



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Details (With Text)

File #:	19-2297	Version:	2	Name:	Good Faith Effort Transparency Reporting Ordinance
Type:	Ordinance	Status:			Approved
File created:	3/11/2019	In control:			Contract Compliance Committee
On agenda:	3/21/2019	Final action:			5/23/2019
Title:	Proposed Second Amendment to File #19-2297 (Contract Compliance Committee May 22, 2019) PROPOSED AN ORDINANCE CREATING THE GOOD FAITH EFFORT TRANSPARENCY REPORTING				

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 281 - The Good Faith Effort Transparency Report - Section 34-283 - Contract Compliance Director Waiver Transparency Reporting is hereby enacted as follows:

Sec. 34-281 - The Good Faith Effort Transparency Report.

Any Person who seeks a partial or full waiver request shall submit a Good Faith Effort Transparency Report upon its partial or full waiver request. The Good Faith Effort Transparency Report shall include:

- (g) A detailed list of any and all PCEs whom the Contractor, Person, or Business engaged, contacted, and/or reviewed, in the County's Marketplace, from the County's list of PCEs and/or other State and local government agencies, whom Cook County recognizes and/ or has a reciprocity agreement with, which identify qualified PCEs for solicitation of bids, for the purposes of securing a bid with the County;
- (h) A detailed explanation of the Contractor, Person, or Business' proposed divided procurement requirements. This explanation will include, but not limited to;
- How the Contractor, Person, or Business proposed to divide the procurement requirements into small tasks and/or quantities into economically feasible units to promote PCE participation; and
 - Whether the proposed procurement requirement divisions are consistent with availability of PCEs;
- (i) A detailed explanation of the Contractor, Person, or Business' negotiations in good faith with PCEs. If the Contractor, Person, or Business fails to contact a PCE, this explanation will include, but is not limited to;
- The timeliness when the Contractor, Person, or Business knew of the bid, when the Contractor, Person, or Party formulated its bid and utilization plan, and the bid request due date;
 - A detailed explanation of timely attempts to contact PCEs providing the type of supplies, equipment, goods, and/or services required for the Procurement. This explanation will include, but is not limited to;
 - Dates of contact attempts;
 - With whom, if anyone, the Contractor, Person, or Business communicated and/or corresponded (including written, virtual, digital, electronic, and other feasible methods of communication); and
- iii. The number of unsuccessful attempts to communicate or correspond with PCEs;
4. A detailed explanation of the Contractor, Person, or Business' negotiations in good faith with PCEs. If the Contractor, Person, or Business successfully contacts a PCE, this explanation will include, but is not limited to;
- a. A detailed explanation regarding why the PCE was incapable of inclusion for the Contractor,

Person, or Business' bid;

b. A description of the information provided regarding the plans and specifications for the work selected for subcontracting and why agreements were unreachable;

i. The Contractor, Person, or Business shall not determine and reject PCEs as unqualified without sound reasons. The Contractor, Person, or Business shall not consider some additional costs involved in finding and using PCEs as the sole reason for the Contractor, Person, or Business' failure to meet the Goals, as long as such costs are reasonable, as determined by the CCD and Board.

c. A detailed explanation regarding a Contractor, Person, or Business' efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; and

d. A detailed explanation of any and all adjusted insurance requirements imposed by the Contractor, Person, or Business seeking PCEs, including but not limited to;

i. Whether the Contractor, Person, or Business assisted PCEs in obtaining any required insurance, where economically feasible, to encourage participation by PCEs.

5. The Contractor, Person, or Business applying for a waiver shall sign the Good Faith Effort Transparency Report. If the Contractor, Person, or Business is a domestic business organization or authorized to conduct business in Illinois, the signee shall be any, employee, agent, and/ or officer authorized to sign on behalf of the Contractor, Person, or Business. The Contractor, Person, or Business' attestation/signature will serve as confirmation the Contractor, Person, or Business provided accurate, complete, and truthful information. Any finding of false, omitted, fraudulent, and/or otherwise misleading information will lead to automatic rejection of the waiver request. The Cook County Office of Contract Compliance reserves the right to pursue additional actions and/or remedies against the requesting Contractor, Person, or Business.

6. The Good Faith Effort Transparency Report shall be due at the time the bid or proposal is due. In the event a bid or proposal leads to a Contract with the County, the Good Faith Effort Transparency Report, as approved by the CCD, shall be incorporated into the Contract. Failure to include a Good Faith Effort Transparency Report upon submission of a request for a partial or full waiver shall result in no consideration for waiver and render the bid or proposal not Responsive.

7. Once the CCD approves a Good Faith Effort Transparency Report, the Contractor, Person, or Business may not change the Good Faith Effort Transparency Report without the prior written approval of the CCD, in consultation with the CPO and the Using Agency. Upon

4. such written approval by the CCD, the revised Good Faith Effort Transparency Report shall be incorporated into the Contract as an amendment by the CPO and made available to the Board for review no later than one week prior to the Bid appearing on the Board agenda for approval. The CCD shall promulgate policies and procedures with respect to changes to a Good Faith Effort Transparency Report.

Sec. 34-282 - Additional Good Faith Effort Factors for Consideration.

