

County Council of Cuyahoga County, Ohio

Ordinance No. O2019-0003

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| Sponsored by: Councilmembers Gallagher, Stephens and Schron | An Ordinance amending Chapter 501 of the Cuyahoga County Code to change the Contracts and Purchasing Procedures, and declaring the necessity that this Ordinance become immediately effective. |
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WHEREAS, Section 205.01 of the Cuyahoga County Code establishes the Board of Control for the purpose of reviewing, approving, or denying County contracts in accordance with the Contracts and Purchasing Procedures established in Chapter 501 of the County Code; and,

WHEREAS, pursuant to Section 501.04 (B) of the Cuyahoga County Code, the Board of Control is generally responsible to approve all contracts, purchases, sales, grants, and loans provided by the County resulting in the County's expenditures in the value range of \$500.00 but not more than \$500,000.00; and,

WHEREAS, County Council is responsible, generally, for approving contracts exceeding \$500,000.00 in value; and,

WHEREAS, in the interest of effective and efficient operations, the County Council desires to increase the threshold requiring Board of Control approval of all contracts, purchases, sales, grants, and loans provided by the County resulting in the County's expenditures from \$500.00 to \$5,000.00; and,

WHEREAS, pursuant to Section 501.12 (B) of the Cuyahoga County Code, the current threshold to require a formal competitive bidding process is \$25,000.00; and,

WHEREAS, in the interest of effective and efficient operations, the County Council desires to increase the threshold requiring a formal competitive bidding process from \$25,000.00 to \$50,000.00; and,

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

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

SECTION 1. Section 501.04 of the Cuyahoga County Code is hereby amended as follows (additions are marked in bold and underline, deletions are stricken):

Section 501.04: Required Approvals

A. Items Requiring County Council Approval

1. The following transactions and other actions shall require approval by the County Council:
 - a. All contracts, purchases, sales, grants provided by the county, or loans provided by the county resulting in the County's expenditure of more than \$500,000.00. If the transaction does not have an end date, the County shall calculate the anticipated expenditures for purposes of determination of the appropriation approval authority based on a five-year term;
 - b. All revenue generating agreements with anticipated revenue above \$500,000.00 during the term of the agreement. If the revenue generating agreement does not have an end date, the County shall calculate the anticipated revenue for purposes of determination of the appropriate approval authority based on a five-year term;
 - c. Any loan in which the County, or any entity thereof, is the borrower;
 - d. All contracts, purchases, loans, leases, or other transactions which create an obligation that would require the appropriation of additional funds not previously authorized;
 - e. All purchases or sales of real estate or real estate interests for any purpose other than making or repairing roads, including bridges, for more than \$50,000.00 and all leases of real estate or real estate interests as lessor or lessee in which the value of the purchase, sale, or lease is more than \$50,000.00;
 - f. All purchases, sales, or leases of real estate in excess of six months other than at fair market value;
 - g. All transfers of cash or appropriation authority between accounts within the County budget and all appropriation changes that result in an increase or decrease in authorized appropriations;
 - h. Any change order or amendment to a contract that is submitted to the Board of Control and does not receive an affirmative vote of one County Council member on the Board of Control;
 - i. Any other specific contract, purchase, sale, lease, grant made by the County, or loan made by the County, or any exemption, procedure, or other action within the process of completing any such contract, purchase, sale, lease, grant made by the County, or loan made by the County for which the County Council, by Resolution of Council, requires approval of the County Council; Any other contract, contract

amendment, change order, purchase, sale, lease, grant made by the County, loan made by the County, exemption, procedure, or other action that requires approval by the County Council pursuant to any other provision of Chapter 501 or any other provision of the County Code;

- j. Any other contract, purchase, sale, lease, grant made by the County, loan made by the County, or any exemption, procedure, or other action within the process of completing any such contract, purchase, sale, lease, grant, exemption, or loan that does not otherwise require Council approval, but the County Executive or Board of Control determines to submit to Council for its consideration, review, and approval or denial; and
- k. Any other contract, purchase, sale, lease, grant made by the County, loan made by the County, or any exemption, procedure, or other action within the process of completing any such contract, purchase, sale, lease, grant, exemption, or loan that the Council President requests its transfer or review to the County Council by written communication to the County Executive and his or her designee prior to approval.

