

PROPOSED ORDINANCE

NO. 2023 -

INTRODUCED BY COMMISSIONER(S): COMMISSIONER

AN ORDINANCE TO AMEND CHAPTER 120 OF THE WAYNE COUNTY CODE OF ORDINANCES, THE "PROCUREMENT ORDINANCE" TO: AMEND SECTION 120-33 TO REQUIRE THE DISCLOSURE OF BUSINESS RELATIONSHIPS FOR SOLE SOURCE PROCUREMENTS; AMEND SECTION 120-46 TO ELIMINATE THE REQUIREMENT FOR THE PAYMENT OF INTEREST ON OUTSTANDING BALANCES; AMEND SECTION 120-50 TO ELIMINATE THE EXEMPTION FOR GRANT FUNDED AGREEMENTS FROM RETROACTIVITY; AMEND SECTION 120-225 TO LOWER THE DOLLAR THRESHOLD FOR CONTRACTS REQUIRED TO DISCLOSE BUSINESS RELATIONSHIPS; AND TO AMEND SECTIONS 120-101, 120-193, 120-225, 120-226 AND 120-227 TO INCREASE THE TIME PERIOD FOR DEBARMENT FROM COUNTY PROCUREMENTS.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CHARTER COUNTY OF WAYNE:

SECTION 1: CODE OF ORDINANCES AMENDED

Chapter 120, Sections 120-33, 120-46, 120-50, 120-101, 120-193, 120-225, 120-226 and 120-227 of the Wayne County Code of Ordinances are amended to read as follows:

SECTION 120-33

Sec. 120-33. - Sole source.

(a) Any request by an agency or department head that a procurement be restricted to one potential source shall be accompanied by a letter from the using department signed by the department head stating why no other source will be suitable or acceptable to meet the needs. A contract may be awarded for a real property, supply, service, or construction item without competition when the purchasing director or his or his designee determines in writing that there is only one source for the required property, supply, service, or construction item or that the proposed award to a single source is a permitted non-competitive procurement as established herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the purchasing director, or his designee, has the authority to negotiate the price, terms, and conditions of the procurement.

(b) The purchasing director may treat a procurement as a sole source procurement under some documented circumstances where there are extremely limited suppliers of a given

commodity upon documented evidence from the requesting department that the comparable sources for the desired product are not in the county's best interest. Examples of this comparable source situation could include, but are not limited to, software applications, homeland security equipment, certain employee benefits, or designated professional services.

(c) County commission approval. Pursuant to section 120-121, certain sole source contract shall first be submitted for county commission approval.

(d) Any contracts awarded pursuant to subsections (a) and (b) of this Section shall comply with the disclosure requirements set out in Section 120-225 of this Chapter.

SECTION 120-46

Sec. 120-46. - Performance certification, past due payment, and payment.

(a) The chief financial officer shall establish a system to assure that the satisfactory performance of each procurement contract is promptly determined and certified, and that payment is promptly ~~ordered~~ issued, and also to assure that performance does not begin and payment is not made before it is authorized.

(b) Unless alternate terms which have a similar purpose and effect are otherwise agreed in writing, a requisitioning department or office shall take all steps necessary to assure that payment for services, supplies and construction is ~~mailed~~ issued to the business within 45 days after delivery and satisfaction of a contract, or receipt of a complete invoice for the same, whichever is later.

(c) If an invoice received by the requisitioning department or office is filled out incorrectly, or contains a defect or impropriety, the department or office shall notify the business within ten days after the invoice is received. The 45-day period shall be extended by each day over five days, which the business takes to make a correction.

~~(d) Except as provided in subsection (e), if payment owed by the requisitioning department or office to a business is past due, the department or office shall pay to the business an additional amount equal to an annual rate of nine percent for the time that the payment remains past due. The business shall not be required to submit a past due notice to collect the additional amount due. The Chief Financial Officer shall establish a means of determining fault for late payments, and shall assure that the cost of late payments is charged whenever feasible against the personnel accounts of the organizational unit or units found to be at fault.~~

~~(e) Subsection (d) shall not apply:~~

~~(1) If payment is delayed because of a good faith disagreement between the department or office and the business regarding contract performance, unless the dispute is resolved in favor of the business, or~~

~~(2) If the business's bid or the contract contains an alternate provision for late payment, and that amount is paid instead.~~

(d) The purchasing director shall assure that every contract which is awarded to a business who may in turn subcontract a part of the performance to a business which has been certified by the division of human relations as a small or disadvantaged business enterprise, shall contain third-party beneficiary provisions which establish for those businesses prompt payment protection from the prime contractor which is similar to that provided to the prime contractor from the county by this section. These provisions shall clearly declare that the county has and assumes no liability nor responsibility to the third-party beneficiary for payments to the third-party beneficiary.

