

County Council of Cuyahoga County, Ohio

Ordinance No. O2012-0020

Sponsored by: Councilmembers Gallagher, Germana, Connally, Jones, Brady, Miller and Rogers and County Executive FitzGerald	An Ordinance establishing the Cuyahoga County Based Business Preference Program.
---	---

WHEREAS, Article VII, Section 7.01 of the Cuyahoga County Charter mandates that “the County shall develop and implement policies, programs and activities for the expansion and enhancement of economic activity in the County so as to create and preserve jobs and employment opportunities for and available to residents of the County; and,

WHEREAS, an objective of the Cuyahoga County Small Business Enterprise (SBE) Program is to spur economic development in the public and private sectors of the Cuyahoga County economy; and,

WHEREAS, the Cuyahoga County Council deems a Cuyahoga County Based Business Preference Program for County purchases, and for entering into agreements and awarding contracts to be critical to the economic vibrancy and development of the County; and,

WHEREAS, the County Executive / Office of Procurement & Diversity administers all County purchases, agreements, and contracts; and,

WHEREAS, all County purchases, and the manner of entering into agreements and contracts are governed by the Cuyahoga County Contracting and Purchasing Procedures Ordinance, and any applicable state and federal laws.

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

SECTION 1. Program. There is hereby created a Cuyahoga County Based Business (CCBB) Preference Program.

SECTION 2. Definitions. For purposes of this ordinance, a Cuyahoga County Based Business means:

- (a) an individual, domestic corporation, sole proprietorship, partnership, or joint venture whose principal place of business has been located in Cuyahoga County for at least three (3) years as registered in official documents filed with the Secretary of State of Ohio or the Cuyahoga County Fiscal Office. If

one party to a joint venture has its principal place of business in Cuyahoga County, the joint venture shall be considered as having its principal place of business in Cuyahoga County; or

(b) a business organization with a “significant economic presence” in Cuyahoga County. For purposes of this ordinance,

a. “Significant economic presence” means a business organization that has for at least three years

- i. Had a sales office, division, sales outlet or manufacturing facility in Cuyahoga County; and
- ii. Pays required taxes to Cuyahoga County; and
- iii. Has an annual gross payroll in Cuyahoga County of at least \$100,000.00.

SECTION 3. Match-Price Preference Option for Cuyahoga County Based Business. Unless otherwise prohibited by state, federal or local law, or condition of said funding, when the County has solicited bids and is determining the lowest price or the lowest evaluated price for purposes of awarding a purchase, agreement or a contract, and the lowest price or lowest evaluated price is submitted by a non-Cuyahoga County business, a Cuyahoga County Based Business whose bid is within two (2) percent of the lowest bid submitted by a non-Cuyahoga County Based Business bidder shall be given the option to match the lowest bid. The option to match shall remain open for five (5) business days. If there are more than one bid from a Cuyahoga County Based Business within the two (2) percent, the opportunity to match shall go to the lower priced bid by the Cuyahoga County Based Business. If there are more than one bid from a Cuyahoga County Based Business within the two (2) percent that are equal in price, the County shall allow all bidders to provide a new bid price within two (2) business days, and the evaluation will proceed based on the new pricing.

SECTION 4. SBE Certification and CCBB Qualification. When a business has been certified as a county SBE, and provided it meets the other definitional requirements of Section 2 (a) or (b), the business may qualify as a CCBB after at least one (1) year of continuous operation in Cuyahoga County, rather than the three (3) years required in Section 2.

SECTION 5. One Preference to Apply. If a business qualifies for both the SBE preference and the County Based Business Preference on a particular purchase, contract or agreement, only the larger preference shall apply.

SECTION 6. Application. The Cuyahoga County Based Business Preference Program applies solely to an entity with which the County is directly entering into a purchase, agreement, or contract, and not to subcontractors.

SECTION 7. Cuyahoga County Based Business Form.

- (a) The Office of Procurement and Diversity is directed to create a Cuyahoga County Based Business form, which shall be submitted by any entity desiring to participate in the Cuyahoga County Based Business Preference Program.
- (b) Any entity desiring to participate in the Cuyahoga County Based Business Preference Program must submit, with and at the time of the bid, proposal or qualifications, a completed, signed and notarized Cuyahoga County Based Business form.

SECTION 8. Verification of Information and Denial of Designation. The Director of the Office of Procurement and Diversity is hereby authorized to investigate and verify any information submitted with the Cuyahoga County Based Business form and may reject the designation of a Cuyahoga County Based Business if he or she believes the information on the form is inaccurate or the entity is ineligible to be designated as a Cuyahoga County Based Business. The Director of the Office of Procurement and Diversity may request additional information prior to approving or rejecting the designation of a Cuyahoga County Based Business.

SECTION 9. Appeal of Denial of Designation. If a designation of a Cuyahoga County Based Business is denied by the Director of the Office of Procurement and Diversity, the entity may submit a written complaint or appeal to the Director of the Office of Procurement and Diversity who shall notify the SBE Grievance Hearing Board. The written complaint or appeal by the entity shall be made within five (5) days to the Director of the Office of Procurement and Diversity upon receipt of the Director of the Office of Procurement and Diversity's decision. The SBE Grievance Hearing Board shall make every effort to hold the hearing no more than twenty (20) days from the date of receipt of the written complaint or appeal from the entity.

SECTION 10. Effect of Denial of Designation. If a designation of a Cuyahoga County Based Business is denied by the Director of the Office of Procurement and Diversity and/or the SBE Grievance Hearing Board, the entity cannot reapply for designation as a Cuyahoga County Based Business for a period of one (1) year from the date of the notice of denial.

SECTION 11. Waiver. The County may choose not to apply the County based Business Program to any particular purchase, agreement or contract by a Resolution of Council enacted prior to the beginning of the purchase process, or issuance of the RFQ, RFP, or bid package.

SECTION 12. Biennial Review. The Office of Procurement and Diversity shall conduct a biennial review of the economic and budgetary impacts of the Cuyahoga County Based Business Program and shall submit the results to Council during the biennial budget process beginning in 2013.

SECTION 13. Open Meetings Compliance. It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Rogers, seconded by Mr. Miller, the foregoing Ordinance was duly enacted.

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

Nays: Simon and Schron

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: July 24, 2012

Committee(s) Assigned: Finance & Budgeting

Committee Report/Second Reading: November 13, 2012

Substituted on the Floor: November 27, 2012

Journal CC008
November 27, 2012