

County Council of Cuyahoga County, Ohio

Ordinance No. 2011-0030

Sponsored by: County Executive FitzGerald and Councilmembers Miller, Brady, Jones and Gallagher	An Ordinance amending Ordinance No. 2011-0014 establishing the Board of Control, establishing procedures governing the making of County contracts and the purchasing of County supplies and equipment, providing procedures for the making of public improvements, establishing procedures under which the County Executive may employ experts and consultants in connection with the administration of the affairs of the County; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, the Cuyahoga County Council enacted a Board of Control, Contracting and Purchasing Ordinance; and,

WHEREAS, it is necessary to amend the Board of Control, Contracting and Purchasing Ordinance to clarify potentially ambiguous provisions therein and to insure that the Board of Control, Contracting and Purchasing Ordinance accurately reflects Council's original intent; and,

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

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

SECTION 1: The policies and procedures of Cuyahoga County, Ohio, relating to contracts, purchases, sales, leases, grants, and loans are amended as follows (additions are capitalized and shaded, deletions are stricken out):

Cuyahoga County
Board of Control, Contracting and Purchasing Ordinance



Cuyahoga County Council
Public Works, Procurement Contracting Committee

Pernel Jones, Jr., Chair
Chuck Germana, Vice Chair
Yvonne Conwell
Dale Miller
Julian Rogers

Amended July 26, 2011

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Chapter 1: Establishment of the Board of Control

Section 1.1: Board of Control Established

There is, hereby, created the Cuyahoga County Board of Control, consisting of seven (7) members identified as follows:

- a) the Cuyahoga County Executive,
- b) the Fiscal Officer,
- c) the Director of Public Works,
- d) the Director of **THE OFFICE OF** Procurement and Diversity, and
- e) three members of Cuyahoga County Council, appointed by the President of Council, within seven (7) days after the enactment of this ordinance and immediately following each Organizational Meeting of Cuyahoga County Council, who shall serve until their successors are appointed.

Section 1.2: County Council Vacancies

Whenever any of the three (3) positions on the Board of Control held by members of County Council becomes vacant, the President of County Council shall appoint another member of County Council to fill the position for the remainder of the term.

Section 1.3: Executive Branch Alternates

For each of the four (4) executive branch members of the Board of Control, the County Executive shall appoint an alternate, who shall attend meetings of the Board of Control whenever that member is unable to do so. Only employees of Cuyahoga County may be appointed as alternates on the Board of Control. Each alternate appointed shall, according to the County Executive's best judgment, have the greatest responsibility and most knowledge in the area(s) of primary responsibility of the person that the alternate replaces. Alternates shall serve at the pleasure of the County Executive, and the County Executive shall appoint a new alternate in the same way as the original designation whenever an alternate position becomes vacant. Appointments of alternates by the County Executive shall not be subject to confirmation by County Council.

Section 1.4: Council Alternates

At the same time that the President of Council appoints members to the Board of Control, the President of Council shall appoint an alternate for each member appointed. Alternates shall be members of County Council and shall serve until their successors are designated. The President of Council shall in the same way appoint an alternate for the remainder of the term whenever an alternate position becomes vacant.

Section 1.5: Alternate Have Full Rights

Any properly appointed alternate shall have all the rights and responsibilities of a member of the Board of Control when attending a meeting on behalf of a member.

Section 1.6: Officers

The County Executive shall serve as Chairperson of the Board of Control, and the Fiscal Officer shall serve as Vice Chairperson. If both the Executive and the Fiscal Officer are absent from any meeting, the Board of Control shall choose one of its members to chair that meeting. For the purposes of this section, County Executive and Fiscal Office shall include their alternates.

Section 1.7: No Additional Compensation

No compensation in addition to a person's regular compensation as an employee of Cuyahoga County shall be provided for service on the Board of Control.

Section 1.8: Clerk of the Board of Control

The County Executive shall designate one staff person, who shall be the Clerk of the Board of Control, who shall publish agendas and meeting notices and record and publish minutes.

Section 1.9: Weekly Meetings

The Board of Control shall meet weekly, at a regular time determined by the Board of Control.

Section 1.10: Quorum

A quorum for the Board of Control shall consist of four (4) members, or their alternates or replacements.

Section 1.11: Vote Required for Board of Control Actions

Except as provided in Section 2.10(a)(7) of this ordinance, a motion to approve or disapprove any item before the Board of Control shall require the affirmative vote of any four (4) or more members. Amendments to items before the Board of Control and parliamentary motions may be adopted by a majority of those present, provided that a quorum is present.

Section 1.12: Rules of Procedure

The Board of Control shall, consistent with the provisions of this ordinance, adopt its own rules of procedure.

Section 1.13: Public Participation

All meetings of the Board of Control shall be open to the public and shall begin by providing time for public comment on matters that are on the agenda for that day. The Board of Control shall also provide time for public comment, either at that time or later in the meeting, on matters that may come before the Board of Control in the future. The Board of Control may also require presenters to register with the Board of Control before speaking and may set a time limit on presentations, which may be extended at the discretion of the Chairperson.