2. Sections 501.04(A)(1)(e) and (f) are not intended to interfere with the Executive and Director of Public Works' ability to manage the County's property, including, without limitation, granting access, easements, licenses, rights of way, or other rights of entry on the County's property and establishing the terms for such entry without seeking Council approval for such action.

3. **A resolution approving any "Item Requiring County Council Approval" under this Section shall be deemed an administrative act of the County Council and shall therefore take effect immediately upon adoption of the resolution by a simple majority of County Council or signature of the County Executive, whichever is applicable. This paragraph shall not apply to any resolution in which County Council specifically exercises its legislative powers granted under the County Charter or general law.**

B. Items Requiring Board of Control Approval. The following transactions and other actions shall require approval by the Board of Control:

- 1. All contracts, purchases, sales, grants provided or by the County, or loans provided by the County resulting in the County's expenditure of more than ~~\$500.00~~ **\$5,000.00** but not more than \$500,000.00. If the transaction does not have an end date, the County shall calculate the anticipated expenditures for purposes of determination of the appropriate approval authority based on a five-year term;
- 2. All revenue generating agreements with anticipated revenue more than ~~\$500.00~~ **\$5,000.00** but not more than \$500,000.00 during the term of the agreement. If the revenue generating agreement does not have an end date,

the County shall calculate the anticipated revenue for purposes of determination of the appropriate approval authority based on a five-year term;

3. All purchases or sales of real estate or real estate interests for more than ~~\$500.00~~ **\$5,000.00** but not more than \$50,000.00 and all leases of real estate or real estate interests as lessor or lessee in which the total value of the transaction is more than ~~\$500.00~~ **\$5,000.00** but not more than \$50,000.00;
 4. Any change order or amendment resulting in the County's expenditure of more than ~~\$500.00~~ **\$5,000.00** that do not otherwise require Council approval using the definition provided in Section 501.02(D) of the County Code for contracts with a value of less than five million dollars; and
 5. All purchases, including, the acquisition through settlement of eminent-domain litigation, of any real estate interests for the purpose of making or repairing roads, including bridges, in excess of \$50,000.00.
- C. **All contracts, purchases, sales, grants or loans provided by the County, purchases or sales of real estate or real estate interests, leases of real estate or real estate interests as lessor or lessee, in which the total value of the transaction is more than \$1,000.00 but less than \$5,000.00 shall be reported monthly to the Board of Control. Each transaction shall be presented to the Board of Control no later than the 15th day of the following month, and shall include a brief description, the approval or execution date, name of the contractor, and the amount of the transaction.**

SECTION 2. Section 501.09 of the Cuyahoga County Code is hereby amended as follows (additions are marked in bold and underline, deletions are stricken):

Section 501.09: Application for and Acceptance of Grants

- A. The County Executive may apply for and accept grants on behalf of the County, and execute all agreements and any other documents in connection with same, without specific approval from the Board of Control or the County Council, provided that any expenditures of grant funds shall be made from funds properly appropriated and any purchases, grants, leases, or loans made using grant funds shall be done in accordance with the provisions of Chapter 501 of the Cuyahoga County Code.
- B. As an exception to Section 501.09(A), specific approval shall be required by the Board of Control for the County's acceptance of grants of more than ~~\$500.00~~ **\$5,000.00**, when either of the following applies:
 1. The County has the discretion to select from multiple potential grant sub-recipients, and the County voluntarily designates a specific sub-recipient as part of the application process; or
 2. Acceptance of the grant requires a local match for which a specific appropriation has not been provided in the applicable operating budget.