(a) The Contract Compliance Director may also consider additional factors, if known, including, but not limited to:

1. Whether the Contractor, Person, or Business followed up with PCEs who it originally identified but were unable to include in the bid, based upon prior communication, but prior to submitting its bid;

2. Whether the Contractor, Person, or Business established delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit;

3. Whether the Contractor, Person, or Business used the services and assistance of the CCD's staff, the Small Business Administration, and/or the Office of Minority Business Enterprises of the U.S. Department of Commerce;

4. Whether the Contractor, Person, or Business timely notified appropriate community, and minority, and/or women business organizations, identified as assist agencies, of the opportunity for participation in the Procurement;

5. Whether the Contractor, Person, or Business maintains or commits to establish and maintain a mentor-protégé agreement with one or more PCEs that is enforceable and that, in the judgment of the CCD, has performance standards and outcomes that are clearly established and effective in terms of assisting the PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the PCE, consistent with the provisions of Section 34-271(d).

(b) In determining whether a Bidder or Respondent Contractor, Person, or Business has made Good Faith Efforts, the levels of participation by PCEs set forth in Utilization Plans submitted by other Contractors, Persons, or Businesses for the same Procurement may be considered. For example, if the apparent successful Bidder or Respondent Contractor, Person, or Business fails to meet the Contract Specific Goals, but meets or exceeds the average PCE participation obtained by other Bidders or Respondents Contractors, Persons, or Businesses, this may be evidence that the apparent successful Bidder or Respondent Contractors, Persons, or Businesses made Good Faith Efforts.

(c) Where the County requires professional services, the County must be able to call upon those professionals whose particular training and experience are most beneficial to the County.

(1) A Utilization Plan shall be required, and if a waiver or partial waiver is requested, "good faith" efforts shall be demonstrated by the submission of the Good Faith Effort

Transparency Report, by the Contractor, Person, or Business, and CCD's consideration of additional factors pursuant to as set forth in Sections 34-271 34-271, 34-281, and 34- 282; provided, however, such Contractors, Persons, or Businesses shall not be required to attempt to subcontract with PCEs if subcontractors would not typically be utilized for the type of Procurement. In such cases, the Contractor, Person, or Business shall document the reasons for not subcontracting in a waiver request also complete a Good Faith Effort Transparency Report detailing the reasons for not subcontracting the professional services for the specific bid.

(2) The Contractor, Person, or Business will endeavor to maximize use of PCEs for supplies, equipment, goods, or services for such Contractor, Person, or Business' business operations not specifically for the Procurement.

(3) If such Contractor, Person, or Business is required to have or has an affirmative action plan and goals, such plan and goals shall be submitted with their Utilization Plan. The CCD shall compare such plan and goals with the Person's Contractor, Person, or Business' actual affirmative action achievements and such achievements may be considered by the County in future Procurements.

(d) Mentor/protégé agreements. Where a Contractor, Person, or Business enters into or maintains a mentor/protege agreement with a PCE to improve or develop certain aspects of the business of the PCE, the CCD shall evaluate the effect of such agreement as a factor in determining good faith efforts. The mentor/protégé agreement may provide for the Contractor, Person, or Business to assist the PCE in such areas as technical aspects of the PCE's business, improving financial management, or providing on-the-job training. To constitute good faith efforts, the mentor/protégé agreement shall satisfy the following requirements.

(1) The PCE performs a Commercially Useful Function;

(2) The agreement shall be included in the Utilization Plan; and

(3) The agreement clearly defines the respective responsibilities of the Contractor, Person, or Business and the PCE and includes specific, measurable goals to be attained by both parties through the performance of the agreement. In order to be a factor in establishing best efforts, the mentor/protégé agreement must be for a reasonable period of time.

(e) The CCD may grant a total or partial waiver based upon the following criteria:

(1) There are not sufficient PCEs capable of providing the supplies, equipment, goods, or services required for the Procurement;

(2) The Procurement cannot reasonably be divided;

(3) The price required by potential PCEs is more than ten percent above competitive levels; and

(4) Any other factor relating to good faith efforts as set forth in the Person's Contractor, Person, or Business' Utilization Plan and Good Faith Effort Transparency Report.

(f) Should the CCD grant any partial or full waiver, the CCD shall report, in writing, its justification for granting the waiver, pursuant to Section 34-283.

Sec. 34-283. - Contract Compliance Director Waiver Transparency Reporting.

The CCD shall report to the Board, in writing, on a monthly basis, and at least three (3) days prior to the Board meeting where such Contracts seek Board approval with a waiver request, a report which shall include:

- (1) The percentage of the total dollar amount of Procurements for such Contracts seeking approval by the Board, whereby the Person or Party, seeking Contract approval requested a partial or full waiver and submitted a Good Faith Effort Transparency Report.
- (2) The number of PCEs available for participation in Procurements, based on Contracts seeking approval by the Board and requesting a waiver, including:
 - a. PCE designation, and
 - b. Industry type and/or NAICS codes of the PCEs, where appropriate.
- (3) A summary regarding whether the CCD approved or rejected the Good Faith Effort Transparency Report and why.
- (4) The CCD report shall include Good Faith Transparency Reports for such Contracts seeking approval, attached to the CCD report as an exhibit.

(1)
BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 265 - Program Administration is hereby amended as follows:

Sec. 34-265. - Program Administration.