(e) If a department headed by an elected official, or the county commission, submits a payment request, directing payment for a procurement which is a budgeted expense, and an adequate balance remains in the relevant account, the chief executive officer shall within ten business days after receipt of the payment request, direct the treasurer to pay the same. Payment requests for less than \$5,000.00 shall not require documentation of competitive solicitation. Payment requests from \$5,000.00 to \$50,000.00 shall contain ~~proof of efforts to comply with the requirements of this chapter~~ documentation of three (3) quotes to the extent practical. Payment requests of \$50,000.01 to \$149,999.99 shall require proof of solicitation in accordance with this Chapter. Payment requests of \$150,000.00 or more shall require a resolution of the county commission, unless stated otherwise in Section 120-121.

SECTION 120-50

Sec. 120-50. - Authorization of premature performance and payment and standard performance contract language.

(a) Performance or payment on a contract shall not commence or continue prior to required approvals and execution as set forth in this section.

(b) Contracts requiring Commission approval. If a Contract requires approval of the County Commission, then no Person shall Authorize Performance or payment on a Contract prior to approval by the County Commission, and execution by the Chief Executive Officer or for legislative branch contracts execution by the Chairperson of the County Commission.

(c) Contracts not requiring Commission approval. If a Contract does not require approval of the County Commission, then no Person shall Authorize Performance or payment on a Contract prior to approval and execution by the Chief Executive Officer or for legislative branch contracts approval and execution by the Chairperson of the County Commission.

(d) Oral and written representations. No Person shall make oral or written representation to another Person that he, she or it has authority to Authorize Performance or payment contrary

1 to this Section; and no Person shall rely on representations of any Person who purports to
2 Authorize Performance or payment contrary to this Section.

3
4 (e) Premature performance at own risk. Any Person that provides Performance prior to
5 approval and execution as required in Subsections (b) and (c) of this Section does so at his,
6 her or its, own risk; and to the extent provided by law, the Person shall agree to hold
7 harmless the County against actual damages, costs, expenses and liability of any kind that
8 the County sustains, incurs or is required to pay arising out of him, her or it rendering
9 Performance contrary to this Section.

10
11 (f) County Remedies. In addition to other remedies available to the County, the County may
12 retain compensation from any Person that claims the County owes him, her, or it
13 compensation as a result of the Person rendering Performance contrary to Subsections (b)
14 and (c) of this Section.

15
16 (g) Notice. All requests for proposals, qualifications or quotations; invitation for bids;
17 solicitation for quotations; other bid specification documents; proposal forms; and Contracts
18 (including purchase orders) for all procurements shall contain a written provision(s) that
19 provides notification of and requires every Person doing business with the County to comply
20 with the provisions of this Section 120-50.

21
22 (h) Personal liability. To the extent provided by law, a Person who violates this Section shall
23 be personally liable for actual damages, costs, expenses and liability of any kind, sustained,
24 incurred or required to be paid by the County arising out of his, her, its violation of this
25 Section.

26
27 (i) Required civil actions. The Department of Corporation Counsel shall institute a civil
28 action in the appropriate Court against a Person who violates this Section to recover any
29 actual damages, costs, expenses and liability of any kind on behalf of the County.

30
31 (j) Exceptions to required civil actions. The Department of Corporation Counsel is not
32 required to institute civil action under Subsection (i) if:

33
34 i. For contracts that require approval of the County Commission, the County
35 Commission approves the retroactive contract; or

36
37 ii. For contracts that only require approval of the Chief Executive Officer or
38 Chairperson of the County Commission, the Chief Executive Officer or Chairperson
39 of the County Commission, respectively, approve the retroactive contract.

40
41 (k) Additional county remedies. The Department of Corporation Counsel shall pursue all
42 legal remedies, including those set forth under Subsection h, if legal action is instituted
43 against the County or if the County settles a lawsuit or claim that is the direct result of
44 authorization, performance or payment in violation of this Section.

45

1 (l) Debarment. Violation of this Section may be cause to debar a Person from County
2 contracts.

3
4 (m) Employee disciplinary action. Notwithstanding any other provisions in this Section and
5 in accordance with any applicable collective bargaining agreement, an employee who
6 violates this Ordinance shall be subject to disciplinary action as determined by the
7 Department of Personnel and Human Resources, and/or the appropriate elected official or
8 his or her designee.

