



AGENDA
CUYAHOGA COUNTY PUBLIC WORKS, PROCUREMENT & CONTRACTING
COMMITTEE MEETING
WEDNESDAY, FEBRUARY 17, 2016
CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS
C. ELLEN CONNALLY COUNCIL CHAMBERS – 4TH FLOOR
10:00 AM

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENT RELATED TO THE AGENDA**
- 4. APPROVAL OF MINUTES FROM THE FEBRUARY 3, 2016 MEETING**
- 5. MATTERS REFERRED TO COMMITTEE**
 - a) R2016-0038: A Resolution authorizing the County Executive, on behalf of the County, to enter into a Memorandum of Understanding among City of Cleveland, Construction Employers Association, Hispanic Roundtable, Hard Hatted Women, Urban League of Greater Cleveland, Greater Cleveland Partnership, Cuyahoga Community College, Cleveland Metropolitan School District and Cleveland Building and Construction Trades Council regarding Community Benefits and Inclusion; authorizing the County Executive to execute the Memorandum of Understanding and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.
 - b) O2016-0004: An Ordinance enacting Sections 503.01(A) to 503.01(D) of the Cuyahoga County Code to expand the Small Business Enterprise Program to Allow Small Business Set Asides, and declaring the necessity that this Ordinance become immediately effective.

- c) O2016-0005: An Ordinance enacting Sections 503.02 to 503.07 of the Cuyahoga County Code to expand the Small Business Enterprise Program; and declaring the necessity that this Ordinance become immediately effective.
- d) O2016-0006: An Ordinance enacting Chapters 507 and 508 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.
- e) O2016-0007: An Ordinance enacting Chapter 510 of the Cuyahoga County Code to establish the Cuyahoga County Business Economic Inclusion Program, and declaring the necessity that this Ordinance become immediately effective.

6. MISCELLANEOUS BUSINESS

7. OTHER PUBLIC COMMENT

8. ADJOURNMENT

**Complimentary parking for the public is available in the attached garage at 900 Prospect. A skywalk extends from the garage to provide additional entry to the Council Chambers from the 5th floor parking level of the garage. Please see the Clerk to obtain a complimentary parking pass.*

***Council Chambers is equipped with a hearing assistance system. If needed, please see the Clerk to obtain a receiver.*



MINUTES

CUYAHOGA COUNTY PUBLIC WORKS, PROCUREMENT & CONTRACTING COMMITTEE MEETING

WEDNESDAY, FEBRUARY 3, 2016

**CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS
C. ELLEN CONNALLY COUNCIL CHAMBERS – 4TH FLOOR**

10:00 AM

1. CALL TO ORDER

Vice-Chairman Miller called the meeting to order at 10:08 a.m.

2. ROLL CALL

Mr. Miller asked Deputy Clerk Carter to call the roll. Committee members Miller, Conwell and Greenspan were in attendance and a quorum was determined. Committee member Simon entered the meeting after the roll call was taken. Committee member Germana was absent from the meeting.

A motion was made by Ms. Conwell, seconded by Mr. Greenspan and approved by unanimous vote to excuse Mr. Germana from the meeting.

3. PUBLIC COMMENT RELATED TO THE AGENDA

No public comments were given.

4. APPROVAL OF MINUTES FROM THE JANUARY 20, 2016 MEETING

A motion was made by Ms. Conwell, seconded by Mr. Greenspan and approved by unanimous vote to approve the minutes of the January 20, 2016 meeting.

5. MATTERS REFERRED TO COMMITTEE

- a) R2016-0031: A Resolution making an award on RQ35632 to Fabrizi Recycling, Inc. in the amount not-to-exceed \$3,184,870.00 for the 2016 Sewer Repair Program in various County Sewer Districts for the period 3/1/2016 - 2/28/2018; authorizing the County Executive to execute the contract and all other documents consistent with said award and this Resolution; and declaring the necessity that this Resolution become immediately effective.

Mr. Stan Kosilesky, Chief Deputy Engineer, addressed the Committee regarding Resolution No. R2016-0031. Discussion ensued.

Committee members asked questions of Mr. Kosilesky pertaining to the item, which he answered accordingly.

