separate amendment to the contract with the design-build firm detailing the scope of work selected to commence before execution of the guaranteed price amendment, and provided that each subcontractor performing work shall provide a payment and performance bond in the amount of its subcontract, which such bond shall name the County and the design-build firm as co-obligees. The separate amendment shall state the sum for the scope of work, which shall include the cost of the work, the general conditions and additional fee, if any, for the design-build firm; but, any class of work included in the scope of work selected to commence before the execution of the guaranteed maximum price amendment shall be subject to the subcontractor selection process set forth in Section 11. If a guaranteed maximum price cannot be successfully negotiated between the County and the design-build firm, then any subcontractor agreement between the design-build firm and a subcontractor for work selected to commence before execution of the guaranteed maximum price amendment may be assigned to the County or to another design-build firm designated by the County, without the assent of the subcontractor, and the County or the designated design-build firm and the subcontractor shall be bound by the terms of the subcontractor agreement; and

(4) The guaranteed maximum price amendment to the contract between the County and the design-build firm shall include a detailed line item cost breakdown by trade, including any cost for work selected to commence before the execution of the guaranteed maximum price amendment; dollar amounts for the design-build firm's design and construction contingencies; dollar amounts for the general conditions and fees, including any amounts related to work selected to commence before the execution of the guaranteed maximum price amendment; a list of all the drawings, specifications and other information on which the guaranteed maximum price is based; a list of allowances and statement of their basis; a list of any assumptions or clarifications on which the guaranteed maximum price is based; the dates for substantial and final completion on which the guaranteed maximum price is based; and a schedule of applicable alternates and unit prices.

(5) The design-build firm shall provide all required performance and payment bonds in the amount of the guaranteed maximum price within five (5) business days after the execution of the guaranteed maximum price amendment.

(c) If a guaranteed maximum price cannot be successfully negotiated between the County and the design-build firm, then the selection committee may commence negotiations with an additional proposer starting with the next highest ranked proposer. If a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked

proposer, then the County shall terminate the procurement process and may instead procure the building project under any other project delivery method permitted by law.

**Section 11.** (a) Each design-build contract with a design-build firm shall include terms that require the following procedures to be observed in connection with the award of subcontracts under the design-build contract:

(1) Prior to the award of any subcontract with an estimated subcontract value, selected by the ~~Contracting and Purchasing Board~~ **the Director of Public Works** at the time of approving the use of the alternate construction delivery method, the design-build firm shall submit to the County for approval the qualifications that a subcontractor must have in order to perform the work of the subcontract and a list of at least three (3) subcontracting firms that the design-build firm believes meets the qualifications. The County may eliminate from the list persons or firms that the County believes are not qualified, **based on the criteria mentioned in the scope of services**, or to which the County has other reasonable objections. The design-build firm shall revise the list unless in accordance with the County's eliminations. The County shall inform the design-build firm of its eliminations of any persons or firms proposed by the design-build firm, within ten (10) working days after the County's receipt of the list. If the County disapproves of a proposed bidder, the written notice to the design-build firm shall set forth the County's objections of the proposed bidder(s). The design-build firm shall not solicit bids or proposals from any person or firm to whom the County has made objections.

(2) The County's elimination of any proposed bidder(s) under Section 11(a)(1) herein is final and not subject to appeal except to the Board of Control on grounds of fraud or collusion. The written Notice of Appeal shall be filed with the Clerk of the Board of Control during business hours on a working day no later than five (5) calendar days of the design-build firm's receipt of the County's objections. If the fifth calendar day falls on a weekend or a legal holiday on which the County Administration Building is closed, the Notice of Appeal shall be filed no later than 4:00 p.m. on the first day following the weekend or the holiday. The Notice of Appeal shall include the appellant's allegations of fraud or collusion with specificity. The failure to timely file the Notice of Appeal with the Clerk of the Board of Control shall be considered a subject-matter jurisdictional defect, which may not be remedied. The Board of Control's determination of the appeal shall not be subject to any further appeals or any other challenges.

(3) After the design-build firm and the County have agreed upon an acceptable list of potential subcontractors, the design-build firm shall solicit at least three (3) competitive bids or proposals (including design-assist bids or proposals) from subcontractors on the list of approved subcontractors. All bids or proposals submitted shall be sealed and shall not be opened before the bid opening date set forth in the solicitation.

(4) On the date set forth in the solicitation, the design-build firm shall open, in the presence of the County, all bids or proposals. The County shall have the right to be present at all post-opening scope review meetings of the design-build firm and the proposed subcontractors.

(5) Giving consideration to the price and the qualifications of each person or firm submitting a bid or proposal, the design-build firm shall recommend for award the subcontractor whose bid or proposal represents the best value, and such recommendation shall be submitted to the County with a written report setting forth the reasons supporting the recommendation. The County shall have the right to object to the proposed award if it determines that the person or firm proposed does not represent the best value. If the County objects to the proposed award, it shall do so by sending written notice of such objection within ten (10) days after the County's receipt of the design-build firm's recommendation report, and such written notice shall set forth the County's reasons for objecting. If the County does not disapprove the bidder recommended by the design-build firm, then the design-build firm shall award the subcontract to the recommended bidder.

(6) Notwithstanding the foregoing, subcontracts with an award value that does not exceed the threshold sum as identified in Subsection (a)(1) of this section, may be awarded by the design-build firm using any selection method selected by the design-build firm with the approval of the County.

(7) Regardless of any monetary thresholds, each subcontract shall expressly name the County as an intended third-party beneficiary with the right to sue and recover under said subcontract.