9
10 (n) Exempt contracts. This Section shall not apply to (1) grant agreements (agreements that
11 only provide funds to the county); (2) ~~grant-funded contracts;~~ (3) collective bargaining
12 agreements; (43) emergency procurements under Section 120-122; (54) unforeseen
13 emergency contracts for services related to election matters; (65) modifications to legal
14 service contracts for litigation purposes where the term of the initial contract has not
15 expired, so long as the modification is submitted to the County Commission for approval
16 within 30 days of commencement of work under the modification; and (76) insurance
17 policies.

18
19 (o) Exempt actions. For purposes of this Section, the following actions performed in the
20 regular course of a Person's job duties do not, alone without further action, constitute the
21 authorizing of Performance or payment under this Section: (1) the approval of a contract in
22 the then implemented and utilized document approval processing system, (2) the processing
23 of a payment request or opening of a requisition, or (3) the approval of a Retroactive
24 contract by the County Commission.

25
26 (p) Reporting.

27 i. For every Retroactive contract, the Department of Corporation Counsel shall
28 provide the County Commission, prior to its vote on the item, with a report outlining
29 any potential liability and legal exposure that could result if the Retroactive contract
30 is approved or not approved.

31
32 ii. The Director of the Department of Corporation Counsel or the Division of
33 Procurement shall submit to the County Commission a report by January 1 of each
34 year, which details the number of Retroactive contracts for the immediately
35 preceding fiscal year, the number of any related litigation/settlements and the results
36 thereof, the total financial impact to the County, any amounts recouped by the
37 County, the total amount of the County's exposure that resulted from violation of the
38 this Section and other pertinent information.

39
40 (q) Definitions. For purposes of this Section words, terms and phrases shall have the
41 following meanings:

42
43 i. 'Authorize' means (1) a communication of any kind, written or oral, that gives the
44 impression, assumption or representation express or implied that the person is
45 approving, authorizing, agreeing to or consenting to performance or payment; (2)

any action that directly or indirectly results in the issuing of funds by the County, including circumstances where any liability for payment is incurred prior to approval and execution; or (3) any action that directly or indirectly results in another person's performance, including circumstances where a contract commences prior to approval and execution.

ii. 'Contract' has the meaning assigned to the term in Section 120-251.

iii. 'Performance' means the furnishing of goods, or the initiation, discharge, or execution of services or construction.

iv. 'Person' means any individual, business, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other private legal entity or quasigovernmental entity or county component unit. Person includes, but is not limited to, employees, officials and contractors of the County of Wayne.

v. 'Retroactive' means performance rendered or payment issued for services, goods, or construction under a contract (1) prior to approval and/or execution as required in this Section; (2) that has expired even if the term is subsequently extended to include the time period of the Performance or payment; (3) that is unexpired but all approved funds have been exhausted; and (4) that is unexpired but a modification to amend the contract has not been approved as required in this Section.

(r) Findings. The County Commission finds that this Section is necessary for the proper conduct of public business and to safeguard public resources.

SECTION 120-101

Sec. 120-101. Authority to debar or suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, and after consulting with the corporation counsel, the Purchasing Director is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than ~~three~~ seven years. After consultation with the corporation counsel, the Purchasing Director is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity, which might lead to debarment. The suspension shall be for a period not to exceed ~~three months~~ seven years.

(a) The causes for debarment include:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any

- 1 other offense indicating a lack of business integrity or business honesty which
- 2 currently, seriously, and directly affects responsibility as a county contractor;
- 3 3. Conviction under state or federal antitrust statutes arising out of the submission
- 4 of bids or proposals;
- 5 4. Violation of contract provisions, as set forth below, of a character which is
- 6 regarded by the Purchasing Director or by the County Commission to be so
- 7 serious as to justify debarment action:
- 8 (a) Deliberate failure without good cause to perform in accordance with the
- 9 specifications or within time limit provided in the contract; or
- 10 (b) If not beyond the control of the contractor, a recent record of failure to
- 11 perform or of unsatisfactory performance in accord with the terms of one
- 12 or more contracts;
- 13 5. Violation of contract terms related to county equal opportunity policies or lack of
- 14 follow-through on an affirmative action commitment for which a preference was
- 15 initially extended;
- 16 6. Any other cause the Purchasing Director determines to be so serious and
- 17 compelling as to affect responsibility as a county contractor, such as, debarment
- 18 by another governmental entity for any cause listed in this article; and
- 19 7. Violation of the ethical standards set forth in article XII (ethics in public
- 20 contracting).
- 21 8. Performance in violation of a provision of Section 120-50 of this Chapter.

