

County Council of Cuyahoga County, Ohio

Ordinance No. O2021-0008

<p>Sponsored by: County Executive Budish</p> <p>Co-sponsored by: Councilmembers Miller and Simon</p>	<p>An Ordinance amending Chapters 507 and Sections 110.3, 205.01, 206.09 207.03, 501.06, 501.10, 501.12, 501.21, 501.22, 502.07, 502.08, 502.09, 502.10, 502.12, 503.02, 503.03, 503.05, 503.06, 503.07, 503.08, 505.05, 510.02, 510.04, 510.06, 510.07, and 510.08 of the County Code to reflect the dissolution of the Office of Procurement and Diversity and its replacement by the Department of Purchasing and the Department of Equity and Inclusion; and declaring the necessity that this Ordinance become immediately effective.</p>
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WHEREAS, Article X, Section 10.01 of the Charter provides for a Department of Purchasing to be responsible for the purchase of goods and services required for all offices of the County, other than separate political subdivisions, that are supported in whole or in part from taxes levied, or other financial assistance provided by the County; and

WHEREAS, in accordance with Article XIII, Section 13.04(1) of the Charter, prior to the Effective date of this legislation, the duties of a Department of Purchasing have been performed by the Office of Procurement and Diversity; and

WHEREAS, on [DATE] Cuyahoga County Council adopted O2021-0006 to clearly define the responsibilities of the Department of Purchasing; and

WHEREAS, on [DATE] Cuyahoga County Council adopted O2021-0007 to establish the Department of Equity and Inclusion to enhance diversity both within County government and throughout the community of Cuyahoga County; and

WHEREAS, The Department of Equity and Inclusion is now charged with some of the roles and responsibilities previously imposed upon the former Office of Procurement and Diversity by the County Code; and

WHEREAS this Ordinance eliminates codified references to the “Office of Procurement and Diversity” and the defined abbreviated term “OPD”, and replaces such references with references to either the Department of Purchasing or the Department of Equity and Inclusion consistent with their respective roles and responsibilities;

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 a County entity.

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

SECTION 1. Chapter 507 and Sections 110.3, 205.01, 206.09, 207.03, 501.06, 501.10, 501.12, 501.21, 501.22, 502.07, 502.08, 502.09, 502.10, 502.12, 503.02, 503.03, 503.05, 503.06, 503.07, 503.08, 505.05, 510.02, 510.04, 510.06, 510.07, and 510.08 of the County Code are hereby amended as follows (deletions are stricken, additions are bold and underlined):

Section 110.03: Procedures and Requirements for Electronic Delivery and Signatures

A. Procedures for Electronic Delivery and Execution of Legislation. The Department of Information Technology shall be responsible for developing and, as may be necessary, amending the manner, format, and security procedures governing the electronic delivery and execution of resolutions and ordinances, which shall be subject to the approval of the Director of Law. Upon being approved by the Director of Law, the procedures and any amendments shall be posted on the County's web site, with copies delivered via electronic mail to the County Executive, Council President, and their respective chiefs of staff. The County Executive or Council President may object to the proposed procedures or amendments within seven calendar days of their electronic receipt of the procedures by submitting the objections to the Director of Law via electronic mail. If the Director of Law does not receive objections from either the County Executive or the Council President within the seven day period, the procedures or amendments shall go into effect on the eighth day of being posted online and submitted to the Executive and Council President.

B. Procedures for Electronic Execution of Contracts, Agreements, Instruments, and Other Documents. The Department of Information Technology and the ~~Office of Procurement and Diversity~~ **Department of Purchasing** shall be responsible for developing and, as may be necessary, amending the manner, format, and security procedures for the electronic delivery and execution of contracts, agreements, instruments, and other documents other than legislation. These procedures shall be subject to the approval of the Director of Law and may go into effect as directed by the Director of Law.