- (a) The Office of Contract Compliance, under the direction of the CCD, who shall report to the President, shall administer the Program. The duties of the CCD shall include:
 - (1) Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program, certification process, recertification process, and no-change affidavits, including time limitations for the submission of documents and information regarding certification applications and contract participation. The CCD is authorized to collect certification and recertification processing fees in the amount of \$250.00 per Application; the collection of said processing fees shall be transacted by the CCD through the Bureau of Finance.
 - (2) Providing information and assistance to PCEs, and Small Businesses relating to the Program, and serve as a liaison to community, contractor, professional and supplier groups, and associations and organizations.
 - (3) Establishing uniform procedures and criteria for certifying, recertifying and decertifying Persons as PCEs, accepting certifications by other agencies, and maintaining a directory of Certified PCEs. Such procedures and criteria shall include non-certification or decertification for the willful submission of false or inaccurate material information, the failure to submit complete and accurate material information to the CCD regarding certification, or a Procurement on a timely basis, and shall relate individually and jointly to both PCEs and PCE owners.
 - (4) Establishing Contract Specific Goals, in collaboration with the User Agency, based upon the availability of PCEs to provide the supplies, materials and equipment or services required by the Contract.
 - (5) Monitoring Contracts to evaluate compliance with Contract Specific Goals and commitments.
 - (6) Cooperating with and providing assistance to Using Agencies to facilitate participation by PCEs in Procurements.
 - (7) Reviewing, approving or rejecting Utilization Plans and Good Faith Effort Transparency Reports for achievement of Contract Specific Goals, and evaluating the extent to which goals were achieved.
 - (8) Monitoring contracts to ensure compliance with Section 34-388, Prompt Payment of PCEs.
 - (9) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
 - (10) Evaluating the effectiveness and utility of the Program.
 - (11) Monitoring the Program and the County's progress towards the Program Goals. The CCD shall report on a quarterly and annual basis to the President on the Program.
- (1)
 - (12) Reporting to the CCC, at its request, information regarding the administration of the Program and its progress toward achieving the Program Goals.
- (b) Using Agencies shall cooperate with the CCD in the administration of the Program, specifically including assisting the CCD with setting Contract Specific Goals and assisting in the identification of available PCEs.

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV -

Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 269 - Utilization Plan; Commercially Useful Function is hereby amended as follows:

Sec. 34-269. - Utilization Plan; Commercially Useful Function.

(a) Utilization Plan. The CPO shall include in Contract Documents for Contracts covered by this Division a requirement that a Utilization Plan be submitted which either: (i) commits to PCE participation equal to or greater than the applicable Contract Specific Goal or Goals, or (ii) requests a waiver of all or a portion of a Contract Specific Goal by submitting a Good Faith Effort Transparency Report pursuant to Section 34-281.

(1) The Utilization Plan shall be in such form and contain such information as is required by the CCD, and may include such components as direct PCE participation, indirect PCE participation, and a mentoring relationship with one or more PCEs.

(2) The Utilization Plan shall be due at the time the bid or proposal is due. In the event a bid or proposal leads to a Contract with the County, the Utilization Plan as approved by the CCD shall be incorporated as a material commitment on the part of the Contractor to each relevant PCE and the contractor and the County. Failure to include a Utilization Plan shall render the bid or proposal not Responsive.

(3) The CCD shall review and either approve or reject the Utilization Plan. For purposes of evaluating a Utilization Plan, only PCEs which perform a Commercially Useful Function relative to the supplies, equipment, goods, services, or types of work for which the PCE has been certified shall be considered.

(4) Once a Utilization Plan has been approved, the Contractor may not change the Utilization Plan, including substituting PCEs named in the Utilization Plan, without the prior written approval of the CCD, in consultation with the CPO and the Using Agency. Upon such written approval by the CCD, the revised Utilization Plan shall be incorporated into the Contract as an amendment by the CPO. The CCD shall promulgate policies and procedures with respect to change to a Utilization Plan.

(1)

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 271 - Request for a Full or Partial Waiver; Good Faith Efforts is hereby amended as follows:

Sec. 34-271. - Request for a Total Full or Partial Waiver; Good Faith Efforts.

(a) Parties submitting bids or proposals for Procurements may in all instances request a partial or full waiver of one or more established contract-specific Goal for PCE participation. A Contractor, Person, or Business requesting a partial or full waiver shall submit, in writing, a report detailing its efforts to comply with County's "good faith efforts" as defined in Section 34-281, hereinafter referred to as the "Good Faith Effort Transparency Report". In reviewing a Contractor, Person, or Business' written request for a partial or total full waiver of a Contract Specific Goal, the CCD shall determine whether a Contractor, Person, or Business has made good faith efforts to meet the applicable Goals and to what extent the waiver request should be granted. In determining whether a Contractor, Person, or Business has made Good faith efforts, the CCD will consider the Good Faith Effort Transparency Report, pursuant to Section 34-281 and additional factors, pursuant to Section 34 -282. Upon evaluation of the Contractor, Person, or Business' Good Faith Effort Transparency Report and additional factors, the CCD will draft and submit a report, pursuant to Section 34-283. whether the Person has

(1) Reviewed lists of PCEs maintained by the County and other State and local governments and agencies to identify qualified PCEs for solicitation for Bids;

(2) Divided Procurement requirements into small tasks or quantities. This shall include, where appropriate, breaking out Contract work items into economically feasible units, consistent with the availability of PCEs, to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces;

(3) Adjusted any insurance requirements imposed by the Person seeking PCEs, or otherwise assist PCEs in obtaining any required insurance, where economically feasible, to encourage participation by PCEs;

(4) Made timely attempts to contact PCEs providing the type of supplies, equipment, goods or services required for the Procurement; and provide them with a convenient and timely opportunity to obtain and review all information concerning the Procurement necessary to enable such PCE to respond;

(5) Followed up initial contacts of PCEs to determine if they are interested participating in

the Procurement;

(6) Negotiated in good faith and on a timely basis with PCEs to enable them to participate in the Procurement. Evidence of such negotiation includes the names, addresses, and telephone numbers of PCEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached. The Contractor may not reject PCEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using PCEs is not in itself sufficient reason for a Contractor's failure to meet the Goals, as long as such costs are reasonable;

(7) Made efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that

(1) such efforts shall not be inconsistent with the requirement that the PCE be responsible for actually obtaining and paying for such items;

(8) Established delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit;

(9) Used the services and assistance of the CCD's staff, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce;

(10) Timely notified appropriate community and minority and women's business organizations identified as assist agencies of the opportunity for participation in the Procurement;

(11) Maintains or commits to establish and maintain a mentor-protégé agreement with one or more PCEs that is enforceable and that, in the judgment of the CCD, has performance standards and outcomes that are clearly established and effective in terms of assisting the PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the PCE, consistent with the provisions of Section 34-271(d).

