

# OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

## **Resolution Authorizing a Small, Minority and Disadvantaged Business Inclusion Program to Implement the Recommendations from the Disparity Study**

WHEREAS, the policy of the Ohio Turnpike and Infrastructure Commission (“Commission”) is to ensure that all businesses owned and controlled by minorities, females or otherwise disadvantaged individuals have the fullest possible opportunity to participate in its contracts; and

WHEREAS, in furtherance of its policy, the Commission adopted Resolution No. 18-2014 on March 24, 2014 authorizing the Executive Director to retain a consultant to conduct a study (“Disparity Study”) to determine whether any disparity exists between the availability of minority business enterprises (“MBEs”) or otherwise disadvantaged business enterprises (“DBEs”) to perform on its contracts and the Commission’s utilization of such businesses; and

WHEREAS, the Commission and the Ohio Department of Transportation (“ODOT”) jointly selected BBC Research & Consulting to perform studies on each entity’s contracting process, marketplace and selection results to determine whether a statistically significant disparity existed during the years 2010 through 2014 between the availability and utilization of MBEs and DBEs on their respective contracting opportunities; and

WHEREAS, in April 2016, BBC Research & Consulting reported to the Commission the results from the Disparity Study (“Report”), which details the Disparity Study’s findings and provides data, statistical analysis and anecdotal testimony constituting evidence that a disparity exists between the number of minority and female owned businesses that are ready, willing and able to perform the Commission’s contracts for construction, professional services and goods and support services and the number of such contractors actually participating in the Commission’s contracting opportunities; and

WHEREAS, Resolution No. 18-2014 further instructed the Executive Director to prepare a program that, to the fullest extent permitted by law, establishes goals for MBEs and DBEs to participate in the Commission’s contracts; and

WHEREAS, the Report presents recommendations to remedy the underutilization of MBEs and DBEs on the Commission’s contracts, which include improved monitoring of MBE and DBE participation, race and gender neutral measures to facilitate the participation of MBEs and DBEs on the Commission’s contracts, including establishing a Small Business Enterprise (“SBE”) program, and implementing narrowly tailored race and gender conscious remedial actions to address the inference of passive involvement in discriminatory conduct against minorities and female owned businesses if such neutral measures fail to eliminate the disparity between availability and utilization of MBEs and DBEs; and

WHEREAS, the Executive Director caused the creation of the Office of Equity and Inclusion in anticipation of the Disparity Study results, and which Office is prepared to administer a program resulting from the findings described in the Report; and

WHEREAS, the Executive Director recommends that the Commission authorize a Small, Minority and Disadvantaged Business Enterprise Inclusion Program to address the underrepresentation of small, minority and disadvantaged businesses participating in the Commission’s contracting opportunities through narrowly tailored means, including establishing a small business enterprise program and race- and gender-neutral measures to attain disadvantaged businesses as partners in fulfilling the needs of the Commission.

NOW THEREFORE, BE IT

RESOLVED, that the Ohio Turnpike and Infrastructure Commission has a compelling interest in ensuring there are equal opportunities for small, minority and otherwise disadvantaged businesses to participate in the Commission’s business transactions, preventing its contracting dollars from disparately affecting disadvantaged businesses, and eliminating the effects of discrimination on competition for its contracting opportunities; and

FURTHER RESOLVED, the Commission establishes a Small, Minority and Disadvantaged Business Enterprise Inclusion Program, described in the attached Exhibit A incorporated in this resolution as if fully rewritten herein, and authorizes the Executive Director to take all actions necessary, reasonable or prudent to implement the Program.