22

23

24 **SECTION 120-193**

25 Sec. 120-193. Administration of Policies.

26

27 (a) Division of human relations. The division of human relations shall, in accordance

28 with this chapter, and the policies, regulations and procedures established pursuant to this

29 section:

- 30
- 31 1. Certify that:
- 32 i. A business is an CBE, DBE, EBE, SBE, or TGCE; or
- 33 ii. A combination of businesses is a JV or MV;
- 34 2. Enforce the federal Title VI plan;
- 35 3. Monitor businesses which have been certified to ensure that the requirements of
- 36 certification continue to be met; and decertify those businesses which are found to be in
- 37 violation of their commitments;
- 38 4. Recommend to the Purchasing Director and the corporation counsel that action be
- 39 taken against any business which has violated the requirements of this chapter or has
- 40 committed any of the offenses listed in subsection (c.) of this section;
- 41 5. Provide technical assistance to applicants for certification with respect to the
- 42 application procedures;
- 43 6. Cooperate with the Purchasing Director in administering the program created by this
- 44 chapter;

1 7. Assist the Purchasing Director in the design and implementation of the policies,
2 regulations and procedures pertaining to this chapter; and

3 8. Monitor businesses which have made an anti-discrimination covenant pursuant to
4 section 120-194, and after consulting with the corporation counsel, debar a business from
5 further award of a county contract for up to ~~three~~ seven years.

6
7 (b) Duties of the Purchasing Director. The Purchasing Director shall, in accordance
8 with this subsection, and the policies, regulations and procedures established pursuant to
9 this section, in cooperation with the division of human relations, endeavor to administer
10 Section 120-191.

11
12 (c) Violations; sanctions.

13 1. A business which commits any of the following offenses shall be subject to the
14 sanctions set forth in subsection (c.)(2) of this section:

15 i. Obtaining certification through the use of fraud, misrepresentation or deceit;

16 ii. Failing to immediately report changes which affect certification; or

17 iii. Violating any provision of this chapter, or any policies, regulations or
18 procedures devised pursuant to this section.

19 2. Any one or all of the following actions may be taken concerning a business which
20 commits any of the offenses listed in subsection (c.)(1) of this section or which otherwise
21 violates any provision of this chapter, or policies, regulations or procedures devised
22 pursuant to this section:

23 i. The division of human relations may, for violations associated with certification,
24 in consultation with the corporation counsel, decertify and disqualify such business
25 from bidding on future contracts for a period of no more than three years;

26 ii. The Purchasing Director may, upon the recommendation of the corporation
27 counsel, rescind or terminate any and all contracts in whole or in part;

28 iii. The director of human relations may recommend to the Purchasing Director
29 that payments be withheld on any and all contracts;

30 iv. The Purchasing Director may, in consultation with the corporation counsel,
31 disqualify such business from bidding on future contracts for a period of no more
32 than three years; and

33 v. The Purchasing Director or director of human relations may refer a violation to
34 the corporation counsel for consideration of an injunction, liquidated damages or
35 other remedies as may be provided under contract or by law.

36 vi. The director of human relations may, for serious defaults in making good faith
37 efforts to comply with the anti-discrimination policies of section 120-192, debar a
38 business from bidding on future contracts for a period of no more than ~~three~~ seven
39 years.

40
41 (d) Assistance from other departments. All county departments shall cooperate with
42 and provide any information requested by the Purchasing Director or the division of
43 human relations for the establishment, administration and enforcement of this chapter.
44

(e) Grievance procedures. Any business aggrieved by a proposed finding, recommendation, proposal or other action to be implemented pursuant to this chapter shall file a written grievance in accordance with the policies, regulations and procedures devised pursuant to this section within ten days from the date of notice of such proposed action with the office of the Purchasing Director. The Purchasing Director shall review the grievance in accordance with the procedures to be established pursuant to subsection (e.) (2) of this section and render a written decision within 30 days from the date the grievance was filed. The written decision of the Purchasing Director shall be final.

(2) The Purchasing Director, in cooperation with the division of human relations, shall devise and operate the grievance procedures for the processing of complaints by any business aggrieved by any proposed finding, recommendation, proposal or other action to be implemented pursuant to this chapter.

(f) Conflicts. In the event of any conflict, inconsistency or incongruity between the requirements of this chapter and the requirements of any other ordinance of the county, the requirements of this chapter shall in all respects govern and control.

SECTION 120-225

Sec. 120-225. - Business must disclose relationships or a shared business venture.

(a) Before award of a contract over \$120,000.00, or which requires county commission approval, each principal beneficiary of a county business, and anyone who exercises significant discretion in making a bid or response, or in performing a specific contract, shall file with the purchasing director a disclosure, based upon their best knowledge and belief:

- (1) Of any relative or domestic partner relationship, or
- (2) Of any shared business venture, with any county employee whose name is on the contract managers list.