(8)

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 297 - Contract Pre-Award Compliance Procedures is hereby amended as follows:

Sec. 34-297. - Contract Pre-Award Compliance Procedures.

(a) For all solicitations, the bidder/proposer Contractor, Person, or Business shall submit a Utilization Plan detailing all subcontractors from which the Contractor, Person, or Business solicited bids or quotations, and if Project Specific Goals have been established, its achievement of the Goals or its Good Faith Efforts to do so. The Utilization Plan shall be due at the time the bid/proposal is due. Any Contractor, Person, or Business requesting a partial or full waiver shall submit a Good Faith Effort Transparency Report with its Utilization Plan when the Utilization Plan is due. In the event a bid or proposal leads to a Contract with the County, the Utilization Plan as approved, and any Good Faith Effort Transparency Report as approved and applicable, by the CCD shall be incorporated as a material commitment on the part of the Contractor, Person, or Business to each relevant PCE, and the contractor Contractor, Person, or Business, and the County. Failure to include a Utilization Plan, and Good Faith Effort Transparency Report, where applicable, shall render the bid or proposal not Responsive.

(b) Any agreement between a contractor Contractor, Person, or Business and a PCE in which the Contractor requires that the PCE not provide subcontracting quotations to other Contractors is prohibited.

(c) Where the contractor Contractor, Person, or Business cannot achieve the Project Specific Goal(s), the CCD will determine whether the Contractor, Person, or Business has made Good Faith Efforts to meet the Goal(s), based upon the submission of a Good Faith Effort Transparency Report by the bidding Contractor, Person, or Business and consideration of additional factors by the CCD, pursuant to Sections 34-281 and 34-282. Parties A Contractor, Person, or Business submitting bids or proposals for Procurements may in all instances request a partial or full waiver of one or more established Project Specific Goal for PCE participation. In making this determination, the Director will consider, at a minimum, whether the Contractor has: the Good Faith Effort Transparency Report, pursuant to Section 34-281 and additional factors, pursuant to Section 34-282.

(1) Solicited through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all PCEs certified in the scopes of work of the contract. The Contractor shall provide interested PCEs with timely, adequate information about the plans, specifications, and requirements of the contract to allow PCEs to respond to the solicitation. The Contractor must follow up initial solicitations with interested PCEs.

(2) Selected portions of the work to be performed by PCEs in order to increase the likelihood that the Project Specific Goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces. It is the Contractor's responsibility to make a portion of the work available to PCEs and to select those portions of the work or material needs consistent with the availability of PCEs to facilitate their participation.

(1)

(3) Negotiated in good faith with interested PCEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of PCEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with PCEs. The Contractor may not reject PCEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using PCEs is not in itself sufficient reason for a Contractor's failure to meet the Project Specific Goals, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all scopes of work that could be subcontracted.

(4) Made efforts to assist interested PCEs in obtaining bonding, lines of credit, or insurance as required by the County or the prime Contractor, where appropriate.

(5) Made efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.

(6) Used the services of the Office of Contract Compliance, available minority/women community organizations, minority/women contractors' groups, government-sponsored minority/women business assistance offices and other appropriate organizations to provide assistance in the recruitment and placement of PCEs.

(7) Maintains or commits to establish and maintain a mentor-protégé agreement with one or more PCEs that is enforceable and that, in the judgement of the CCD, has performance standards and outcomes that are clearly established and effective in terms of assisting the PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the PCE consistent with the provisions of Section 34-271(d).

(d) In determining whether a Contractor, Person, or Business has made Good Faith Efforts, the performance of other Contractors, Persons, or Businesses in meeting the Project Specific Goals may be considered. For example, when the apparent successful Contractor, Person, or Business fails to meet the Project Specific Goals but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Contractor, Person, or Business could have met the Project Specific Goals. Similarly, if the apparent successful Contractor, Person, or Business fails to meet the Project Specific Goals, but meets or exceeds the average PCE participation obtained by other Contractors, Persons, or Businesses, this may be evidence that the apparent successful Contractor, Person, or Business made Good Faith Efforts.

(e) A signed letter of intent from each listed PCE, describing the work, materials, equipment or services to be performed or provided by the PCE and the agreed upon dollar value shall be due at the time of bid proposal or within three days after such submission.

(f) The CCD shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from PCEs. The CCD may request clarification in writing of items listed in the Utilization Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts augment or modify any Good Faith Effort Transparency Report.

(d) (g) If the CCD determines that the Utilization Plan demonstrates that the Project Specific Goals have been achieved or accepts the Good Faith Efforts Transparency Report submitted, made, with the concurrence of the User Agency, the CCD and User Agency shall recommend award to Purchasing Agent. The CCD must issue a report to the Board pursuant to Section 34-283 upon acceptance of the Contractor's Good Faith Effort Transparency Report no later than one week prior to the Board meeting where the Contract seeks approval by the Board.