Section 205.01 Board of Control

- A. Board of Control Established
1. Establishment: There is, hereby, created the Cuyahoga County Board of Control, consisting of seven 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~~ **Department of Purchasing**, and
 - e. Three members of Cuyahoga County Council, appointed by the President of Council, immediately following each Organizational Meeting of Cuyahoga County Council, who shall serve until their successors are appointed.
2. Jurisdiction: The Board of Control shall have jurisdiction to review, approve, or deny all of the following:
- a. Any contract, contract amendment, change order, purchase, sale, lease, grant, loan, exemption, procedure, or any other action that requires approval by the Board of Control pursuant to Chapter 501 of Cuyahoga County Code or any other County Code provisions.
 - b. Any other contract, contract amendment, change order, purchase, sale, lease, grant, loan, exemption, procedure, or other action that does not otherwise require approval by the County Council or Board of Control, but the County Executive determines to submit to the Board of Control for its consideration, review, and approval or denial.
 - c. Any other contract, purchase, sale, lease, grant made by the County, loan made by the County, or any procedure within the process of completing any such contract, purchase, sale, lease, grant, or loan for which the County Council, by Resolution or Ordinance of Council, requires approval of the Board of Control.
- B. County Council Vacancies: Whenever any of the three 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.
- C. Executive Branch Alternates: For each of the four executive branch members of the Board of Control, the County Executive shall appoint two alternates, one of whom 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.
- D. Council Alternates: At the same time that the President of Council appoints members to the Board of Control, the President of Council shall appoint at least three alternates who shall serve as a pool of alternates if any of the Council members are unavailable. Alternates shall be members or employees 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.

E. 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.

F. 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.

G. No Additional Compensation, Collective Action, and Conflicts of Interest:

1. 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.

2. The Board of Control is a board created by law, and its members act collectively, and in their official capacities, in the award of contracts and in taking any other action. It shall not be a conflict of interest for a Board member, including the County Executive or a director of a department or an office, to advocate before the Board, deliberate on, or vote for or against a contract or any other item involving his or her department or office. It also shall not be a conflict of interest for a Council Board member to advocate before the Board, deliberate on, or vote for or against a contract within his or her District or involving a purchase by the County Council.

H. 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.

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

J. Quorum: A quorum for the Board of Control shall consist of four (4) members attending personally or through their alternates.

K. Vote Required for Board of Control Actions: Except as provided in Section 501.04(A)(1)(g) of the County Code, 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.

L. Rules of Procedure:

1. The Board of Control shall, consistent with the provisions of this Section 205.01, adopt its own rules of procedure.

2. Should any conflict arise between the rules of procedure of the Board of Control and the County Code, the requirements of County Code shall prevail.

3. The rules of the Board of Control may include procedures for the approval or preapproval of time sensitive, mission critical purchases not to exceed \$25,000.00 for any one time sensitive, mission critical purchase item.

4. Nothing in this Section shall be interpreted to prohibit the Board of Control from utilizing consent agendas.

M. 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.

N. 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 6:00 p.m. 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.

O. 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, as determined by the County Executive in his or her discretion, or when the County Executive determines that it is advantageous to the County to have a special meeting, the Board of Control may conduct a meeting with less notice than that required by Section 205.01(N) of the County Code. For any special or emergency meeting, in addition to the notice requirements of Section 205.01(N), 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 24 hours notice 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.

P. 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.

Q. Executive Session: Notwithstanding the requirement in Section 205.01(M) 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 pursuant to the Ohio Open Meetings Act or any other general law permitting such Executive Session. 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.

R. 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.

S. Public Meetings and Public Records: The Board of Control shall be subject to all state and county laws concerning public meetings and public records.

T. 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 the ~~Office of Procurement and Diversity~~ **Department of Purchasing**, may set a deadline for the submission of items for the agenda by county departments for each meeting.

U. 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.

Section 206.09 County Equity Commission

A. **Composition:** To oversee the County's equity efforts, there shall be a Cuyahoga County Equity Commission consisting of the Directors of Development, Human Resources, Health and Human Services, **Equity and Inclusion** ~~Procurement & Diversity~~, and Public Safety and Justice Services, or their respective designees. The County shall use its internal resources to assist the Equity Commission with data collection and analysis.

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. The committee shall submit its advice and recommendation to the Director of the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion**. 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;
 6. One representative of the Cleveland Building and Construction Trade Council jointly appointed by the County Executive and the President of Council;
 7. One representative of the Construction Employers Association jointly appointed by the County Executive and the President of Council; and
 8. Two other representatives jointly appointed by the County Executive and the President of Council
- B. Appointments to the Diversity and Inclusion Advisory Committee shall be for a term of two years. The Diversity and Inclusion Advisory Committee shall elect its own chairperson.

Section 501.06 Law Department Empowered to Authorize Minor Deviations from Approval Actions.

The Law Department may authorize minor deviations from the original approval actions of contracts, revenue generating agreements, purchases, sales, leases, grants, loans, change orders, amendments, or any other approved transactions, including, but not limited to, the identification of the vendor's name and starting and ending dates. If the Law Department approves such deviations, the ~~Office of Procurement and Diversity~~ **Department of Purchasing** shall process the contractual documents. The Law Department shall report all such approved deviations from the original approval actions on a monthly basis to the requisite approval authorities.

