

County Council of Cuyahoga County, Ohio

Ordinance No. O2016-0006

Sponsored by: County Executive Budish/Department of Law and Councilmembers Brady, Brown, Conwell, Hairston and Jones Co-sponsored by: Councilmember Miller	An Ordinance enacting Chapters 507 and 508 <u>and Section 207.03</u> of the Cuyahoga County Code to establish the County's Risk Management procedures and performance bond and insurance requirements, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, the Department of Law's Risk Management Division has been working on developing risk management practices, including performance bond requirements, to simultaneously promote the County's interest in contracting with small businesses and protect the County against risk; and

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

WHEREAS, the Law Department, through its Risk Management Division, shall submit within 60 days written guidelines regarding the process by which performance bond waivers shall be granted, and shall include consideration of equity between prospective bidders by way of offsetting the cost of obtaining performance bonds, and shall notify Council immediately when the offset is not considered; and

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

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

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

Chapter 507: Risk Management Procedures

The Law Department, through its Risk Management Division, in coordination with the Office of Procurement and Diversity, shall determine the appropriate risk management protections for county contracts, including but not limited to, all insurance and performance bond requirements. All such risk management

protections shall be subject to the review and approval of the contract approval authority that has jurisdiction over the award of the contract. Unless otherwise provided in the Cuyahoga County Code, insurance and bonding requirements shall be determined as set forth in Chapter 508 of the Cuyahoga County Code.

Section 507.01: Small Business Considerations

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

Chapter 508: County's Performance Bond and Insurance Requirements

Section 508.01: Performance Bond Requirements

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

Section 508.02: When Performance Bonds Are Not Required

(A) Performance Bond Waivers on Construction Contracts

Unless otherwise prohibited by federal, state or local law, or as a condition of funding or unless otherwise provided in the Cuyahoga County Code, Performance and Payment Bond requirements for construction contracts in the amount of \$250,000.00 or less may be waived for contractors or vendors who pre-qualify. This waiver does not include projects that include federal funding.

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

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

(C) Performance Bond Waivers for Non-construction Projects

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

(D) Reserve Coverage for Performance Bond Waivers

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

~~(E) For contracts competitively procured under this Title, the Law Department, through its Risk Management Division, in coordination with Public Works shall identify individual contracts for which Performance and Payment Bond requirements may be waived for pre-qualified contractors prior to the issuance of the Request for Bids, Request for Proposals, or other competitive solicitation. The Request for Bids, Request for Proposals, or other competitive solicitation shall include a notice to bidders that the Performance and Payment Bond requirements may be waived for pre-qualified respondents, and shall further request that respondents provide a cost estimate of obtaining any required Performance and/or Payment bonds for the contract. The cost estimates provided by respondents shall be excluded from the county's evaluation or scoring criteria.~~

Section 508.03: County's Insurance Requirements

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

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

Section 508.04: Updates to County's Insurance Requirements

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

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

Section 207.03 Diversity and Inclusion Advisory Committee

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

- (1) One representative appointed by the County Executive;
- (2) One representative from County Council appointed by the President of Council;
- (3) **One representative of the Greater Cleveland Partnership's Commission on Economic Inclusion jointly appointed by the County Executive and the President of Council;**
- (4) **One representative of the Urban League of Greater Cleveland jointly appointed by the County Executive and the President of Council;**
- (5) **One representative of the Hispanic Roundtable Community Programs jointly appointed by the County Executive and the President of Council;**
- ~~(3)~~(6) One representative ~~appointed by the Executive Director of the Cleveland Building and Construction Trade Council~~ **jointly appointed by the County Executive and the President of Council;**
- ~~(4)~~(7) One representative ~~appointed by the Executive Director of the Construction Employers Association or its delegate~~ **jointly appointed by the County Executive and the President of Council;** and
- ~~(5)~~(8) ~~One~~ **Two other** representatives jointly appointed by the County Executive and the President of Council ~~who is not affiliated with the Cleveland Building and Construction Trade Council or the Construction Employers Association or its delegate.~~

(B) **Appointments to the Diversity and Inclusion Advisory Committee shall be for a term of two years.** The Diversity and Inclusion Advisory Committee

Additional Sponsorship Requested: April 6, 2016

Committee Report/Second Reading: April 12, 2016

Legislation Amended on the Floor: April 26, 2016

[Clerk's Note: Legislation did not receive the affirmative vote of at least eight members of Council; therefore, it is not effective immediately.]

Journal CC022

April 26, 2016