(h) If the CCD finds that a rejects the Contractor's Contractor, Person, or Business' did not make sufficient Good Faith Efforts Transparency Report, the CCD shall communicate this finding to the Purchasing Department and recommend that the bid/proposal be rejected. A Contractor may protest this determination pursuant to the County's bid protest procedures.

Effective date: This Ordinance Amendment shall be in effect September 1, 2019.

Sponsors: BILL LOWRY, ALMA E. ANAYA, LUIS ARROYO JR, SCOTT R. BRITTON, DENNIS DEER, BRIDGET

DEGNEN, BRANDON JOHNSON, DONNA MILLER, STANLEY MOORE, KEVIN B. MORRISON, SEAN M. MORRISON, PETER N. SILVESTRI, DEBORAH SIMS, LARRY SUFFREDIN, JEFFREY R. TOBOLSKI

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
5/23/2019	1	Board of Commissioners	approve as amended	Pass
5/22/2019	2	Contract Compliance Committee	recommend for approval as amended	Pass
5/22/2019	1	Contract Compliance Committee	accept as amended	Pass
3/21/2019	1	Board of Commissioners	refer	Pass

Proposed Second Amendment to File #19-2297 (Contract

Compliance Committee May 22, 2019)

PROPOSED AN ORDINANCE CREATING THE GOOD FAITH EFFORT TRANSPARENCY REPORTING

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 281 - The Good Faith Effort Transparency Report - Section 34-283 - Contract Compliance Director Waiver Transparency Reporting is hereby enacted as follows:

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- (g) A detailed list of any and all PCEs whom the Contractor, Person, or Business engaged, contacted, and/or reviewed, in the County's Marketplace, from the County's list of PCEs and/or other State and local government agencies, whom Cook County recognizes and/ or has a reciprocity agreement with, which identify qualified PCEs for solicitation of bids, for the purposes of securing a bid with the County;
- (h) A detailed explanation of the Contractor, Person, or Business' proposed divided procurement requirements. This explanation will include, but not limited to;
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 - The timeliness when the Contractor, Person, or Business knew of the bid, when the

Contractor, Person, or Party formulated its bid and utilization plan, and the bid request due date;

- A detailed explanation of timely attempts to contact PCEs providing the type of supplies, equipment, goods, and/or services required for the Procurement. This explanation will include, but is not limited to;
 - Dates of contact attempts;
 - With whom, if anyone, the Contractor, Person, or Business communicated and/or corresponded (including written, virtual, digital, electronic, and other

feasible methods of communication); and

iii. The number of unsuccessful attempts to communicate or correspond with PCEs;.

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 - a. A detailed explanation regarding why the PCE was incapable of inclusion for the Contractor, Person, or Business' bid;
 - b. A description of the information provided regarding the plans and specifications for the work selected for subcontracting and why agreements were unreachable;
 - i. The Contractor, Person, or Business shall not determine and reject PCEs as unqualified without sound reasons. The Contractor, Person, or Business shall not consider some additional costs involved in finding and using PCEs as the sole reason for the Contractor, Person, or Business' failure to meet the Goals, as long as such costs are reasonable, as determined by the CCD and Board.
 - c. A detailed explanation regarding a Contractor, Person, or Business' efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; and
 - d. A detailed explanation of any and all adjusted insurance requirements imposed by the Contractor, Person, or Business seeking PCEs, including but not limited to;
 - i. Whether the Contractor, Person, or Business assisted PCEs in obtaining any required insurance, where economically feasible, to encourage participation by PCEs.
5. The Contractor, Person, or Business applying for a waiver shall sign the Good Faith Effort Transparency Report. If the Contractor, Person, or Business is a domestic business organization or authorized to conduct business in Illinois, the signee shall be any, employee, agent, and/ or officer authorized to sign on behalf of the Contractor, Person, or Business. The Contractor, Person, or Business' attestation/signature will serve as confirmation the Contractor, Person, or Business provided accurate, complete, and truthful information. Any finding of false, omitted, fraudulent, and/or otherwise misleading information will lead to automatic rejection of the waiver request. The Cook County Office of Contract Compliance reserves the right to pursue additional actions and/or remedies against the requesting Contractor, Person, or Business.
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7. Once the CCD approves a Good Faith Effort Transparency Report, the Contractor, Person, or Business may not change the Good Faith Effort Transparency Report without the prior written approval of the CCD, in consultation with the CPO and the Using Agency. Upon
- 4.
- such written approval by the CCD, the revised Good Faith Effort Transparency Report shall be incorporated into the Contract as an amendment by the CPO and made available to the Board for review no later than one week prior to the Bid appearing on the Board agenda for approval. The CCD shall promulgate policies and procedures with respect to changes to a Good Faith Effort Transparency Report.

Sec. 34-282 - Additional Good Faith Effort Factors for Consideration.