Section 501.10 Purchases to be Executed by ~~Office of Procurement and Diversity~~ **the Department of Purchasing**

All purchases of goods and services shall be done by the ~~Office of Procurement and Diversity~~ **Department of Purchasing**, under the direction of the County Executive. The various departments may use office vouchers and procurement cards for purchases not to exceed \$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 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 \$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(D) 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.

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 \$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 \$50,000, 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~~ **Department of Purchasing** 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 \$50,000 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~~ **Department of Purchasing** 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~~ **Department of Purchasing**, 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 the Board of Control pursuant to Section 501.04 of the County Code.

Section 501.21 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 ensure compliance with the County Code and state and county ethics laws relating to contracting and procurement. Areas within the purview of such power shall include the following:

1. the establishment of bid specifications;
2. Bid submittals;
3. activities of contractors, including their departments, agents, and employees that specifically relate to performance on a contract with the county; and
4. 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 **Purchasing** ~~Procurement and Diversity~~, the Director of Law, the Prosecuting Attorney, and other appropriate officials, as needed, to ensure that proper action is taken in response to its findings.

Section 501.22 Purchasing Policy and Procedure Manual

The County Executive shall promulgate regulations to be implemented by the ~~Office of Procurement and Diversity~~ **Department of Purchasing** governing purchasing and contracting policies and procedures. The regulations shall be adopted in accordance with Chapter 113 of the County Code.

Section 502.07 Cuyahoga County Based Business Form

- A. The ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** 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 502.08 Verification of Information and Denial of Designation

The Director of the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** 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~~ **Department of Equity and Inclusion** may request additional information prior to approving or rejecting the designation of a Cuyahoga County Based Business.

Section 502.09 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~~ **Department of Equity and Inclusion**, the entity may submit a written complaint or appeal to the Director of the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** 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~~ **Department of Equity and Inclusion** upon receipt of the Director of the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion**'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 502.10 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~~ **Department of Equity and Inclusion** 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 502.12 Biennial Review

The ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** 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 503.02

A. The Small Business Enterprise Program is hereby expanded to allow the ~~Cuyahoga County Office of Procurement and Diversity (“OPD”)~~ **Department of Equity and Inclusion** to set aspirational Minority Business Enterprise and /or

Women Business Enterprise subcontractor participation goals for every Request for Bid, Request for Proposal, and Request for Qualifications issue by the County based upon available information including, but not limited to, the disparity study.

B. "Minority Business Enterprise" or "MBE" means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American or Asian-Indian American; and whose management and daily business operations are controlled by one or more of these owners as determined by ~~OPD~~ **the Department of Equity and Inclusion**.

C. "Women Business Enterprise" or "WBE" means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more women and whose management and daily business operations are controlled by one or more of these owners as determined by ~~OPD~~ **the Department of Equity and Inclusion**.

Section 503.03

A. In consideration of the right and privilege to submit a bid or proposal on construction projects and other contracts with Cuyahoga County, at the time of submitting a proposal or bid, each participant shall be required to present appropriate documentation. The documents described below must be completed and signed by each Participant before a proposal or bid can be considered responsive:

1. Covenant of Non-Discrimination: Each Participant must submit a duly executed and attested Covenant of Non-Discrimination (MBE/WBE-1) on a form prescribed by ~~OPD~~ **the Department of Equity and Inclusion**. This written instrument shall contain promises, declarations and/or affirmations made by the Participant. The completed document must contain an original signature and date of signature.

2. MBE/WBE Subcontractor Participation Plan: Each Participant must submit a duly executed, affirmed, and certified Subcontractor Participation Plan (MBE/WBE-2) on a form prescribed by ~~OPD~~ **the Department of Equity and Inclusion** for each MBE/WBE subcontractor proposed. Copies and/or facsimiles of MBE/WBE-2 submitted with bids/proposals are acceptable BUT all required signatures must be dated as indicated. Also, please note the following:

a. Certified MBE/WBEs who are bidding as prime contractors MUST complete and submit the top portion of Form MBE/WBE-2 to guarantee MBE/WBE credit.

b. MBE/WBEs with multiple geographical locations shall enter the Cuyahoga County address and contact information on Form MBE/WBE-2.

c. Prime vendors are PROHIBITED from using MBE/WBE(s) with whom the prime vendor has a familial relationship, joint or co-ownership, common

partners, officers, or a shareholder relationship to meet the MBE/WBE Participation Goal. Hence, on Cuyahoga County projects/contracts, any portion of work subcontracted to a MBE/WBE vendor by a prime vendor that meets the above-mentioned criteria will NOT count towards the achievement of the established MBE/WBE Participation Goal.