On a motion by Mr. Miller with a second by Ms. Conwell, Resolution No. R2016-0031 was considered and approved by unanimous vote to be referred to the full Council agenda with a recommendation for passage under second reading suspension of the rules.

6. MISCELLANEOUS BUSINESS

Mr. Miller announced that the Administration will be introducing legislation at the February 9, 2016 Council meeting regarding implementing findings from the Disparity Study.

7. OTHER PUBLIC COMMENT

No public comments were given.

8. ADJOURNMENT

With no further business to discuss and on a motion by Ms. Conwell with a second by Mr. Greenspan, the meeting was adjourned at 10:22 a.m., without objection.

County Council of Cuyahoga County, Ohio

Resolution No. R2016-0038

<p>Sponsored by: County Executive Budish and Councilmembers Brady, Brown, Conwell, Hairston, Jones and Miller</p>	<p>A Resolution authorizing the County Executive, on behalf of the County, to enter into a Memorandum of Understanding among City of Cleveland, Construction Employers Association, Hispanic Roundtable, Hard Hatted Women, Urban League of Greater Cleveland, Greater Cleveland Partnership, Cuyahoga Community College, Cleveland Metropolitan School District and Cleveland Building and Construction Trades Council regarding Community Benefits and Inclusion; authorizing the County Executive to execute the Memorandum of Understanding and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.</p>
--	--

WHEREAS, Article VII, Section 701 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, it is necessary that this Resolution 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 RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. That the Cuyahoga County Council hereby authorizes the County Executive, on behalf of the County, to enter into a Memorandum of Understanding among City of Cleveland, Construction Employers Association, Hispanic Roundtable, Hard Hatted Women, Urban League of Greater Cleveland, Greater Cleveland Partnership, Cuyahoga Community College, Cleveland Metropolitan School District and Cleveland Building and Construction Trades Council and other possible entities regarding Community Benefits and Inclusion.

SECTION 2. To the extent an exemption is required to enter into this Memorandum of Understanding, it is hereby granted.

SECTION 3. It is necessary that this Resolution become immediately effective for the usual daily operation of the County, the preservation of public peace, health or safety in the County, and any reasons set forth in the preamble. Provided that this Resolution 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 4. 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 _____, seconded by _____, the foregoing Resolution was duly adopted.

Yeas:

Nays:

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

First Reading/Referred to Committee: February 9, 2016
Committee(s) Assigned: Public Works, Procurement & Contracting

Journal _____
_____, 20__

**MEMORANDUM OF UNDERSTANDING
REGARDING COMMUNITY BENEFITS AND INCLUSION**

This Memorandum of Understanding ("MOU"), dated February 26, 2013, is among the Construction Employers Association ("CEA"), Hispanic Roundtable, Hard Hatted Women ("HHW"), the Urban League of Greater Cleveland ("ULGC"), Greater Cleveland Partnership ("GCP"), the City of Cleveland ("City"), Cuyahoga Community College ("Tri-C"), the Cleveland Metropolitan School District ("CMSD"), and the Cleveland Building and Construction Trades Council ("CBCTC") (collectively, the "Parties").

With a goal of reframing the public discourse on economic development in Cleveland to encourage collaboration to fuel economic growth, harness that growth to create a more equitable and inclusive local economy and create shared prosperity, the Parties agree as follows:

1. **Demand Driven Workforce Study**—The Parties will use their good-faith efforts to raise funds for a study of public and private sector real estate owners, developers, contractors, subcontractors, and others to determine near- and long-term demand for construction tradespersons (by trade discipline), construction administration and technology personnel (e.g., construction office, secretarial, accounting, safety, CAD, and support), and facilities maintenance personnel. This demand study will provide the basis for future pre-apprenticeship, apprenticeship, and other training in the Northeast Ohio area's high schools, community colleges, and workforce training programs. The Parties will consult with the Governor's office, Team NEO, GCP, foundations, and other parties that can support this important research effort.
2. **Pre-Apprenticeship and School-To-Registered-Apprenticeship Programs**—
 - a. Following completion of the workforce demand study and based upon its findings, the Parties, through CEA, will hire a qualified third-party (e.g., the Ohio State University College of Education and Human Ecology) to design a curriculum and high-school course of study for persons seeking careers in the trades, construction administration/technology, and facilities management.