(b) A relative or domestic partner relationship exists:

- (1) If a principal beneficiary is a relative or domestic partner of a person on the contract managers list, or
- (2) If a relative or domestic partner of a person on the contract managers list has become employed by the county business within the previous 12 months, or
- (3) If there has been any discussion of the future employment of the person or of a relative or domestic partner of any person on the contract managers list within the previous 12 months.

(c) A shared business venture exists when the principal beneficiary and a county employee who is on the contract managers list each currently have a substantial financial interest in one or more of the same business ventures. If a shared business venture exists, then the contract shall be submitted for approval of the county commission, and it shall require the vote of at least ten commissioners to approve that contract.

(d) Before award of a contract of any amount, a county business shall file with the purchasing director a disclosure identifying a former county elected official, who held office within the previous 12 months, who has any interest in the county business. All such contracts shall be awarded and approved in accordance with chapter 40 of the Wayne County Code of Ordinances.

(e) The purchasing director shall keep business disclosures with the contract file for at least three years after submitted. If county commission approval is required of a contract, a copy of all relevant disclosures shall be included with the submittal.

SECTION 120-226

Sec. 120-226. Unfair Business Advantage.

To maintain the integrity of the County's contracting and purchasing procedures and to limit the possibility of a County business acquiring an unfair business advantage, a County business that hires a County employee or former County employee who is/was involved in the award or management of a contract to the County business shall be subject to debarment for a period of ~~one~~ three (~~13~~) years.

SECTION 120-227

Sec. 120-227. Sanctions for neglect or misrepresentation of required disclosures.

(a) Breach of contract. Each contract executed shall contain a provision which makes any material misrepresentation or delinquency in the disclosures required by section 120-225, by the business a material breach of the contract, sufficient to warrant immediate termination of the contract, and to further require the payment of liquidated damages equal to 15 percent of the compensation made or due under the contract as of the date of termination. Recovered compensation shall be credited to the fund from which initially disbursed.

(b) Debarment. If a county business is found to have made a material misrepresentation or to be willfully delinquent or knowingly evasive in the disclosures required by section 120-225, that business, and any other business which has substantially the same principal beneficiaries, may be debarred by the Purchasing Director, pursuant to article VI, from competing for any further county contracts for up to ~~three~~ seven years.

(c) Civil infraction. If a person is found to have made a material misrepresentation or to be willfully delinquent or knowingly evasive in making the disclosures required by section 120-225, that person shall be responsible for a civil infraction and may be fined for a civil penalty of up to \$500.00.

(d) Deliberate misrepresentation is a misdemeanor. If a person shall make a deliberate misrepresentation of a material fact upon a disclosure required under section 120-225,

1 that person shall be guilty of a misdemeanor, the penalty for which shall a term of up to
2 ninety (90) days in the Wayne County jail or in another facility contracted by the County,
3 or a fine of up to \$500.00, or both. In addition, The Wayne County Sheriff shall seek
4 reimbursement for the full costs of incarceration from a person convicted and sentenced
5 under this article.

6
7 (e) Duty of prosecuting attorney. The Wayne County Prosecuting Attorney may initiate
8 and prosecute the civil infraction and misdemeanor proceedings provided by this article.
9 The prosecuting attorney may also initiate a civil action for breach of contract on behalf
10 of the county against a business pursuant to section 120-227(a) if the corporation counsel
11 declines to do so. Allegations that the prosecuting attorney has violated this article shall
12 be referred to the Michigan Attorney General.

13
14 (f) Duty of county clerk and legislative auditor general. The county clerk shall
15 maintain a public file of all disclosures, and shall make copies available to the public
16 pursuant to the terms of the Freedom of Information Act. The county clerk shall have no
17 responsibility, however, for the enforcement of this article. The legislative auditor general
18 shall review the file from time to time and audit compliance with the requirements of this
19 article. Evidence of deliberate misrepresentation or willful neglect to comply with this
20 article shall be reported to the Wayne County Prosecuting Attorney.

21 22 23 **SECTION 2: SEVERABILITY**

24 The provisions of this Ordinance shall be severable. If a court of competent jurisdiction
25 declares any provision in this Ordinance invalid, illegal or unenforceable in any respect
26 for any reason, such invalidity, illegality or unenforceability shall not affect any other
27 provision in this Ordinance.

28 29 30 **SECTION 3: EFFECTIVE DATE**

31 This Ordinance is effective immediately upon adoption by the Wayne County
32 Commission.

33 34 35 **ADOPTED BY THE WAYNE COUNTY COMMISSION ???**

36
37 (2023-)
38