Section 1.14: Agendas

The Clerk of the Board of Control shall publish the notice and agenda for each meeting on the county's website, post them at its office, and send them by electronic mail to each member of County Council no later than the close of business on the second business day before the meeting. For each proposed contract to be considered, the agenda shall list the type of contract, a summary of the scope of work, the anticipated costs, the expected schedule of payments by fiscal year, the source(s) of funding, the anticipated start date, and the vendor's name. For agenda items other than contracts, the Board of Control shall specify in its rules what documentation shall be submitted with the request.

Section 1.15: Special Meetings

The Board of Control may conduct a special meeting at a time other than its regularly scheduled time. In the event of an emergency, the Board of Control may conduct a meeting with less notice than that required by Section 1.15 of this ordinance. For any special or emergency meeting, in addition to the notice requirements of Section 1.15, the Board of Control

shall also send notice to all news media organizations that request to be notified of such meetings. A meeting may be conducted with less than twenty-four (24) hours only to respond to an emergency concerning which immediate official action is required, and the notice and agenda shall state the nature of the emergency requiring such action.

Section 1.16: Minutes

The Clerk of the Board of Control shall promptly prepare and publish the minutes of each meeting of the Board of Control on the county's website, which shall in no case occur later than one week after each meeting.

Section 1.17: Executive Session

Notwithstanding the requirement in Section 1.14 for open meetings, the Board of Control may go into Executive Session, only to discuss one or more of the topics permitted to be discussed in Executive Session according to Section 121.22 of the Ohio Revised Code. The published agenda for any meeting at which the Board of Control goes into Executive Session must include notice of the intent to go into Executive Session and a general description of the subject matter to be discussed. Prior to going into Executive Session, the Board of Control must approve a motion to go into Executive Session. That motion must be approved by a majority of members present by roll call vote, with a quorum being present, and the motion shall state the topic(s) to be discussed in Executive Session and that no other topics may be discussed.

Section 1.18: Journal

The Clerk of the Board of Control shall maintain a Journal of the Board of Control, which shall be posted on the county's website and maintained as a permanent file, which may be in an electronic format. The Journal shall include the notice, agenda, and minutes of all Board of Control meetings.

Section 1.19: Public Meetings and Public Records

The Board of Control shall be subject to all state laws and county ordinances concerning public meetings and public records.

Section 1.20: Deadline for Agenda Items

The Clerk of the Board of Control, in consultation with the Fiscal Officer, the Director of Public Works, and the Director of Purchasing, may set a deadline for the submission of items for the agenda by county departments for each meeting.

Section 1.21: Consideration of Items Not on the Agenda

The Board of Control may, by 2/3 vote of members present, with a quorum being present, allow consideration of items not on the agenda or items submitted after the deadline for submission of items established by the Clerk of the Board of Control.

Chapter 2: Approvals Required for Contracts, Purchases and Sales, Leases, Grants and Loans

Section 2.1: County Executive's Authority

a) The County Executive, through the appropriate departments of county government acting under his/her direction may SOLICIT BIDS; enter into all contracts; MANAGE CONTRACTS THROUGH THEIR CONCLUSION AND EXECUTE ALL NECESSARY DOCUMENTS FOR THE ADMINISTRATION AND CONCLUSION OF CONTRACTS; ACCEPT COMPLETENESS OF PROJECTS; TERMINATE CONTRACTS; RELEASE ESCROW FUNDS UPON CONCLUSION OF CONTRACTS; APPLY FOR, accept or make grants; purchase, sell, AND lease any real estate or real estate interests; ACCEPT OR GRANT ACCESS, EASEMENTS, LICENSES, AND OTHER RIGHTS OF ENTRY ON REAL ESTATE; and provide or enter into loans, provided that all requirements of this ordinance applicable to that action are met. For actions requiring approval of the County Council or the Board of Control, such approvals shall be obtained prior to execution of the action. Actions not requiring approval of either the County Council or the Board of Control may be executed by the County Executive or his/her designees in accordance with procedures established by this ordinance and the County Executive.

b) THE COUNTY EXECUTIVE MAY PERFORM ANY OF THE FUNCTIONS THAT HE OR SHE MAY PERFORM UNDER THIS ORDINANCE THROUGH HIS OR HER DULY AUTHORIZED DESIGNEES.

Section 2.2: Usage of the Terms “Contract and “Sale”

For the purposes of the ordinance:

- a) "contract" shall not include an employment contract between the County and any regular full-time or part-time employee of the County or any contract entered into in settlement of litigation; and
- b) "sale" shall include only sales of assets.