The selected third-party will design the curriculum for review and approval by CMSD, Ohio Department of Education, Ohio State Apprenticeship Council, Tri-C, and/or other necessary approving authorities for high

school, pre-apprenticeship, and school-to-registered-apprenticeship curricula.

b. Once the Parties and necessary approving authorities have approved the curricula and course of study:

i. **Adult Pre-Apprenticeship Program**— The Parties will take reasonable and necessary steps to obtain approval for an adult pre-apprenticeship program operated by one or more qualified administrators or an administrative collaboration comprised of organizations such as the ULGC, Helmets to Hardhats, HHW, Cleveland Job Corps, Esperanza, Tri-C and/or Union Construction Industry Partnership-Apprenticeship Skill Achievement Program (“UCIP-ASAP”).

ii. **High School School-to-Apprenticeship Program**— The Parties will assist CMSD in forming and operating a new high school school-to-registered-apprenticeship program. Assistance will include:

1. provision of industry-specific training, as need and funding permit;

2. facilitated staffing of industry-specific volunteer working committees within CMSD; and

3. provision of technical advice to CMSD regarding the program’s structure, formation, and process of complying with and/or gaining recognition from the Ohio Department of Education and the Ohio State Apprenticeship Council.

iii. CMSD shall implement the school-to-registered-apprenticeship program at Max Hayes and other high schools by formally adopting the curriculum and courses of study and through articulation agreements with Tri-C and others, including, but not limited to, interested union apprenticeship training councils.

iv. Once the pre-apprentice programs described in paragraphs 2(b)(i) and (ii) are formed and operational, the Parties shall take reasonable and necessary steps to designate them, along with UCIP-ASAP to the extent it remains a stand-alone program, as preferred first-source pre-apprenticeship programs.

3. **Funding**— The demand study and program development services described in paragraphs 1 and 2(a) will be obtained through outside funding. GCP shall work in conjunction with the other Parties to mobilize funding for these items. The Committee (as defined in paragraph 7(a) hereinbelow), working within the framework of the GCP Commission on Economic Inclusion (“GCP/Commission”), shall apply for and receive the outside funding.

4. **Workforce Reporting**—

- a. The Parties shall use good-faith efforts to encourage private owners and developers of major construction and development projects (“Major Projects”) to enter into community benefits agreements (“CBAs”) with their contractors and appropriate constituency organizations relevant to the Major Project that include reporting of workforce information to the Committee (as defined in paragraph 7(a) hereinbelow). Within ninety days of the date of this MOU, the Committee shall determine the project-size threshold for defining a Major Project, as that phrase is used in this MOU. At least yearly, the Committee will review and determine whether to change the project-size threshold.
- b. The Parties’ goal is that the private owners and developers will use CBAs that contain provisions requiring contractors (and the contractors’ subcontractors) working on the Major Projects to report project-size information and certain monthly payroll information to the private owner/developer and the Committee. In that regard, the Parties shall use good-faith efforts to encourage inclusion of these paragraph 4 reporting requirements in the project-specific CBAs.
- c. The information to be reported monthly should include:
 - i. the number and percentage of all construction worksite hours performed by Cleveland residents;
 - ii. the number and percentage of all construction worksite hours performed by low-income persons who are Cleveland residents (with low-income status determined by reference to relevant guidelines established by the United States Department of Housing and Urban Development);
 - iii. the number and percentage of all work hours performed by minorities, broken out by race;
 - iv. the number and percentage of all work hours performed by women;

- v. usage of minority business enterprises, including, without limitation, the value of all contracts performed by minority business enterprises and the percentage of the total project cost represented by the value of the contracts performed by minority business enterprises;
- vi. usage of female business enterprises, including, without limitation, the value of all contracts performed by female business enterprises and the percentage of the total project cost represented by the value of the contracts performed by female business enterprises; and
- vii. apprenticeship utilization per trade, broken out by race and gender.

The Committee shall review from time to time the type of workforce information that it wishes to have reported.

- d. The Parties' goal is for the collected workforce data to be available to the public. The GCP/Commission shall develop the standards and guidelines under which the workforce data reported to the Committee will be made available to the public.
- e. GCP hereby expressly endorses the use of CBAs and the reporting of workforce data on Major Projects as defined herein. In that regard, GCP will require the use of CBAs and the above-referenced reporting as a condition of funding from Cleveland Development Advisors for any Major Project.