SECTION 3. Section 501.10 of the Cuyahoga County Code is hereby amended as follows (additions are marked in bold and underline, deletions are stricken):

Section 501.10: Purchases to be Executed by Office of Procurement and Diversity

All purchases of goods and services shall be done by the Office of Procurement and Diversity, under the direction of the County Executive. The various departments may use office vouchers and procurement cards for purchases not to exceed ~~\$500.00~~ **\$1,000.00**. **Office vouchers shall be used only for unexpected or uncommon purchases. Recurring purchases of goods and services from the same vendor, originally contemplated in the development of an agency's budget shall be paid through the use of an encumbrance voucher.**

SECTION 4. Section 501.12 of the Cuyahoga County Code is hereby amended as follows (additions are marked in bold and underline, deletions are stricken):

Section 501.12: Competitive Bidding Requirements and Exceptions

- A. Except as otherwise provided in Chapter 501 of the County Code, including, but not limited to, Sections 501.12, 501.14, and 501.01 (D), all contracts, purchases, or leases shall be done in accordance with the competitive bidding procedures provided for in Sections 307.86 through 307.921 of the Ohio Revised Code. 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 Chapter 501 of the County Code, the procedures, requirements, and terms of this Chapter shall prevail.
- B. Competitive bidding is not required when any of the following apply:
 - 1. The estimated cost is less than ~~\$25,000.00~~ **\$50,000.00**;
 - 2. The purchase is for professional services, such as architectural, legal, medical, veterinary, financial, insurance, information technology, engineering, consulting, surveying, appraisal, brokerage, or construction management services;
 - 3. The purchase is made in response to an emergency as provided for in Section 501.08 of the County Code or the purchase is approved by the County Council or the Board of Control, as applicable, to be made without competitive bidding in response to an emergency;
 - 4. The transaction is for the purchase, sale, lease (as lessor or lessee), conveyance, transfer, exchange, easement, right of way, license, or any other disposition or acquisition of real property or real-estate interests;

5. The purchase is for used personal property, material, or supplies which are to be sold by the submission of written bids or at an auction open to the public;
6. The purchase is for services, supplies, replacements or supplemental parts, for a product or equipment owned or leased by the county, and the only source of the services, supplies, replacements or parts is limited to a single supplier;
7. The purchase is for services related to information technology, such as programming services, that are proprietary or limited to a single source;
8. The transaction is with the federal government, a state or a political subdivision thereof, a county or contracting authority thereof, a board of education, a township, a municipal corporation or a contracting authority thereof, a court, or any other one or more political subdivisions or other governmental entities, including, but not limited to, a county hospital, a regional transportation authority, a board of developmental disabilities, an alcohol, drug addiction and mental health services board, a veterans service commission, a county land reutilization corporation (land bank), a sewer district, or a port authority;
9. The purchase is made by a county department performing the duties provided for in Section 329.04 of the Ohio Revised Code and consists of family services duties or workforce development activities;
10. The purchase is made by a public children services agency performing the duties provided for in Section 5153.16 of the Ohio Revised Code and consists of family services, programs, or ancillary services that provide case management, prevention, or treatment services for children at risk of being or alleged to be abused, neglected, or dependent children;
11. The purchase consists of criminal justice services, social services programs, family services, or workforce development activities from nonprofit corporations or associations under programs funded by the federal government or by state grants;
12. The purchase is for an insurance policy, health care plan, or child care services for provision to county employees;
13. The purchase is for goods and services provided by persons with severe disabilities and provided for in Sections 4115.31 through 4115.35 of the Ohio Revised Code;
14. The Board of Control determines, upon its review of a request for an exemption from the requirements of competitive bidding, that the use of competitive sealed proposals would be advantageous to the county and the contracting authority complies with Section 307.862 of the Ohio Revised Code, as modified by Section 501.01 of this Chapter;