Section 2.3: Definition of Value

For the purposes of this ordinance, the value of any contract, purchase, sale, grant, or loan shall be the total amount obligated, received or contracted for, even if over multiple years, but shall not include any optional extensions. Whenever a construction or renovation project requires the execution of two or more contracts, the sum of the value of the multiple contracts required shall be used as the value for each contract, except that contracts for phases of a construction or renovation project, executed before it is known whether the total project cost will exceed \$500,000, may be handled as a separate contract.

Section 2.4: Thresholds for Options of Contracts

Exercise of an option on a contract shall require approval of the County Council or the Board of Control if the thresholds provided for in Section 2.10(a)(1) and 2.11(a), respectively, for approval of contracts are met.

Section 2.5: Contracts with Multiple Vendors

a) UNLESS AN EXEMPTION IS APPROVED UNDER SECTION 2.5(b) HEREIN, THE VALUES OF PROPOSED CONTRACTS TO BE ENTERED PURSUANT TO A SINGLE REQUEST FOR BIDS (RFB), REQUEST FOR PROPOSALS (RFP) OR REQUEST FOR QUALIFICATIONS (RFQ) SHALL BE AGGREGATED AND TREATED AS A SINGLE CONTRACT FOR PURPOSES OF APPLYING THE MONETARY THRESHOLDS UNDER SECTIONS 2.10 AND 2.11.

b) REQUESTS FOR EXEMPTION FROM THE REQUIREMENTS OF SECTION 2.5(a) SHALL BE SUBMITTED TO THE BOARD OF CONTROL, WHICH IS HEREBY AUTHORIZED TO REVIEW SUCH REQUESTS AND TO APPROVE OR DISAPPROVE THEM.

Section 2.6: Definition of New Item

For the purposes of this ordinance, a "new item" in a change order or amendment to a contract is any item not provided for in the prior version of the contract, and does not include a change in the quantity, version, style, manufacturer, or supplier of any item included in the prior version of the contract.

Section 2.7: Change Orders or Amendments on Contracts

A change order or amendment to a contract may be presented in the form of a list of proposed changes, rather than submitting items individually. For the purposes of this ordinance, the value of a change order or amendment submitted as a list of items shall be the greater of:

- a) the net change to the value of the contract after all additions, , are added and all deletions or reductions are subtracted; or
- b) the total value of all new items, as defined in Section 2.6 of this ordinance, in the change order or amendment.
- c) the term "change order or amendment" shall include the use of county contingency funds.

Section 2.8: Approval Thresholds for Change Orders or Amendments

For the purposes of this ordinance, a change order or amendment to a contract shall not be considered a separate contract and shall be subject to the requirements of Sections 2.10(a)(7) and 2.11(c) of this ordinance.

Section 2.9: Single Approval Generally Required; Exceptions

Except as provided for in Sections 2.10(a)(7) and (8) and Sections 2.11(c) and (d), approvals provided for in Sections 2.10 and 2.11 of the ordinance shall be required to enter into a contract or lease, to accept a grant, or to make a purchase, sale, grant, or loan and not at other stages of the process of completing these transactions.

Section 2.10: Items Requiring County Council Approval

- a) The following transactions shall require approval by the County Council:
 - 1) All contracts, purchases, grants provided by the county, or loans provided by the county for more than \$500,000;

- 2) Any loan in which the county, or any entity thereof, is the borrower;
 - 3) All contracts, purchases, loans, leases, or other transactions which create an obligation which would require the appropriation of additional funds not previously authorized;
 - 4) All purchases or sales of real estate or real estate interests for more than \$50,000 and all leases of real estate or real estate interests as lessor or lessee in which the total value of the ~~transaction~~ **PURCHASE, SALE, OR LEASE** is more than \$50,000;
 - 5) All **PURCHASES, SALES, OR LEASES OF** real estate **IN EXCESS OF SIX MONTHS** ~~transactions~~ other than at fair market value;
 - 6) 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;
 - 7) Any change order or amendment to a contract that is submitted to the Board of Control ~~for which the change order or amendment~~ **AND** does not receive an affirmative vote of one County Council member on the Board of Control.
 - ~~8) Any contract or agreement with one or more other political subdivisions or governmental agencies made pursuant to Article 3, Section 9, Subsection 8 of the Charter;~~
 - 8) i) Any other specific contract, purchase, sale, lease, grant, or loan or any procedure within the process of completing any such contract, purchase, sale, lease, grant or loan for which the County Council, by Motion of Council, requires approval of the County Council.**
- b) **SECTIONS 2.10 (A) (4) AND (5) 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.**

Section 2.11: Items Requiring Board of Control Approval

The following transactions shall require approval by the Board of Control:

- a) All contracts, purchases, grants provided or by the County, or loans provided by the County for more than \$100,000 but not more than \$500,000, except that the County Executive and/or the Director of Economic Development may make loans of not more than \$200,000 without approval from the Board of Control for the limited purpose of implementing the Federal Neighborhood Stabilization Program.
- b) All purchases or sales of real estate or real estate interests for more than \$10,000 but not more than \$50,000 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 \$10,000 but not more than \$50,000;
- c) Any change order or amendment **WITH A VALUE OF** \$25,000 or more using the definition provided in Section 2.7 of this ordinance for contracts with a value of less than five million dollars or \$50,000 or more for contracts with a value of five million dollars or more.
- d) Any other specific contract, purchase, sale, lease, grant, or loan or any procedure within the process of completing any such contract, purchase, sale, lease, grant or loan for which the County Council, by Motion of Council, requires approval of the Board of Control.
- e) **ANY OTHER SPECIFIC CONTRACT, PURCHASE SALE, LEASE, GRANT, EXEMPTION OR LOAN OR PROCEDURE WITHIN THE PROCESS OF COMPLETING ANY SUCH CONTRACT, PURCHASE, SALE, LEASE, GRANT EXEMPTION OR LOAN THAT DOES NOT OTHERWISE REQUIRE COUNCIL OR BOARD OF CONTROL APPROVAL, BUT THE COUNTY EXECUTIVE DETERMINES TO SUBMIT TO THE BOARD OF CONTROL FOR ITS CONSIDERATION, REVIEW AND APPROVAL OR DENIAL.**

Section 2.12: Monthly Reports on Contract Changes

During any construction or renovation project, the **DIRECTOR OF THE DEPARTMENT RESPONSIBLE FOR THE PROJECT IN CONJUNCTION WITH THE** ~~county's representative~~, project manager, or other person responsible for the project shall provide the following information monthly to the Board of Control:

- a) A description of all changes made in the project since the previous report and the cost or savings associated with each change, and

- b) The percentage of contingency funds used in the project up to that point and how that percentage compares with the projected use of contingency funds at that point in the project.

Section 2.13: Identification of Funding Sources

Any item submitted to the County Council or the Board of Control which includes a request for approval for the expenditure of money shall specify the funding source(s) to be used.

Section 2.14: Experts or Consultants

The County Executive may enter into a contract with experts or consultants in connection with the administration of the affairs of the county, as provided for in Article 3, Section 9, Subsection 3 of the Cuyahoga County Charter, subject to the approval process and other requirements regarding contracts provided for in this ordinance and the specific notice requirement provided for in Section 4.4 of this ordinance.

Section 2.15: County Executive Emergency Authority

In an emergency which threatens the life, health, or property in the county, **AS DECLARED AND DETERMINED BY THE COUNTY EXECUTIVE**, and in which official action is needed prior to when a meeting of the County Council or the Board of Control could take place, the County Executive may enter into contracts or leases or make purchases not to exceed \$500,000 for any one emergency event, without obtaining the approval of the County Council or the Board of Control. Whenever this power is exercised, the County Executive shall immediately send a report to County Council and post the report on the county's website, describing the nature of the emergency, the actions taken, and the estimated cost and sources of funding for the actions taken.

Section 2.16: **GRANT APPLICATION AND** Acceptance of Grants

The County Executive may **APPLY FOR AND** accept grants on behalf of the county 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 this ordinance.

Section 2.17: Referral to County Council

The County Executive may refer an item to the County Council for approval that otherwise would require approval from the Board of Control.

Chapter 3: General Provisions

Section 3.1: Director of Procurement and Diversity to Execute Purchases

All purchases of goods and services shall be done by the Director of Procurement and Diversity, under the direction of the County Executive. The various departments may use office vouchers for purchases not to exceed \$1,000 and procurement cards for purchases of less than \$500.

Section 3.2: Legal Review

All contracts, purchases, sales, leases, grants, or loans must undergo legal review before being executed. Use of a standard form, approved in advance by the Law Department for a specific type of transaction, shall satisfy the requirement of this section.

Section 3.3: Appropriation and Warrant Procedures

All expenditures related to any contract, purchase, sale, lease, grant, or loan must be made in accordance with the appropriation and proper warrant provisions of Section 5705.41 of the Ohio Revised Code.

Section 3.4: Competitive Bidding Required; Exceptions

a) Except as provided in Section 3.13(b) of this Ordinance and Subsection (b) below, 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.

b) Competitive bidding is not required when any of the following apply:

1. The estimated cost is less than \$25,000;
2. ~~The purchase is for the professional services of an accountant, architect, attorney at law, physician, engineer, consultant, surveyor, or appraiser, or construction manager;~~ **THE PURCHASE IS FOR PROFESSIONAL SERVICES, SUCH AS ARCHITECTURAL, LEGAL, MEDICAL, 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 2.15 of this ordinance 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. Contracts for the purchase of real property or real estate interests;
5. Leases of real estate or real estate interests as lessee, in which all of the following apply:
 - i. The contracting authority develops requests for proposals for leasing the property, specifying the criteria that will be considered prior to leasing the property, including the desired size and geographic location of the property;
 - ii. The contracting authority receives responses from prospective lessors with property meeting the criteria specified in the requests for proposals 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 3.13 of this Ordinance; and
 - iii. The contracting authority negotiates with the prospective lessors to obtain a lease at the best and lowest price reasonably possible considering the fair market value of the property and any relocation and operational costs that may be incurred during the period the lease is in effect.
6. 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;
7. The purchase is for **SERVICES**, supplies, ~~or a replacement~~ **S** or ~~a supplemental part~~ **S** ~~or parts~~, for a product or equipment owned or leased by the county, and the only source of **THE SERVICES**, supplies, ~~for the supplies or~~ **REPLACEMENTS OR PARTS** ~~part(s)~~ is limited to a single supplier;