5. Mentor Protégé; MBE/FBE/SBE Contracting; Residential Workforce—

- a. Working together, the Parties shall use good-faith efforts to obtain the commitment of owners/developers, contractors, subcontractors, and design professionals to provide mentor-protégé and contract opportunities for MBE, FBE, and SBE contractors, design professionals, and others as determined by the owner/developer. The aspirational goals of the Parties are 15% MBE, 7% FBE, 8% SBE, and, for projects in the City of Cleveland, 20% Cleveland residents.

- b. When a private owner/developer establishes contracting goals for minority, female, or resident contractors, the Parties shall use good-faith efforts to secure the private owner/developer's commitment to:
 - i. pay all undisputed construction invoices within 30 days of the private owner/developer's receipt of a properly-submitted and correct invoice;
 - ii. incorporate the following into project bid specification documents and contracts for construction contractors at every tier:
 - 1. workforce reporting (as set forth in paragraph 4 of this MOU) by each prime contractor, in a manner that will be enforceable through the private owner/developer's contractual remedies;
 - 2. contractor and sub-contractor participation in a bona fide mentor-protégé program, in a manner that will be enforceable through the private owner/developer's contractual remedies; and
 - iii. take reasonable steps to relax contractual retainage and performance bonding requirements to assist MBE/FBE/SBE contractors.

6. Assistance to Contractors; Apprenticeship; and Pre-Apprenticeship Utilization—

- a. The Parties agree to use good-faith efforts to encourage private owners/developers of Major Projects to incorporate the following concepts into their CBAs:
 - i. Designation of the CMSD high-school-to-apprenticeship programs referenced in paragraph 2(b)(ii), the adult pre-apprenticeship programs referenced in paragraph 2(b)(i), and any other programs approved by the Committee (as defined in paragraph 7(a) hereinbelow) as preferred first-source pre-apprenticeship programs.
 - ii. When a contractor's request for employees to meet the private owner/developer's goals for minority, female, or resident employees cannot be or is not being met, or as otherwise required to meet the terms, conditions, and goals of this MOU, the private owner/developer shall have the right to direct the contractor to employ new apprentices who have completed one of the

pre-apprenticeship programs described in paragraph 2(b) above to meet the private owner/developer's goals or the terms, conditions, and goals of this MOU.

- iii. Requiring the contractor to provide eligible pre-apprentices the opportunities for apprenticeships as required to meet the terms, conditions, and goals of this MOU.
 - iv. With respect to each construction trade working on the Major Project, requiring contractors to utilize apprentices in amounts developed on a per-trade basis to fit the unique needs and circumstances of the Major Project. (The Parties note that the Ohio State Apprenticeship Council sets ratios of journeypersons to apprentices in the apprenticeship standards of apprenticeship programs registered with it, which may be consulted relative to the circumstance above.)
- b. CEA shall work with the pre-apprenticeship groups identified in paragraph 2(b) hereinabove and their respective registered apprenticeship programs to meet the goals of this MOU.
 - c. The Parties agree to use good faith efforts to encourage private owners/developers of Major Projects to work with qualified apprenticeship training organizations to meet the goals of this MOU.
 - d. At least quarterly, the Committee shall meet to evaluate compliance with the terms and conditions of this paragraph 6.

7. Construction Diversity & Inclusion Committee—

- a. The GCP/Commission shall form and facilitate a committee to monitor diversity and inclusion in the construction industry (the "Committee"). The Committee shall include representatives of each Party, other non-CBCTC unions signatory to CBAs, and others designated by the GCP/Commission, including other non-GCP private owners and developers signatory to CBAs.
- b. The Committee shall meet not less than quarterly and shall:
 - i. Review the data gathered pursuant to paragraph 4 of this MOU;