B. Use of 2nd Tier Subcontractors: In the event that a subcontractor portions out work and utilizes the services of a sub-subcontractor or vendor, the prime contractor shall be required to report this use to ~~OPD~~ **the Department of Equity and Inclusion**. For reporting purposes, the prime contractor shall report statistical data for the sub-subcontractor or sub-vendor, including race, gender, business size, area of specialization, dollar value, description of services or products purchased, and contact information. No MBE/WBE subcontractor will be permitted to subcontract more than 25% of their subcontract work (based on dollar value) without prior approval by ~~OPD~~ **the Department of Equity and Inclusion**.

C. Other Information and Data: ~~OPD~~ **The Department of Equity and Inclusion** may request additional information and data prior to a contract award. This information may include, but is not limited to, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, location, size, and area of specialization and structure of the identified businesses.

Aggressive “Good Faith Efforts” to include MBE/WBEs in the procurement process are required of all Participants. These Good Faith Efforts should be in addition to the Participant’s regular and customary solicitation process of contact with potential subcontractors and/or vendors.

D. Written Notice to MBE/WBEs: To demonstrate good faith efforts, a Participant shall deliver written or electronic notice to potential, MBE/WBEs. MBE/WBEs should be contacted not less than one (1) week before the bid or proposal due date. Names, addresses, and telephone numbers for available MBE/WBEs may be obtained by contacting ~~OPD~~ **the Department of Equity and Inclusion** or reviewing the database on the **Department of Purchasing** website at <http://opd.cuyahogacounty.us/>.

The written or electronic notice sent to potential subcontractors or vendors shall contain the following:

1. Sufficient information about the plans, specifications, and relevant terms and conditions of the solicitation. This should include information about the work which will be subcontracted or the goods which will be obtained from subcontractors and suppliers;
2. A contact person knowledgeable of the project scope documents, within the Participant’s office, to answer questions about the conditions of the contract;

3. Information as to the Participant's bonding requirements; and
 4. The deadline for price quotations.
- E. Evaluation of Good Faith Efforts: In evaluating good faith efforts, ~~OPD~~ **the Department of Equity and Inclusion** will determine whether the Participant has made reasonable good faith efforts to obtain MBE/WBE participation as part of its bid or proposal. ~~OPD~~ **the Department of Equity and Inclusion** may evaluate not only the different kinds of efforts made by a Participant, but also the quantity and intensity of those efforts. One method of evaluation will be whether the MBE/WBE goal has been met. Prime Contractors and any Participant herein shall be required to affirm and certify that information is correct in their bid/proposal and that they will meet or exceed the MBE/WBE Subcontractor Plan submitted with their bid/proposal. Prime Contractors also shall be required to report statistical data for its employees and proposed subcontractors that include race, gender, business size, area of specialization, dollar value, description of services or products purchased and contact information. Such information shall be certified and affirmed by the Prime Contractor when it submits the bid/proposal.

~~OPD~~ **The Department of Equity and Inclusion** will consider a completed Good Faith Effort Certification (MBE/WBE-3) as evidence of a Participant's good faith in trying to obtain MBE/WBE participation in a bid or proposal.

F. Required Documentation: To demonstrate good faith efforts, Participants shall keep detailed records of all correspondence and responses thereto, logs of all telephone calls made and received regarding the project or contract, confirmation receipts for fax transmissions, receipts from registered or certified mail, copies of advertisements in publications and other media, and other relevant papers required by this Program.

G. Good Faith Effort Certification: Participant must submit a completed Good Faith Certification (MBE/WBE-3) ONLY if the MBE/WBE Participation Goal is not met. In the MBE/WBE-3 form, Participant must certify that it interviewed and seriously considered MBE/WBEs and provide supporting documentation of that fact. Additional documentation demonstrating a good faith effort must accompany this document. The completed document must contain an original signature, notarizations, and date of signature.

H. Award of Contract: Proposals/ bids may be rejected and projects re-submitted for the sole purpose of attaining goals where inadequate "good faith effort" has been demonstrated. Cuyahoga County reserves the right to determine the action to be taken on the contract if a goal is not met, including rejecting any or all bids or proposals. If an awarded contract is later amended for additional dollars, MBE/WBE subcontractor participation should still reflect the percentage of dollars originally contracted for.