8. The purchase is for services related to information technology, such as programming services, that are proprietary or limited to a single source;
9. The purchase is from the federal government, the state, another county or contracting authority of another county, or a board of education, township, or municipal corporation;
10. 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;
11. 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;
12. 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;
13. The purchase is for an insurance policy, health care plan, or child care services for provision to county employees and is done in accordance with Section 307.86(F) of the Ohio Revised Code;
14. 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;
15. The ~~contracting authority~~ **EXECUTIVE AT A PUBLIC MEETING** determines 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 3.13(B) of this ordinance;
16. ~~Except regarding the limit provided for in Section 3.4(B)(1) of this ordinance, †~~ The purchase is for any other purpose that may be done without competitive bidding according to Section 307.86 of the Ohio Revised Code;

17. THE PURCHASE IS MADE THROUGH A JOINT PURCHASING PROGRAM ~~PURSUANT TO SECTION 9.48 OF THE OHIO REVISED CODE~~ AUTHORIZED BY THE OHIO REVISED CODE, INCLUDING, BUT NOT LIMITED TO, OHIO REVISED CODE SECTION 9.48; AND,

18. THE PURCHASE IS MADE THROUGH A STATE CONTRACT ~~PURSUANT TO SECTION 125.04 OF THE OHIO REVISED CODE~~ AUTHORIZED BY THE OHIO REVISED CODE, INCLUDING, BUT NOT LIMITED TO, OHIO REVISED CODE SECTION 125.04 AND OHIO REVISED CODE SECTION 5513.01.

- 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) **THE OFFICE OF PROCUREMENT AND DIVERSITY IS CHARGED WITH VERIFYING THE QUALIFICATIONS OF PURCHASES MADE UNDER SECTIONS 3.4(B) (7) AND (8). EACH PURCHASE MADE UNDER THESE SECTIONS MUST UNDERGO THE MANDATORY VERIFICATION IN ADVANCE OF INITIATING THE PURCHASING PROCESS IN ACCORDANCE WITH THE UNIFORM PROCEDURES ADOPTED BY THE OFFICE OF PROCUREMENT AND DIVERSITY IN CONSULTATION WITH THE DEPARTMENT OF LAW.**
- e) **EXCEPT IN THE CASE OF PURCHASES MADE UNDER 3.4(B)(9), (17), AND (18), IN THE CASE OF CONTRACTS ON BEHALF OF COURTS WITH ANY OTHER COURTS OR OTHER POLITICAL SUBDIVISIONS, OR WHEN AN EXEMPTION IS GRANTED BY THE COUNTY EXECUTIVE at a public meeting, ~~Whenever~~ IF the county SEEKS TO makes purchases OF \$25,000.00 OR MORE** other than by competitive bidding, and the county is able to identify multiple sources 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 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 3.13(B) of this Ordinance; and
 3. The contracting authority negotiates with the prospective vendors to obtain a contract which best satisfies the criteria specified in the request for proposals or qualifications.
- f) **IF THE COUNTY SEEKS TO MAKE PURCHASES GREATER THAN \$1,000, BUT LESS THAN \$25,000, THE CONTRACTING AUTHORITY SHALL SEEK INFORMAL QUOTES OR PROPOSALS FROM MULTIPLE VENDORS IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED BY THE OFFICE OF PROCUREMENT AND DIVERSITY.**

Section 3.5: Procedure Manuals

Except as otherwise provided in this ordinance, all contracts, purchases, sales, or leases shall be done in accordance with:

- a) the Purchasing Policy and Procedure Manual, dated January, 2006, amended December 21, 2006;
- b) the Request for Proposal (RFP) Manual, adopted December, 2006;
- c) the Small Business Enterprise (SBE) Program Policies and Procedures, adopted December 20, 2005, as amended, including the SBE Price Preference Policy adopted on October 1, 2009, and the SBE Requirements for Economic Development Bond Funded Projects, adopted October 29, 2009.

Section 3.6: County Executive to Propose Revisions to Procedure Manuals

On or before December 31, 2011, the County Executive shall submit legislation to County Council, proposing revisions to each of the documents listed in Section 3.5 of this ordinance to update them and align them with the provisions of this ordinance. This proposed legislation may propose dividing these documents into sections to be adopted by ordinance

and other sections to be adopted by and which may be amended by administrative rule.