- ii. Discuss, agree upon and publish recommended best practices for improving diversity and inclusion in construction, such as:
 1. Workforce affirmative action measures to meet future market demand;
 2. Community benefit agreement terms to assist project owners and developers and small, minority, and female contractor businesses;
 3. Transparency; and
 4. Challenges faced by project owners/developers and contractors.
 - iii. Discuss and agree upon metrics from which the GCP/Commission shall publish an annual report card for Major Projects, participating owners/developers, and participating contractors.
 - iv. Monitor and assess pre-apprenticeship supply and demand as defined in the demand study set forth in paragraph 1 as well as similar demand studies in the future. The Committee also shall monitor and assess the progress of the pre-apprenticeship utilization efforts outlined in this MOU.
8. **Term and Termination**— Any Party may terminate its agreement to be bound by this MOU upon not less than thirty (30) days' written notice to all other Parties who, at the time of such notice, are still bound by this MOU.
9. **Signatures**— The parties to this MOU need not all sign on the same page. Signatures on separate pages and executed at different times will not affect the validity of the MOU. Original signatures and signatures provided by facsimile are equally valid.

[Signatures on next page]

CITY OF CLEVELAND, OHIO

[Signature]
Printed Name: Frank J. Taylor
Title: City Engineer
Date: 2/22/13

CLEVELAND METROPOLITAN SCHOOL DISTRICT

[Signature]
Printed Name: Eric S. Graham
Title: Chief Executive Officer
Date: 2/22/13

GREATER CLEVELAND PARTNERSHIP

[Signature]
Printed Name: Edlie Taylor
Title: CEO
Date: 2/20/13

URBAN LEAGUE OF GREATER CLEVELAND

[Signature]
Printed Name: MARSHA MOCKBEE
Title: President
Date: 2/26/13

CONSTRUCTION EMPLOYERS ASSOCIATION

[Signature]
Printed Name: Tony Panzera
Title: President
Date: 2/20/13

HISPANIC ROUNDTABLE

[Signature]
Printed Name: Jose Delicario
Title:
Date: 2/20/13

CUYAHOGA COMMUNITY COLLEGE

[Signature]
Printed Name: Robert A. Verhoff
Title: Director of Construction Program
Date: 2/26/2013

HARD HATTED WOMEN

[Signature]
Printed Name: Terri B. Sandu
Title: President
Date: 2.25.13

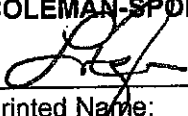
CLEVELAND BUILDING AND CONSTRUCTION TRADES COUNCIL

[Signature]
Printed Name: David O'Donoghue
Title: Executive Secretary
Date: 2/20/13

ENDORSEMENTS

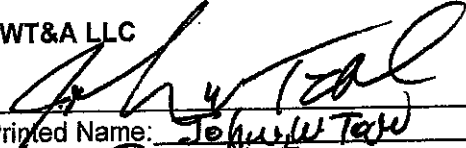
We, the undersigned African-American contractors, wholeheartedly endorse the terms and goals of the foregoing Memorandum of Understanding dated February 26, 2013.

COLEMAN-SPORN CORPORATION



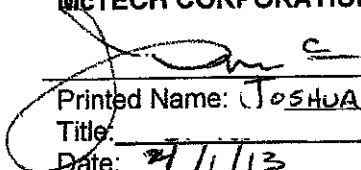
Printed Name: _____
Title: _____
Date: 3-13-2013

JWT&A LLC




Printed Name: John W. Taylor
Title: PRESIDENT
Date: 3/19/2013

McTECH CORPORATION



Printed Name: JOSHUA PERKINS
Title: _____
Date: 3/11/13

OZANNE CONSTRUCTION COMPANY



Printed Name: POMILU OZANNE
Title: CEO
Date: 3/14/13

County Council of Cuyahoga County, Ohio

Ordinance No. O2016-0004

Sponsored by: County Executive Budish/Office of Procurement and Diversity and Councilmembers Brady, Brown, Conwell, Hairston, Jones and Miller	An Ordinance enacting Sections 503.01(A) to 503.01(D) of the Cuyahoga County Code to expand the Small Business Enterprise Program to Allow Small Business Set Asides, and declaring the necessity that this Ordinance become immediately effective.
---	--

WHEREAS, Article VII, Section 701 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, 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. Section 503.01(A) of the Cuyahoga County Code is hereby enacted to read as follows:

Section 503.01(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.

Section 503.01(B)

The Small Business Enterprise Program set forth in Cuyahoga County Code Section 501.01 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.

Section 503.01(C)

OPD 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.