When evaluating a bid to determine the lowest and best bid, the County may consider, in addition to all of the other factors, whether a bid is MBE/WBE

compliant; provided, however, that such MBE/WBE compliance shall not be considered if the difference between the MBE/WBE-compliant bid and the lowest responsive bid is more than the price preference specified below.

Lowest Bid Received Range (\$)	Price Preference (%) Limit	Price Preference (\$)
0 – 500,000	10%	0 – 50,000
500,000. <u>01</u> – 1,000,000	10% up to max \$80,000 (10-8)	50,000. <u>01</u> – 80,000
1,000,000. <u>01</u> – 3,000,000	8% up to max \$210,000 (8-7)	80,000. <u>01</u> – 210,000
3,000,000. <u>01</u> - 5,000,000	7% up to max \$250,000	210,000. <u>01</u> – 250,000
> 5,000,000	\$250,000 maximum (≤5)	250,000. <u>01</u> maximum

Section 503.05

- A. Exclusions. This policy shall not apply to the following:
 1. “Sole Source” procurements under the Cuyahoga County ordinances which by their very nature limit the source of supply to one vendor.
 2. County purchases from political subdivisions/government entities;
 3. County purchases off state contracts, off federal contracts, and from joint purchasing programs.
 4. The acquisition of any interest in real property including lease holdings.
 5. Direct and indirect employee payments including payroll expenditures, pensions and unemployment compensation and other employee-related expenditures;
 6. Any other categories and subcategories of goods and services Cuyahoga County may from time to time establish as excluded contracts upon recommendation of the Director of the ~~Office of Procurement & Diversity~~ **Department of Purchasing** and approval by the Cuyahoga County Executive and Cuyahoga County Council.
- B. Application for Waiver. If the Contractor, consultant, supplier or vendor does not meet the project goal, the bidder or offer or may seek a partial or total waiver of the project goal. The application for waiver of all or part of the project goal shall include full documentary evidence of the Participant’s good faith efforts to meet the project goal and why the request for waiver should be granted. The application shall be notarized and submitted as a part of the bid or offer. Additional explanation, affidavits, exhibits or other materials may be required by the MBE/WBE Program to substantiate good faith efforts. Waivers may also be granted by ~~OPD~~ **the Department of Equity and Inclusion** for an acceptable explanation as to why the goals should be waived.
- C. Waiver for Detriment to Public Health, Safety or Financial Welfare. The MBE/WBE goal may be waived if the same causes a detriment to public health,

safety or the financial welfare of the County. The MBE/WBE may also be waived by ~~OPD~~ **the Department of Equity and Inclusion** in the event available MBE/WBEs provide price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cost, overhead and profit.

Section 503.06

~~OPD~~ **The Department of Equity and Inclusion** may prepare and/or amend forms to carry out the actions described herein. The forms shall be similar or the same as those that other governments, like the State and City of Cleveland, already have in place in an effort to make it simple and easy and encourage greater participation.

Section 503.07

The Director of the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Purchasing** or designee reserves the right and discretion to reject any bid or proposal for any reason or all bids or proposals for no reason at all without incurring any liability.

Section 503.08 Small Business Set Asides

- A. “Set Asides for Small Business Enterprises” are defined as the reserving of some or all of a Request for Bid, Request for Proposal, Request for Qualifications or contract exclusively for participation by Small Business Enterprises as determined by the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion**.
- B. The Small Business Enterprise Program set forth in Cuyahoga County Code Section 503.01 is hereby expanded to allow Requests for Bids, Requests for Proposals, Requests for Qualifications, and contracts to contain Set Asides for Small Business Enterprises exclusively for participation by Small Business Enterprises.
- C. The ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion** may prepare and/or amend forms to carry out the actions described herein. The forms shall be similar to those that other governments, like the State and City of Cleveland, already have in place in an effort to make it simple and easy and encourage greater participation from SBEs.
- D. The Director of the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Purchasing** or designee reserves the right and discretion to reject any bid or proposal for any reason or all bids or proposals for no reason at all without incurring any liability.
- E. Within 90 days of the effective date of this provision, the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion** shall, in collaboration with the Department of Public Works, develop written parameters the County will use to identify contracts or services eligible to be set aside for small business enterprises and shall submit such written

parameters to Council. On or before April 1 of each year starting in 2017, the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion** shall issue a report to Council outlining the status of the Small Business Enterprises Program, including the overall impact the program has had on correcting the disparities identified in the 2015 Cuyahoga County Disparity Study.