Section 3.7: Standards for Awarding Contracts

Contracts and purchases which require competitive bidding, and are awarded in accordance with this ordinance shall be awarded to the lowest and best bidder meeting the specifications that are most advantageous to Cuyahoga County. The County reserves the right to consider all elements entering into the question of determining the lowest and best bid, including the following:

- a) whether the bidder has the appropriate experience, reputation, and workforce to perform the required work;
- b) the bidder's past performance on legal and ethical matters;
- c) whether the bidder exhibits a history of workforce stability and workplace safety, and provides workers a fair wage and fair benefits, as evidenced by payroll and employee records, for the required work, based on market conditions;
- d) whether the bidder has adhered to all conditions and requirements of the bid, ~~RFP, or RFQ~~ AND specifications;
- e) the quality of the product or service provided by the bidder on previous projects;
- f) with respect to a bidder whose bid is substantially below that of the next lowest bidder, supplemental details regarding the bid and/or historical information regarding performance and costs on similar contracts to demonstrate the bidder's ability to complete the contract at the price specified;
- g) whether the bidder is able to comply with the criteria outlined in Section 3.8 of this ordinance;
- h) whether the bidder's past performance has demonstrated a commitment to diversity in employment and subcontracting;
- i) maintenance costs and warranty provisions provided for in the bid;
- j) the delivery or completion date provided for in the bid;
- k) whether, with respect to work done in construction trades, the bidder will use only construction trades personnel who were trained in a state

or federally approved apprenticeship program or career technical program, or who are currently enrolled in a state or federally approved apprenticeship program or career technical program, or who have at least three years of experience in a particular trade; except that for the purposes of full inclusion and creation of entry-level opportunities, up to ten percent (10%) of the construction trades personnel may be participants in pre-apprenticeship programs or otherwise have less training and experience;

- l) whether the bidder, unless otherwise agreed to in a collective bargaining agreement, contributes to an employee pension or retirement plan for those employees working on the contract, such benefits being part of the employees' regular compensation and not merely on the contract, and provides evidence thereof upon request;
- m) whether the bidder, unless otherwise agreed to in a collective bargaining agreement, makes available a minimum health care plan for those employees working on the contract, such benefits being part of the employees' regular compensation and not merely on the contract and provides a copy of the plan on request;
- n) whether the bidder meets any other requirements determined by the County to be specifically relevant to the proposed contract.

Section 3.8: Required Certifications by Successful Bidders

At the time of execution of the contract, the successful bidder shall certify that it:

- a) shall be in compliance with Ohio's Drug-Free Workplace requirements, including, but not limited to, maintaining a substance abuse policy that its personnel are subject to on the contract (the successful bidder shall provide this policy upon request);
- b) does not have an Experience Modification Rating greater than 1.5 with respect to the Bureau of Workers Compensation risk assessment rating;
- c) is in compliance and will remain in compliance with Federal and Ohio Equal Opportunity Employment Laws;
- d) shall pay the prevailing wage rate and comply with other provisions set forth in Sections 4115.03 through 4115.16 of the Ohio Revised Code and Sections 4101:9-4-01 through 4101:9-4-28 of the Ohio Administrative Code, including but not limited to the filing of certified payroll reports;

- e) has not been debarred from public contracts for prevailing wage violations or found or determined by the state to have underpaid the required prevailing wage, whether intentionally or unintentionally, even if settled subsequent to the finding, more than three (3) times in the last ten (ten) years, provided that, when aggregating for any single project, no finding of an underpaid amount of less than \$1,000.00 shall be considered, and no single finding based upon a journeyman-to-apprenticeship ratio shall be considered a violation of this provision unless as part of multiple, similar findings;
- f) has not been penalized or debarred from any federal, state, or local public contract or falsified certified payroll records, or has otherwise been found, after appeals, to have violated the Fair Labor Standards Act in the past ~~five (5) years~~ **SEVEN (7) YEARS, OR DURING THE BIDDER'S ENTIRE TIME OF DOING BUSINESS, IF LESS THAN SEVEN (7) YEARS;**
- g) has not had the professional license of any of its employees revoked ~~in the past five (5) years in Ohio or any other state~~ **for malfeasance or misfeasance;**
- h) has not violated any unemployment or workers compensation law during the past five (5) years, or during the bidder's entire time of doing business, if less than five (5) years;
- i) at the time of contract award, does not have final, unsatisfied judgments against it which in total amount to 50% or more of the contract amount;
- j) will utilize, for work performed under the contract supervisory personnel that have three (3) or more years of experience in the specific trade and who maintain the appropriate state license(s), if any;
- k) shall be properly licensed to perform all work as follows:
 1. if performing a trades contract, shall be licensed pursuant to Ohio Revised Code Section 4740 as a heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor;
 2. if performing work regulated under Section 3737.65 of the Ohio Revised Code, be certified by the State Fire Marshall;
 3. if performing work under any other trade, occupation, or profession licensed under Title 47 of the Ohio Revised Code,

be licensed for that trade, occupation, or profession as provided in the Ohio Revised Code;