- (a) The Contract Compliance Director may also consider additional factors, if known, including, but not limited to:
1. Whether the Contractor, Person, or Business followed up with PCEs who it originally identified but were unable to include in the bid, based upon prior communication, but prior to submitting its bid;
 2. Whether the Contractor, Person, or Business established delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit;
 3. Whether the Contractor, Person, or Business used the services and assistance of the CCD's staff, the Small Business Administration, and/or the Office of Minority Business Enterprises of the U.S. Department of Commerce;
 4. Whether the Contractor, Person, or Business timely notified appropriate community, ~~and~~ minority, and/or women business organizations, identified as assist agencies, of the opportunity for participation in the Procurement;
 5. Whether the Contractor, Person, or Business maintains or commits to establish and maintain a mentor-protégé agreement with one or more PCEs that is enforceable and that, in the judgment of the CCD, has performance standards and outcomes that are clearly established and effective in terms of assisting the PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the PCE, consistent with the provisions of Section 34-271(d).
- (b) In determining whether a ~~Bidder or Respondent~~ Contractor, Person, or Business ~~has~~ made Good Faith Efforts, the levels of participation by PCEs set forth in Utilization Plans submitted by other Contractors, Persons, or Businesses for the same Procurement may be considered. For example, if the apparent successful ~~Bidder or Respondent~~ Contractor, Person, or Business fails to meet the Contract Specific Goals, but meets or exceeds the average PCE participation obtained by other ~~Bidders or Respondents~~ Contractors, Persons, or Businesses, this may be evidence that the apparent successful ~~Bidder or Respondent~~ Contractors, Persons, or Businesses made Good Faith Efforts.
- (c) Where the County requires professional services, the County must be able to call upon those professionals whose particular training and experience are most beneficial to the County.
- (1) A Utilization Plan shall be required, and if a waiver or partial waiver is requested, "good faith" efforts shall be demonstrated by the submission of the Good Faith Effort

Transparency Report, by the Contractor, Person, or Business, and CCD's consideration of additional factors pursuant to ~~as set forth in~~ Sections 34-271, 34-281, and 34-282; provided, however, such Contractors, Persons, or Businesses shall not be required to attempt to subcontract with PCEs if subcontractors would not typically be utilized for the type of Procurement. In such cases, the Contractor, Person, or Business shall ~~document the reasons for not subcontracting in a waiver request~~ also complete a Good Faith Effort Transparency Report detailing the reasons for not subcontracting the professional services for the specific bid.

- (2) The Contractor, Person, or Business will endeavor to maximize use of PCEs for supplies, equipment, goods, or services for such Contractor, Person, or Business' business operations not specifically for the Procurement.
- (3) If such Contractor, Person, or Business is required to have or has an affirmative action plan and goals, such plan and goals shall be submitted with their Utilization Plan. The CCD shall compare such plan and goals with the ~~Person's~~ Contractor, Person, or Business' actual affirmative action achievements and such achievements may be considered by the County in future Procurements.
- (d) Mentor/protégé agreements. Where a Contractor, Person, or Business enters into or maintains a mentor/protege agreement with a PCE to improve or develop certain aspects of the business of the PCE, the CCD shall evaluate the effect of such agreement as a factor in determining good faith efforts. The mentor/protégé agreement may provide for the Contractor, Person, or Business to assist the PCE in such areas as technical aspects of the PCE's business, improving financial management, or providing on-the-job training. To constitute good faith efforts, the mentor/protégé agreement shall satisfy the following requirements.
 - (1) The PCE performs a Commercially Useful Function;
 - (2) The agreement shall be included in the Utilization Plan; and
 - (3) The agreement clearly defines the respective responsibilities of the Contractor, Person, or Business and the PCE and includes specific, measurable goals to be attained by both parties through the performance of the agreement. In order to be a factor in establishing best efforts, the mentor/protégé agreement must be for a reasonable period of time.
- (e) The CCD may grant a total or partial waiver based upon the following criteria:
 - (1) There are not sufficient PCEs capable of providing the supplies, equipment, goods, or services required for the Procurement;
 - (2) The Procurement cannot reasonably be divided;
 - (3) The price required by potential PCEs is more than ten percent above competitive levels; and
 - (4) Any other factor relating to good faith efforts as set forth in the ~~Person's~~ Contractor, Person, or Business' Utilization Plan and Good Faith Effort Transparency Report.
- (f) Should the CCD grant any partial or full waiver, the CCD shall report, in writing, its justification for granting the waiver, pursuant to Section 34-283.

Sec. 34-283. - Contract Compliance Director Waiver Transparency Reporting.

The CCD shall report to the Board, in writing, on a monthly basis, and at least **three (3) days** prior to the Board meeting where such Contracts seek Board approval with a waiver request, a report which shall include:

- (1) The percentage of the total dollar amount of Procurements for such Contracts seeking approval by the

Board, whereby the Person or Party, seeking Contract approval requested a partial or full waiver and submitted a Good Faith Effort Transparency Report.

- (2) The number of PCEs available for participation in Procurements, based on Contracts seeking approval by the Board and requesting a waiver, including:
 - a. PCE designation, and
 - b. Industry type and/or NAICS codes of the PCEs, where appropriate.
- (3) A summary regarding whether the CCD approved or rejected the Good Faith Effort Transparency Report and why.
- (4) The CCD report shall include Good Faith Transparency Reports for such Contracts seeking approval, attached to the CCD report as an exhibit.

(1)

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 265 - Program Administration is hereby amended as follows:

Sec. 34-265. - Program Administration.