Section 505.05 Debarment Web Site

The County shall give notice of debarment under Chapter 505 of the Cuyahoga County Code on the County's web site as follows:

- A. The Agency of Inspector General shall maintain a listing on its web site of all debarred contractors. The listing shall include the date of the issuance of the debarment and the expiration thereof.
- B. The ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Purchasing** shall provide a link on its web site to the Agency of Inspector General's list of debarred contractors.
- C. The Agency of Inspector General shall exercise good faith efforts to expeditiously remove contractors from the list of debarred contractors upon the expiration of the debarment period or reversal of the Agency's debarment of a contractor.

Chapter 507: Risk Management Procedures

The Law Department, through its Risk Management Division, in coordination with the ~~Office of Procurement and Diversity~~ **Department of Purchasing**, 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 510.02

For the purposes of Chapter 510 of the Cuyahoga County Code:

"Minority Business Enterprise" means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian-Pacific American or Asian-Indian American; and whose management and daily business operations are controlled by one or more of these owners as determined by the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion**.

“Women Business Enterprise” means an individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that is at least 51% owned by one or more women and whose management and daily business operations are controlled by one or more of these owners as determined by the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion**.

“Inclusive Business” means:

- A. An individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that demonstrated a commitment to utilizing Minority Business Enterprises and/or Women Business Enterprises as subcontractors on three projects within the past two years as determined by the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion**; or
- B. An individual, domestic corporation, sole proprietorship, partnership, joint venture, entity or company that demonstrated that it hired and employed a diverse workforce based on payroll records within the past two years as determined by the ~~Cuyahoga County Office of Procurement and Diversity~~ **Department of Equity and Inclusion**.

Section 510.04

- A. The ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** is directed to create a Cuyahoga County Business Economic Inclusion Program form, which shall be submitted by any entity desiring to participate in the Cuyahoga County Business Economic Inclusion Program. Where appropriate and applicable, the form shall be the same or similar to those that other governments, like the State and City of Cleveland, already have in place in an effort to make it simple and easy and to encourage greater participation.
- B. An entity desiring to participate in the Cuyahoga County Business Economic Inclusion Program must submit, with and at the time of the bid, proposal or qualifications, a completed, signed and notarized Cuyahoga County Business Economic Inclusion Program form.

Section 510.05

The Director of the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** or designee is hereby authorized to investigate and verify any information submitted with the Cuyahoga County Business Economic Inclusion Program form and may reject the designation of an Inclusive Business if ~~he or she~~ **the Director of the Department of Equity and Inclusion** believes the information on the form is inaccurate or the entity is ineligible to be designated as an Inclusive Business. The Director of the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** or designee may request additional information prior to approving or rejecting the Inclusive Business designation.

Section 510.06

If an Inclusive Business designation is denied by the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion**, the entity may submit a written complaint or appeal to the Director of the ~~Office of Procurement and Diversity~~ **the Department of Equity and Inclusion** 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~~ **Department of Equity and Inclusion** upon receipt of the Director of the **Department of Equity and Inclusion** ~~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 510.07

If an Inclusive Business designation is denied by the ~~Office of Procurement and Diversity~~ **Department of Equity and Inclusion** and/or the SBE Grievance Hearing Board, the entity cannot reapply for designation as an Inclusive Business for a period of one (1) year from the date of the notice of denial.

Section 510.08

~~The Director of the Cuyahoga County Office of Procurement and Diversity or designee reserves the right and discretion to reject any bid or proposal for any reason or all bids or proposals for no reason at all without incurring any liability.~~

SECTION 2. 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 3. It is found and determined that all formal actions of this Council 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. Miller, seconded by Ms. Brown, the foregoing Ordinance was duly adopted.

Yeas: Miller, Sweeney, Tuma, Conwell, Brown, Stephens, Simon and Jones

Nays: Baker, Gallagher and Schron



County Council President

5/25/2021

Date



County Executive

5/25/2021

Date



Clerk of Council

5/25/2021

Date

First Reading/Referred to Committee: April 13, 2021

Committee(s) Assigned: Human Resources, Appointments & Equity

Additional Sponsorship Requested on the Floor: April 13, 2021

Committee Report/Third Reading: May 25, 2021

Additional Sponsorship Requested on the Floor: May 25, 2021

Journal CC042

May 25, 2021

[Clerk's Note: Electronic signatures affixed in accordance with Cuyahoga County Code Chapter 110]