- l) shall, if performing a trade contract pursuant to Ohio Revised Code Section 4740, not subcontract more than twenty-five percent (25%) of the labor, excluding materials, for its awarded contract, unless to subcontractors also licensed pursuant to Ohio Revised Code Section 4740 or certified by the State Fire Marshall pursuant to Ohio Revised Code Section 3737.65.
- m) shall provide access as needed and allow the Agency of the Inspector General to perform the functions provided for in Section 3.12 of this ordinance.
- n) shall require all ~~if~~ **OF** its subcontractors, at the time of execution of a subcontract, to make all of the certifications required in ~~this~~ Section **3.8, EXCEPT FOR SUBSECTIONS g, h AND j.**

Section 3.9: Remedies for Breach of Contract

If any material breach of contractual obligations or the certifications provided for in Section 3.8 of this ordinance occurs during the contract performance by the vendor, the County may exercise any or all contractual remedies, including, but not limited to, contract termination for cause.

Section 3.10: Ethics Compliance Required

No contract shall be entered into unless all the provisions of state law and county ordinances related to ethics policy have been met.

Section 3.11: Unlawful Interest in a Public Contract

Any contract entered into in violation of Ohio Revised Code Section 2921.42(H) and/or related county ordinances concerning unlawful personal interest in a public contract shall be void and unenforceable.

Section 3.12: Inspector General's Authority

The Inspector General shall have the power to audit, investigate, inspect and review the operations, activities, and performance of the contracting and procurement processes of Cuyahoga County government in order to detect corruption and fraud and insure compliance with this ordinance and state and county ethics laws relating to contracting and procurement. Areas within the purview of such power shall include the following:

- a) the establishment of bid specifications,
- b) bid submittals,
- c) activities of contractors, including their departments, agents, and employees that specifically relate to performance on a contract with the county,
- d) relevant activities of public officials and employees of the county.

Provided that, in the reasonable judgment of the Inspector General's agency, doing so does not jeopardize any existing or anticipated investigation, the Inspector General's agency shall promptly report any wrongdoing to the County Executive, the County Council, Director of Public Works, the Director of Procurement and Diversity, the Director of Law, the Prosecuting Attorney, and other appropriate officials, as needed, to insure that proper action is taken in response to its findings.

Section 3.13: Home Rule Powers Asserted

To the extent permitted under the home rule powers available to Cuyahoga County as a charter county, the County Executive or his/her designees may:

- a) issue requests for bids, proposals, or qualifications which allow the responder to choose among two or more alternative approaches for completing the work;
- b) advertise for bids or request proposals or qualifications either on-line through the county's website or through a newspaper of general circulation that serves the county, or both, with the option to supplement such advertising through the use of additional media;
- c) on or after August 1, 2011, and in accordance with any implementing legislation on alternative construction delivery systems enacted by County Council, choose among the various available construction project delivery systems, in order to achieve the best possible combination of cost, quality, time to completion, and risk control.

Section 3.14: Encouragement of Diversity

In designing specifications for bids, requests for proposals, and requests for qualifications, the county shall consider dividing requests into smaller components when doing so would create a larger pool of potential bidders without reducing the cost-effectiveness of the project.

SECTION 3.15: GENERAL CONTRACTING AUTHORITY OF THE COUNTY EXECUTIVE

- A) THIS ORDINANCE IS INTENDED TO FULFILL ANY STATE, FEDERAL, OR OTHER REQUIREMENT FOR A RESOLUTION OR ORDINANCE GRANTING THE COUNTY EXECUTIVE THE AUTHORITY TO APPLY FOR OR ACCEPT GRANTS ON BEHALF OF THE COUNTY.

- B) THIS ORDINANCE IS INTENDED TO FULFILL ANY STATE, FEDERAL, OR OTHER REQUIREMENT FOR A RESOLUTION OR ORDINANCE GRANTING THE COUNTY EXECUTIVE THE AUTHORITY TO ENTER INTO A CONTRACT UNLESS APPROVAL FOR SUCH ACTION IS SPECIFICALLY REQUIRED UNDER SECTIONS 2.10 AND 2.11.

- C) THIS ORDINANCE SHALL NOT BE CONSTRUED TO LIMIT OR TO RESTRICT THE POWERS, DUTIES AND RESPONSIBILITIES OF THE COUNTY EXECUTIVE AS PROVIDED BY THE CHARTER OR STATE LAW AND THE LISTING OF ANY SPECIFIC POWERS, DUTIES OR RESPONSIBILITIES OF THE COUNTY EXECUTIVE IN THIS ORDINANCE SHALL NOT BE CONSTRUED TO EXCLUDE ANY OTHER POWER, DUTY OR RESPONSIBILITY PROVIDED FOR IN THE CHARTER OR BY THE GENERAL LAW OF THE STATE OF OHIO.