**(Resolution No. 43-2016 adopted June 20, 2016)**



# Ohio Turnpike and Infrastructure Commission

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| <b>Policy:</b> Establish a Small, Minority and Disadvantaged Business Enterprise Inclusion Program to Implement the Recommendations from the Disparity Study | <b>Authorized by:</b><br>Commission<br>Resolution No. __-2016 |
| <b>Department:</b> Executive Director  | <b>Effective Date:</b><br>June 20, 2016                       |
| <b>Policy No.:</b> 1000.127  |   |

## 1. Purpose:

At the request of the Commission, BBC Research & Consulting and Exstare Federal Services Group, LLC analyzed the race and gender composition of the businesses available to supply goods and services to the Commission with the businesses actually utilized under Commission contracts. The report describing the analysis, its conclusions and recommendation was delivered to the Commission in April 2016 (“Disparity Study”). The Disparity Study identified significant disparities, based on both statistical and anecdotal evidence, between the availability and utilization of minority and female business on Commission contracts. While the Disparity Study found that the Commission does not directly discriminate on the basis of race or gender, substantial disparities exist that could constitute a basis to support an inference of passive participation in discrimination.

In response to the Disparity Study, the Commission authorized this Small, Minority and Disadvantaged Business Enterprise Program that serves to directly and narrowly advance the Commission’s compelling interest to ensure there are equal opportunities for small, minority and otherwise disadvantaged businesses to participate in the Commission’s business transactions, prevent its contracting dollars from contributing to discriminatory conduct, and remedy the effects of discrimination within the Commission’s marketplace.

## 2. Authority/Reference:

Sections 5537.03 and 5537.04 of the Revised Code  
Resolution No. 18-2014, adopted March 24, 2014  
Resolution No. \_\_\_\_\_, adopted June 20, 2016

## 3. Program:

The Commission establishes a Business Inclusion Program for Small, Minority and Disadvantaged Business Enterprises (“Business Inclusion Program”) to provide the maximum feasible opportunity for small, minority or otherwise disadvantaged businesses to participate fully in its contracts. The Business Inclusion Program shall institute race- and gender-neutral measures in furtherance of its purpose for soliciting, evaluating and selecting bidders proposing to furnish any goods or services for the Commission. The Business Inclusion Program will assist in removing barriers and fostering opportunities for minority and otherwise disadvantaged businesses to engage in transactions with the Commission. These race- and gender-neutral measures include, but are not limited to, the following:

- A. The Office of Equity and Inclusion is responsible for administering the Business Inclusion Program, and every employee is responsible for actively assisting in implementing its tenets and fulfilling its purpose.
- B. Certifying entities meeting established standards for recognition as Small Business Enterprises (“SBEs”), and broadly promoting the directory of certified SBEs among employees and prime contractors.
- C. Establishing annual overall and contract specific participation goals for SBEs in the various contracting opportunities with the Commission. Each department shall use its best efforts to utilize SBEs as contractors and subcontractors for all business opportunities in a manner that meets or exceeds the goals.
- D. Imposing obligations for bidders on contracts in excess of \$50,000.00 to demonstrate its good faith efforts to achieve the contract specific participation goals for SBEs, and obligations to attain participation through contract performance that meets or exceeds the bidders’ representations.
- E. Broadly promoting contracting opportunities and delivering timely information to potentially interested businesses on contracting procedures, bid submission requirements and direct specific contracting opportunities.
- F. Issuing and advertising invitations for bids and requests for proposals that solicit offers on quantities, specifications, scopes of services and completion schedules that facilitate widespread interest in competing for the contracting opportunity and also ensuring that the Commission continues to make reasonable, efficient and economical expenditures.
- G. Segmenting contracts into scopes of work and services that are strategically packaged to facilitate the participation of SBEs in the various opportunities to contract with the Commission, where feasible.
- H. Identifying elements of the contract or specific subcontracts that are of a size that small businesses can reasonably perform.
- I. Encouraging prime contractors to provide subcontracting opportunities of a size that small businesses can reasonably perform, rather than bundling the opportunities or self-performing all the work involved.
- J. Holding pre-bid conferences, where appropriate, to explain the projects and to assist bidders by identifying available businesses to perform as subcontractors.
- K. Adopting procedures to enforce the prompt payment obligation of prime contractors to pay amounts owing to subcontractors for work completed.