**Section 12. For non-complex building projects as determined by the Director of Public Works, the Director of Public Works may opt to utilize a one-step design build process, including, if deemed appropriate, a selection process through an RFB.**

**Section 13.** The Department of Public Works, with the approval of the **Director of Law**~~Contracts and Purchasing Board~~, may adopt rules proscribing additional terms and provisions to be included in each construction manager-at-risk or design-build contract, including procedures and criteria for pre-qualification of subcontractors under Sections 6 and 12 ~~11~~.

**Section 14.** (a) For each contract for ~~the construction, reconstruction, improvement, alteration, installation, demolition or repair of~~ any building project estimated to cost not more than \$200,000.00, the **Director of Public Works** ~~Contracts and Purchasing Board~~ may elect to use the general contracting method, pursuant to this Section 14 ~~13~~.

(b) The County shall give public notice of the building project and shall solicit bids from general contracting firms. The public notice and solicitation shall be

advertised in a newspaper of general circulation in the County or on the County's website. The public notice and solicitation shall be given not less than two (2) weeks before the deadline for submitting bids. The public notice and solicitation shall include the time and date of the deadline for receipt of bids, the address of the office to which the responses are to be delivered, a general description of the project, and a general description of the anticipated schedule and estimated construction cost for the building project.

(c) The County shall require interested general contracting firms to submit a pricing proposal and statement of qualifications in response to the bid request. The statement of qualifications shall include the following:

- (1) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other potential qualified responders;
- (2) completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and financial statement;
- (3) a list of all convictions or fines assessed against the general contraction firm or any of its officers or directors for violations of state or federal law;
- (4) submission of a project organization chart with specific information on key project personnel or consultants;
- (5) a letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the building project;
- (6) submission of information on the firm's safety record including its workers' compensation experience modifier for the prior three (3) years;
- (7) submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
- (8) submission of information regarding the firm's experience on similar projects including contact information of the architects and owners of the projects;
- (9) submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy;
- (10) submission of either a single aggregate lump sum price or a single aggregate cost-plus, not-to-exceed guaranteed maximum price, as required by the bid documents; and

(11) any other relevant information that the County determines desirable.

(d) The contract for general contracting services shall be awarded to the firm whose bid is determined by the lowest and best.

**Section 15.** For purposes of the Jail Kitchen Project, the Board of Control may grant exemptions from any of the requirements or monetary thresholds provided for in this Ordinance if it determines that such action is advantageous to the County.

*(Amended on 3/27/2012 by Ordinance No. O2012-0010)*

**Section 16.** In determining whether to accept any recommendation for a contract award or in determining the lowest and best bid for any contract under this ordinance, the County may consider any or all of the factors provided for in Section 4.7 of the Contracting and Purchasing Procedures Ordinance for Cuyahoga County.

**Section 17.** At the time of execution of any contract under this ordinance, any successful bidder or respondent to an RFP **contractor** shall make all of the certifications provided for in Section 4.8 of the Contracting and Purchasing Procedures Ordinance of Cuyahoga County.

**Section 18.** The County shall have the right to take measures to encourage fair and equitable participation by all segments of the County's residents in county construction projects.

**SECTION 2. The policies and procedures established in Section 1, subsections 1 through 18, are intended to provide the County with alternate construction project delivery methods in addition to those available under the Ohio Revised Code. The County shall still have to option to operate under the Ohio Revised Code if it deems it advantageous to do so.**

**SECTION 3.** Awards of contracts under this Ordinance, and the approval of expenditure of funds therefor, shall be made by the appropriate County approval authority based on the monetary thresholds established in the County's Contracting and Purchasing Procedures Ordinance.

**SECTION 4 3.** The ~~Contracts and Purchasing Board~~ **Director of Public Works, with the approval of the Director of Law,** shall determine the appropriate bonding requirements for all contracts entered under this Ordinance.

**SECTION 5 4.** The Department of Development is hereby directed to investigate alternative possible programs, including funding sources, to provide bonding guarantees to small businesses and to report back to Council no later than October 30, 2011, with its findings and proposals for the adoption of such a program by the County.

**SECTION 6 5.** If any conflict arises between the procedures, requirements, or any other terms of the Ohio Revised Code, Ohio Administrative Code, or any other law or regulation, and this Ordinance, the procedures, requirements, and terms of this Ordinance shall prevail.

**SECTION 7 6.** It is necessary that this Ordinance become immediately effective in order that critical services being provided by Cuyahoga County can continue without interruption, and to continue the usual daily operation of the County. Provided that this Ordinance receives the affirmative vote of eight members of Council, this Ordinance shall become immediately effective upon the signature of the County Executive.

**SECTION 8 7.** It is found and determined that all formal actions of this County Council meeting relating to the adoption of this ordinance were adopted in an open meeting of the County Council and that all deliberations of this County Council and any of its committees that resulted in such formal actions took place 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 Mr. Schron, seconded by Mr. Miller, the foregoing Ordinance was duly enacted.

Yeas: Brady, Germana, Gallagher, Schron, Conwell, Jones, Rogers, Simon, Greenspan, Miller and Connally

Nays: None

_____	_____
County Council President	Date
_____	_____
County Executive	Date
_____	_____
Clerk of Council	Date

First Reading/Referred to Committee: August 9, 2011  
Committee(s) Assigned: Economic Development & Planning

Additional Sponsorship Requested on the Floor: August 9, 2011

Second Reading/Referred to Committee: August 23, 2011  
Committee(s) Assigned: Economic Development & Planning

Additional Sponsorship Requested on the Floor: October 25, 2011

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October 25, 2011