Chapter 4: Notification Requirements

Section 4.1: Procurement Database

The County Executive shall develop, maintain, and post on the county's website a procurement database, which shall include two separate parts, which shall contain descriptions of:

- a) all executed contracts, purchases, and sales, other than real estate transactions, for \$1000 or more; and

- b) all executed purchases, sales, leases (as either lessor or lessee) of real estate.

The database shall be searchable by purpose, vendor, purchaser, dollar amount, funding source, department, transaction date, and other relevant factors.

Section 4.2: Grants and Loans Database

The County Executive shall develop, maintain, and post on the county's website a grants and loans database, which shall include two separate parts, which shall contain descriptions of:

- a) all grants and loans received, searchable by purpose, funding source, department, date of receipt, length of term, and other relevant factors; and
- b) all grants and loans provided, searchable by purpose, recipient, funding source, department, date provided, and other relevant factors.

Section 4.3: Pending Transactions Database

The County Executive shall develop, maintain, and post on the county's website a pending transactions database, which shall include four separate parts, describing all pending transactions of \$50,000 or more which have been initiated by formal, public action but not yet completed, as follows:

- a) contracts, purchases, and sales, other than real estate transactions,
- b) real estate transactions,
- c) grants and loans to be received, and
- d) grants and loans to be provided.

The database shall provide a log of date and event for each major step in the process for each transaction and shall be searchable by purpose, department, date of initiation, funding source, and other relevant factors.

Section 4.4: Special Procurement Events Database

The County Executive shall develop, maintain and post on the county's website a special procurement events database, which shall include two parts, as follows:

- a) Any time that the County Executive initiates formal, public action to contract for goods or services that are substantially different from goods or services that the county currently contracts for or has contracted for within the last three (3) years. Contracting to achieve

the same purpose using improved technology shall not require notice under this subsection unless the new technology is sufficiently different so as to constitute an entirely new product; and

- b) Any time that the County Executive initiates formal public action to contract for the services of experts or consultants as provided for in Article 3, Section 9, Subsection 3 of the Charter.

The County Executive shall promptly send specific notice to the County Council whenever any of these events occur.

Section 4.5: Notification to County Councilperson

Whenever the County Executive initiates the formal, public action for a contract, purchase, sale, lease, grant, or loan with an expected value of \$25,000 or more that is located in or primarily affects a particular County Council District, the County Executive shall provide written notification to the Councilperson from that district.

Section 4.6: Timeline for Databases and Notifications

The County shall exercise best efforts to ensure that the databases provided for in Sections 4.1 through 4.4 of this ordinance are in operation and posted on the county's website and the notification process provided for in Section 4.5 of this ordinance are in operation starting not later than September 30, 2011, with the exception that the searchable features of the databases are in operation no later than March 31, 2012. Prior to the required initiation dates for the databases and notification processes provided for in Sections 4.1 through 4.5 of this ordinance, the County Executive shall use available resources to make available to the County Council and the public as much as possible of the information required in these sections.

Section 4.7: Historical Information not Required in Databases

The databases provided for in Sections 4.1 and 4.2 of this ordinance shall be required to include only transactions executed on or after the initiation date of each part of these databases. The databases provided for in Sections 4.3 and 4.4 shall be required to include only transactions initiated by formal, public action on or after the initiation date of each part of these databases.

Section 4.8: Exclusion of Confidential Information

Notwithstanding any other provisions of this chapter, the databases provided for in Sections 4.1, 4.2, 4.3, and 4.4 of this ordinance shall not include any information required to be kept confidential by federal or state law or federal or state administrative rule and may exclude any other information that is not a public record according to Section 149.43 of the Ohio Revised Code.

Section 4.9: Notice of Executed Contracts, Purchases and Sales

On or about the 5th calendar day prior to each regular meeting of County Council, the Executive shall provide the County Council a list of all contracts, purchases or sales executed and all grants or loans made or received for more than \$50,000 since the previous list was provided. Any change or amendment in which the total additions exceed \$50,000 shall also be included. Provided that all other requirements of this ordinance have been met, this list does not need to be provided prior to the transactions being executed.

SECTION 2: Effective Date. It is hereby found and determined necessary for this Ordinance to become immediately effective, for the reasons that this Ordinance provides for the usual daily and necessary operations of Cuyahoga County government. Therefore, this Ordinance, provided that it receives the affirmative vote of at least eight (8) members of County Council, shall be in full force and effect from and immediately after the earliest time permitted by law.

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. Miller, seconded by Mr. Jones, the foregoing Ordinance was duly enacted.

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

Nays: None

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: July 12, 2011

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

Amended on the Floor: July 26, 2011

Additional Sponsorship Requested: July 26, 2011

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July 26, 2011