Section 503.01(D)

The Director of the Cuyahoga County Office of Procurement and Diversity or designee reserves the right and discretion to reject any and/or all bids or proposals for any reason or 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 _____, seconded by _____, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: February 9, 2016

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

Journal _____
_____, 20__

County Council of Cuyahoga County, Ohio

Ordinance No. O2016-0005

Sponsored by: County Executive Budish/Office of Procurement and Diversity and Councilmembers Brady, Brown, Conwell, Hairston, Jones and Miller	An Ordinance enacting Sections 503.02 to 503.07 of the Cuyahoga County Code to expand the Small Business Enterprise Program; and declaring the necessity that this Ordinance become immediately effective.
---	---

WHEREAS, Article VII, Section 701 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, 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. Section 503.02 of the Cuyahoga County Code is hereby enacted to read as follows:

Section 503.02

The Small Business Enterprise Program is hereby expanded to allow the Cuyahoga County Office of Procurement and Diversity (“OPD”) 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.

“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.

“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.

Section 503.03

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. 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 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.

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. 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.

Other Information and Data: OPD 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.

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 or reviewing the database on the 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.

Evaluation of Good Faith Efforts: In evaluating good faith efforts, OPD will determine whether the Participant has made reasonable good faith efforts to obtain MBE/WBE participation as part of its bid or proposal. OPD 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 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.

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.

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.

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
500,001 – 1,000,000	10% up to max \$80,000 (10-8)	50,000 – 80,000
1,000,0001 – 3,000,000	8% up to max \$210,000 (8-7)	80,000 – 210,000
3,000,001 – 5,000,000	7% up to max \$250,000 (7-5)	210,000 – 250,000
>5,000,000	\$250,000 maximum (≤5)	250,000 maximum

Section 503.04

All participants are subject to the Monitoring and Post-Award Reporting, Grievance Process, Sanctions and Penalties for Non-Compliance provisions of Cuyahoga County Code Section 503.01.

Section 503.05

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 and approval by the Cuyahoga County Executive and Cuyahoga County Council.

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 for an acceptable explanation as to why the goals should be waived.

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 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 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 or designee reserves the right and discretion to reject any and/or all bids or proposals for any reason or 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 _____, seconded by _____, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: February 9, 2016

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

Journal _____
_____, 20__

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	An Ordinance enacting Chapters 507 and 508 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.
---	---

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, 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 for Performance Bond Waivers under Section 508.02 of the Cuyahoga County 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.

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. 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 _____, seconded by _____, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: February 9, 2016
Committee(s) Assigned: Public Works, Procurement & Contracting

Journal _____
_____, 20__

County Council of Cuyahoga County, Ohio

Ordinance No. O2016-0007

Sponsored by: County Executive Budish/Office of Procurement and Diversity and Councilmembers Brady, Brown, Conwell, Hairston, Jones and Miller	An Ordinance enacting Chapter 510 of the Cuyahoga County Code to establish the Cuyahoga County Business Economic Inclusion Program, and declaring the necessity that this Ordinance become immediately effective.
---	--

WHEREAS, Article VII, Section 701 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, 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. Chapter 510 of the Cuyahoga County Code is hereby enacted to read as follows:

Chapter 510: Cuyahoga County Business Economic Inclusion Program

Section 510.01

There is hereby created a Cuyahoga County Business Economic Inclusion Program.

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.

“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.

“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 Female Business Enterprises as subcontractors on three projects within the past two years as determined by the Cuyahoga County Office of Procurement and Diversity; 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.

Section 510.03

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-Inclusive Business, an Inclusive Business whose bid is within two (2) percent of the lowest bid submitted by a non- Inclusive Business shall be given the option to match the lowest bid. The option to match shall remain open for five (5) business days. If there is more than one bid from an Inclusive Business within the two (2) percent, the opportunity to match shall go to the lower priced bid by the Inclusive Business. If there is more than one bid from an Inclusive 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 510.04

- A. The Office of Procurement and Diversity 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 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 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 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, 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 510.07

If an Inclusive Business designation is denied by the Office of Procurement and Diversity 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 and/or all bids or proposals for any reason or 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 _____, seconded by _____, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: February 9, 2016

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

Journal _____

_____, 20__