

# **OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION**

## **Resolution Extending the Ohio Turnpike and Infrastructure Commission's Business Inclusion Program for an Interim Period of One-Year**

WHEREAS, the policy of the Ohio Turnpike and Infrastructure Commission ("Commission") is to ensure that all disadvantaged businesses and all businesses owned and controlled by minorities and females have the fullest possible opportunity to participate in contracts involving the expenditure of Commission funds, including leases, purchase orders and all forms of agreement where work, labor, services, supplies, equipment and materials, or any combination of the foregoing; 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, in April 2016, BBC Research & Consulting reported to the Commission the results from the Disparity Study. The Disparity Study found that a disparity existed between the number of minority and female owned businesses that were 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. The Disparity Study found that disparity was based on societal discrimination, not any discriminatory practices on the part of the Commission was; and

WHEREAS, to remedy the underutilization of minority and female owned businesses on the Commission's contracts, the 2016 Disparity Study recommended: (i) improved monitoring of minority owned business enterprises ("MBEs") and disadvantaged business enterprises ("DBEs") on the Commission's contracts; (2) establishing a race and gender neutral small business enterprise ("SBE") program; and (3) implementing narrowly tailored race and gender conscious remedial actions to address the inference of passive involvement in discriminatory conduct against minority and female owned businesses if such neutral measures fail to eliminate the disparity between availability and utilization of MBEs and DBEs; and

WHEREAS, pursuant to Resolution No. 43-2016 adopted on June 20, 2016, the Commission established a Small, Minority and Disadvantaged Business Inclusion Program (the "Program") with the purpose of "...ensuring there are equal opportunities for small, minority and otherwise disadvantages 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

WHEREAS, the Program was authorized for an initial period of six (6) years, subject to review and reauthorization by the Commission, and that initial six (6) year period expires as of June 19, 2022; and

WHEREAS, the Program is implemented under the Office of Equity and Inclusion Standards and Practice Manual for the Small, Minority and Disadvantaged Business Enterprise Inclusion Program (the "Program Manual") which provides procedures for program administration, certification of firms, establishing contract goals, contract award procedures, contract performance measures, enforcement, and program review and reauthorization; and

WHEREAS, the Program Manual provides, in pertinent part: "[t]he Program shall automatically terminate six (6) years after the date of adoption by the Commission, unless reauthorized by the Commission. The Commission shall determine whether there exists strong basis of evidence of discrimination such that the Program should be continued and ensure that the Program's goals and operations remain narrowly tailored based upon the evidence;" and

WHEREAS, beginning in 2021, the Commission agreed to partner with the Ohio Department of Transportation, Division of Opportunity, Diversity, and Inclusion, to jointly contract with a consultant to perform an Availability Study to identify the availability of SBEs in various

industries in the Commission's market area and assist the Commission in reviewing its Program aspirational goal based on that data and, furthermore, to use the information from the Availability Study to make improvements to the Program in conjunction with other recommended changes; and

WHEREAS, the Program has been administered through the Department of Contracts Administration and/or Legal Department by a Business Inclusion Manager who has provided the Commission with Program reports as required by the Program Manual, the most recent report being the 2018-2019 Report which due to the COVID-19 pandemic was provided to the Commission at its meeting on March 15, 2021; and

WHEREAS, the Office of Equity and Inclusion has prepared a 2020-2021 Annual Report which is currently before the Commission and, in summary, reports the following:

- During the reporting period, the contractors met the project specific goals showing a balance between SBE availability and utilization.
- The Commission is currently working with a consultant under an ODOT contract to prepare an Availability Study, the results of which will assist the Commission with setting overall aspirational SBE goals backed by data of available companies within the contracting market, but this study will not be completed until later in 2022.
- Challenges encountered during the COVID-19 pandemic, including the vacant Business Inclusion Program Manager position impacted successful implementation of program improvements and, as a result, a similar list of improvements is contained in the 2020-2021 Annual Report: (1) a need to capture all data from all contracts, including small contracts (under \$50,000), purchase card transactions and revenue generating concession contracts; (2) training and education of Commission personnel on procurement procedures; (3) cross-department communication at project outset about goal setting; (4) completing an Availability Study to update the Program's overall aspirational SBE goal.

WHEREAS, based on the foregoing, the Program is currently meeting or exceeding the 2016 aspirational goals for SBE utilization, and it is imperative to complete the Availability Study in order to have the data necessary to establish an updated aspirational goal based on current data which continues to further to Program's objectives; and

WHEREAS, the Director of Contracts Administration recommends that the existing Program be extended for an interim period of one-year, subject to formal review and reauthorization by the Commission at that time, including a plan for Program improvements and changes based on the results of the Availability Study; and

WHEREAS, the Executive Director has reviewed the recommendation of the Director of Contracts Administration and recommends that the Commission extend the Program for an interim one-year period, until June 19, 2023, when the Office of Equity and Inclusion will present the Commission with a recommendation for reauthorizing the Program subject to necessary changes based on the Availability Study and other best practices.

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED, that the Commission extends the existing Business Inclusion Program for an interim period of one-year until June 19, 2023, at which time the Office of Equity and Inclusion will have the results of the Availability Study and be able to present to the Commission a formal request to reauthorize the program with necessary improvements and changes to ensure the Program continues to serve its intended purpose.

**(Resolution No. 35-2022 adopted May 16, 2022)**