- (a) The Office of Contract Compliance, under the direction of the CCD, who shall report to the President, shall administer the Program. The duties of the CCD shall include:
 - (1) Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program, certification process, recertification process, and no-change affidavits, including time limitations for the submission of documents and information regarding certification applications and contract participation. The CCD is authorized to collect certification and recertification processing fees in the amount of \$250.00 per Application; the collection of said processing fees shall be transacted by the CCD through the Bureau of Finance.
 - (2) Providing information and assistance to PCEs, and Small Businesses relating to the Program, and serve as a liaison to community, contractor, professional and supplier groups, and associations and organizations.
 - (3) Establishing uniform procedures and criteria for certifying, recertifying and decertifying Persons as PCEs, accepting certifications by other agencies, and maintaining a directory of Certified PCEs. Such procedures and criteria shall include non-certification or decertification for the willful submission of false or inaccurate material information, the failure to submit complete and accurate material information to the CCD regarding certification, or a Procurement on a timely basis, and shall relate individually and jointly to both PCEs and PCE owners.
 - (4) Establishing Contract Specific Goals, in collaboration with the User Agency, based upon the availability of PCEs to provide the supplies, materials and equipment or services required by the Contract.
 - (5) Monitoring Contracts to evaluate compliance with Contract Specific Goals and commitments.
 - (6) Cooperating with and providing assistance to Using Agencies to facilitate participation by PCEs in Procurements.
 - (7) Reviewing, approving or rejecting Utilization Plans and Good Faith Effort Transparency Reports for achievement of Contract Specific Goals, and evaluating the extent to which goals were achieved.
 - (8) Monitoring contracts to ensure compliance with Section 34-388, Prompt Payment of PCEs.

- (9) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
 - (10) Evaluating the effectiveness and utility of the Program.
 - (11) Monitoring the Program and the County's progress towards the Program Goals. The CCD shall report on a quarterly and annual basis to the President on the Program.
- (1)
- (12) Reporting to the CCC, at its request, information regarding the administration of the Program and its progress toward achieving the Program Goals.
- (b) Using Agencies shall cooperate with the CCD in the administration of the Program, specifically including assisting the CCD with setting Contract Specific Goals and assisting in the identification of available PCEs.

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 269 - Utilization Plan; Commercially Useful Function is hereby amended as follows:

Sec. 34-269. - Utilization Plan; Commercially Useful Function.

- (a) *Utilization Plan*. The CPO shall include in Contract Documents for Contracts covered by this Division a requirement that a Utilization Plan be submitted which either: (i) commits to PCE participation equal to or greater than the applicable Contract Specific Goal or Goals, or
- (ii) requests a waiver of all or a portion of a Contract Specific Goal by submitting a Good Faith Effort Transparency Report pursuant to Section 34-281.
- (1) The Utilization Plan shall be in such form and contain such information as is required by the CCD, and may include such components as direct PCE participation, indirect PCE participation, and a mentoring relationship with one or more PCEs.
 - (2) The Utilization Plan shall be due at the time the bid or proposal is due. In the event a bid or proposal leads to a Contract with the County, the Utilization Plan as approved by the CCD shall be incorporated as a material commitment on the part of the Contractor to each relevant PCE and the contractor and the County. Failure to include a Utilization Plan shall render the bid or proposal not Responsive.
 - (3) The CCD shall review and either approve or reject the Utilization Plan. For purposes of evaluating a Utilization Plan, only PCEs which perform a Commercially Useful Function relative to the supplies, equipment, goods, services, or types of work for which the PCE has been certified shall be considered.
 - (4) Once a Utilization Plan has been approved, the Contractor may not change the Utilization Plan, including substituting PCEs named in the Utilization Plan, without the prior written approval of the CCD, in consultation with the CPO and the Using Agency. Upon such written approval by the CCD, the revised Utilization Plan shall be incorporated into the Contract as an amendment by the CPO. The CCD shall promulgate policies and procedures with respect to change to a Utilization Plan.
- (1)

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 271 - Request for a Full or Partial Waiver; Good Faith Efforts is hereby amended as follows:

Sec. 34-271. - Request for a ~~Total~~ Full or Partial Waiver; Good Faith Efforts.

- (a) Parties submitting bids or proposals for Procurements may in all instances request a partial or full

waiver of one or more established contract-specific Goal for PCE participation. A Contractor, Person, or Business requesting a partial or full waiver shall submit, in writing, a report detailing its efforts to comply with County's "good faith efforts" as defined in Section 34-281, hereinafter referred to as the "Good Faith Effort Transparency Report". In reviewing a Contractor, Person, or Business' written request for a partial or ~~total~~ full waiver of a Contract Specific Goal, the CCD shall determine whether a Contractor, Person, or Business has made good faith efforts to meet the applicable Goals and to what extent the waiver request should be granted. In determining whether a Contractor, Person, or Business has made Good faith efforts, the CCD will consider the Good Faith Effort Transparency Report, pursuant to Section 34-281 and additional factors, pursuant to Section 34-282. Upon evaluation of the Contractor, Person, or Business' Good Faith Effort Transparency Report and additional factors, the CCD will draft and submit a report, pursuant to Section 34-283. ~~whether the Person has~~

- (1) Reviewed lists of PCEs maintained by the County and other State and local governments and agencies to identify qualified PCEs for solicitation for Bids;
- (2) Divided Procurement requirements into small tasks or quantities. This shall include, where appropriate, breaking out Contract work items into economically feasible units, consistent with the availability of PCEs, to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces;
- (3) Adjusted any insurance requirements imposed by the Person seeking PCEs, or otherwise assist PCEs in obtaining any required insurance, where economically feasible, to encourage participation by PCEs;
- (4) Made timely attempts to contact PCEs providing the type of supplies, equipment, goods or services required for the Procurement; and provide them with a convenient and timely opportunity to obtain and review all information concerning the Procurement necessary to enable such PCE to respond;
- (5) Followed up initial contacts of PCEs to determine if they are interested participating in the Procurement;
- (6) Negotiated in good faith and on a timely basis with PCEs to enable them to participate in the Procurement. Evidence of such negotiation includes the names, addresses, and telephone numbers of PCEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached. The Contractor may not reject PCEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using PCEs is not in itself sufficient reason for a Contractor's failure to meet the Goals, as long as such costs are reasonable;
- (7) Made efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that

(1) ~~such efforts shall not be inconsistent with the requirement that the PCE be responsible for actually obtaining and paying for such items;~~

- (8) Established delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit;
- (9) Used the services and assistance of the CCD's staff, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce;
- (10) Timely notified appropriate community and minority and women's business organizations identified as assist agencies of the opportunity for participation in the Procurement;

- (11) Maintains or commits to establish and maintain a mentor-protégé agreement with one or more PCEs that is enforceable and that, in the judgment of the CCD, has performance standards and outcomes that are clearly established and effective in terms of assisting the PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the PCE, consistent with the provisions of Section 34-271(d).