- L. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the Commission and subcontracting with the prime contractors.
- M. Adopting procedures to administer the prohibition on the termination or substitution of subcontractors without approval.
- N. Maintaining information on all plan holders bidding on Commission contracts and facilitate its utilization for subcontractors.
- O. Applying established standards to certify entities as owned and controlled by minority and otherwise socially and economically disadvantaged individuals as Minority Business Enterprises (“MBEs”) and Disadvantaged Business Enterprises (“DBEs”).
- P. Gathering, tracking, monitoring, maintaining and reporting prime contracting and subcontracting data for the participation of SBEs, MBEs and DBEs in the Commission’s contracts.

If the Executive Director deems additional race and gender neutral measures are necessary, the Business Inclusion Program may include one or more of the following preferences for contracting with SBEs:

- A. Applying a bid discount preference of five (5) percent to bids received from SBEs exceeding \$50,000.00, but cap the value of the bid discount at an amount that ensures the Commission will continue to make reasonable, efficient and economical expenditures. The discounted bid preference for SBEs is used for bid evaluation purposes only. The application of the bid discount preference does not alter the pricing under contract based on the actual bid amount of the SBEs.
- B. Granting SBEs that submit responsive and responsible bids within five (5) percent of the apparent low bid that is less than \$50,000.00, or otherwise not subject to the requirements of Section 5537.07 of the Revised Code, an option to match the low bid amount and award the contract using the low bid pricing.
- C. Applying an evaluation credit of five (5) percent to the total points awarded for proposals received from SBEs.

The Business Inclusion Program will be assessed for the efficacy of its race- and gender-neutral components at least annually beginning one (1) year after implementation. Should the program fail to adequately eliminate the underutilization of minority and female owned businesses, as identified in the Disparity Study for each contract category, the Executive Director may implement narrowly tailored race- and gender-conscious aspects to the Business Inclusion Program. A narrowly tailored race- and gender conscious program is deemed necessary to ensure there are equal opportunities for small, minority and otherwise disadvantaged businesses to participate in the Commission’s business transactions and remedy passive participation in discrimination within the Commission’s marketplace. In addition to continuing to use the generally applicable race- and gender-neutral measures

outlined above, the Executive Director may order that the Business Inclusion Program incorporate one or more narrowly tailored race- and gender-conscious measures that include, but are not necessarily limited to, the following:

- A. Establishing annual overall and contract specific participation goals for MBEs and DBEs in the Commission's various contracting opportunities. Each department shall use its best efforts to utilize MBEs and DBEs as contractors and subcontractors for all contracts in a manner that meets or exceeds the goals.
- B. Imposing obligations for bidders on contracts in excess of \$50,000.00 to demonstrate its goods faith efforts to achieve the contract specific participation goals for MBEs and DBEs, and obligations to attain participation through contract performance that meets or exceeds the bidders' representations.
- C. Applying a bid discount preference of five (5) percent to competitive sealed bids received from MBEs and DBEs exceeding \$50,000.00, but cap the value of the bid discount at an amount that ensures the Commission will continue to make reasonable, efficient and economical expenditures. The discounted bid preference for MBEs and DBEs is used for bid evaluation purposes only. The application of the bid discount preference does not alter the pricing under contract based on the actual bid amount of the MBE or DBE.
- D. Granting MBEs and DBEs that submit responsive and responsible bids within five (5) percent of the apparent low bid that is less than \$50,000.00, or otherwise not subject to the requirements of Section 5537.07 of the Revised Code, an option to match the low bid amount for award of the contract using the low bid pricing.
- E. Applying an evaluation credit of five (5) percent to the total points awarded for proposals received from MBEs and DBEs.

The race and gender conscious measures shall terminate six (6) years after implementation unless reauthorized by the Commission. The Commission will determine whether continued narrowly tailored race and gender specific remedial actions are necessary to further its compelling interests in ensuring there are equal opportunities for small, minority and otherwise disadvantaged businesses to participate in the Commission's business transactions, preventing its contracting dollars from disparately affecting minority and women owned businesses, and eliminating the effects of discrimination on competition for its contracting opportunities.