15. The Board of Control determines, upon its review of a request for an exemption from the requirements of competitive bidding, that an alternative procurement process would be advantageous to the County. The request to the Board must specify the details of the proposed alternative procurement process, and the Board may approve the request as presented or may impose any other changes or additional requirements as it deems appropriate.
 16. The program, contract, or agreement is funded through a federal, state, or other grant or program and is awarded by the County to the recipient(s) pursuant to the criteria or requirements of the grant or program, such as contracts entered pursuant to the Community Development Block Grant Program, the Store Front Renovation Rebate Program, the McKinney Vento Homeless Assistance Renewal Grant, or other similar grants or programs. To be eligible for this exemption, the program's criteria and requirements for the selection of the recipients must first be approved by the Board of Control. This approval can be done singularly for the entire program without the need for individualized consideration.
 17. The purchase is for any other purpose that may be done without competitive bidding pursuant to the Ohio Revised Code;
 18. The purchase is made through a joint purchasing program authorized by the Ohio Revised Code, including, but not limited to, Ohio Revised Code Section 9.48; and,
 19. The purchase is made through a state contract authorized by the Ohio Revised Code, including, but not limited to, Ohio Revised Code Section 125.04 and Ohio Revised Code Section 5513.01; and,
- C. Any purchase of professional design services provided by architects, engineers, or surveyors shall be done as provided for in Sections 153.65 through 153.71 of the Ohio Revised Code. The contracting authority, however, may deviate from the requirements of Ohio Revised Code Section 153.691 if the County Executive, with the approval of the Board of Control, determines that doing so would be advantageous to the County.
- D. Except in the case of contracts and purchases made under Sections 501.12(B)(8), (15), and (16) of the County Code, unless a request for an exemption is granted by the Board of Control, as presented or with any other changes or additional requirements deemed appropriate by the Board, if the County seeks to make contracts or purchases of ~~\$25,000.00~~ **\$50,000.00** or more other than by competitive bidding, and the contracting authority is able to identify more than one source through which the purchase could be made, the contracting agency shall:
1. Develop requests for proposals or qualifications, specifying the products or services to be purchased and the criteria that will be considered prior to making the purchase;

2. Receive responses from prospective vendors/contracting parties meeting the criteria specified in the request for proposals or qualifications by giving notice in a manner substantially similar to the procedures established for giving notice under section 307.87 of the Ohio Revised Code as modified by Section 501.01(D) of the County Code; and
 3. The contracting authority negotiates with the prospective vendors/contracting parties to obtain a contract which best satisfies the criteria specified in the request for proposals or qualifications.
- E. If the County seeks to make contracts or purchases greater than \$1,000, but less than ~~\$25,000.00~~ **\$50,000.00**, the County shall solicit bids for the contract/purchase for a period of no less than eight hours on the County's web site and through a vendor email notification system that is approved by the Office of Procurement and Diversity and the Law Department. The County shall make best efforts to ensure that the posting hours take place between 5:00 a.m. and 7:00 p.m. EST. If the online process does not result in at least three bids, the County shall exercise best efforts to obtain three bids through additional solicitation efforts.
- F. If the County seeks to make contracts or purchases of ~~\$25,000.00~~ **\$50,000.00** or more, and it is unable to identify more than one source and a vendor provides the County with a verified statement, subject to the penalty of perjury, certifying its sole source status, the County shall then solicit the availability of vendors for the contract/purchase. The solicitation shall be for a period of no less than 48 hours on the County's web site and through a vendor email notification system that is approved by the Office of Procurement and Diversity and the Law Department. If the posting fails to identify any additional vendor, the County may then proceed to submit the proposed purchase/contract to the appropriate approval authority as a sole source. If, however, the posting results in the identification of more than one possible vendor, the County shall only proceed with the procurement through the requisite competitive process under Chapter 501 of the Cuyahoga County Code unless the County receives an appropriate exemption in accordance with the requirements of the Code. The request for an exemption shall be made on a form established by the Office of Procurement and Diversity, and approved by the Law Department, and shall include a verified statement by the vendor, subject to the penalty of perjury, certifying the vendor's sole-source status. If the sole-source request is approved, the purchase or contract must still receive the requisite approval by the County Council or Board of Control pursuant to Section 501.04 of the County Code.

SECTION 5. 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 6. It is found and determined that all formal actions of this Council concerning and 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 Mr. Gallagher, seconded by Mr. Schron, the foregoing Ordinance was duly enacted.

Yeas: Miller, Tuma, Gallagher, Schron, Conwell, Jones, Brown, Stephens, Simon and Brady

Nays: Baker

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

First Reading/Referred to Committee: February 12, 2019
Committee(s) Assigned: Public Works, Procurement & Contracting

Legislation Substituted in Committee: March 6, 2019

Committee Report/Second Reading: March 12, 2019

Legislation Substituted on the Floor: April 9, 2019

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