(8)

BE IT ORDAINED, by the Cook County Board of Commissioners, Chapter 34 - Finance, Article IV - Procurement, Division 8 - Minority and Woman-Owned Business Enterprises, Section 34- 297 - Contract Pre-Award Compliance Procedures is hereby amended as follows:

Sec. 34-297. - Contract Pre-Award Compliance Procedures.

- (a) For all solicitations, the ~~bidder/proposer~~ Contractor, Person, or Business shall submit a Utilization Plan detailing all subcontractors from which the Contractor, Person, or Business solicited bids or quotations, and if Project Specific Goals have been established, its achievement of the Goals or its Good Faith Efforts to do so. The Utilization Plan shall be due at the time the bid/proposal is due. Any Contractor, Person, or Business requesting a partial or full waiver shall submit a Good Faith Effort Transparency Report with its Utilization Plan when the Utilization Plan is due. In the event a bid or proposal leads to a Contract with the County, the Utilization Plan as approved, and any Good Faith Effort Transparency Report as approved and applicable, by the CCD shall be incorporated as a material commitment on the part of the Contractor, Person, or Business to each relevant PCE, and the ~~contractor~~ Contractor, Person, or Business, and the County. Failure to include a Utilization Plan, and Good Faith Effort Transparency Report, where applicable, shall render the bid or proposal not Responsive.
- (b) Any agreement between a ~~contractor~~ Contractor, Person, or Business and a PCE in which the Contractor requires that the PCE not provide subcontracting quotations to other Contractors is prohibited.
- (c) Where the ~~contractor~~ Contractor, Person, or Business cannot achieve the Project Specific Goal(s), the CCD will determine whether the Contractor, Person, or Business has made Good Faith Efforts to meet the Goal(s), based upon the submission of a Good Faith Effort Transparency Report by the bidding Contractor, Person, or Business and consideration of additional factors by the CCD, pursuant to Sections 34-281 and 34-282. Parties A Contractor, Person, or Business submitting bids or proposals for Procurements may in all instances request a partial or full waiver of one or more established Project Specific Goal for PCE participation. In making this determination, the Director will consider, at a minimum, whether the Contractor has: the Good Faith Effort Transparency Report, pursuant to Section 34-281 and additional factors, pursuant to Section 34-282.
- (1) Solicited through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all PCEs certified in the scopes of work of the contract. The Contractor shall provide interested PCEs with timely, adequate information about the plans, specifications, and requirements of the contract to allow PCEs to respond to the solicitation. The Contractor must follow up initial solicitations with interested PCEs.
- (2) Selected portions of the work to be performed by PCEs in order to increase the likelihood that the Project Specific Goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces. It is the Contractor's responsibility to make a portion of the work available to PCEs and to select those portions of the work or material needs consistent with the availability of PCEs to facilitate their participation.

(4)

- (3) Negotiated in good faith with interested PCEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of PCEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with PCEs. The Contractor may not reject PCEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using PCEs is not in itself sufficient reason for a Contractor's failure to meet the Project Specific Goals, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all scopes of work that could be subcontracted.
 - (4) Made efforts to assist interested PCEs in obtaining bonding, lines of credit, or insurance as required by the County or the prime Contractor, where appropriate.
 - (5) Made efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.
 - (6) Used the services of the Office of Contract Compliance, available minority/women community organizations, minority/women contractors' groups, government-sponsored minority/women business assistance offices and other appropriate organizations to provide assistance in the recruitment and placement of PCEs.
 - (7) Maintains or commits to establish and maintain a mentor-protégé agreement with one or more PCEs that is enforceable and that, in the judgement of the CCD, has performance standards and outcomes that are clearly established and effective in terms of assisting the PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the PCE consistent with the provisions of Section 34-271(d).
- (d) In determining whether a Contractor, Person, or Business has made Good Faith Efforts, the performance of other Contractors, Persons, or Businesses in meeting the Project Specific Goals may be considered. For example, when the apparent successful Contractor, Person, or Business fails to meet the Project Specific Goals but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Contractor, Person, or Business could have met the Project Specific Goals. Similarly, if the apparent successful Contractor, Person, or Business fails to meet the Project Specific Goals, but meets or exceeds the average PCE participation obtained by other Contractors, Persons, or Businesses, this may be evidence that the apparent successful Contractor, Person, or Business made Good Faith Efforts.
- (e) A signed letter of intent from each listed PCE, describing the work, materials, equipment or services to be performed or provided by the PCE and the agreed upon dollar value shall be due at the time of bid proposal or within three days after such submission.
- (f) The CCD shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from PCEs. The CCD may request clarification in writing of items listed in the Utilization Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts augment or modify any Good Faith Effort Transparency Report.
- (d) (g) If the CCD determines that the Utilization Plan demonstrates that the Project Specific Goals have been achieved or accepts the Good Faith Efforts Transparency Report submitted, made, with the concurrence of the User Agency, the CCD and User Agency shall recommend award to Purchasing Agent. The CCD must issue a report to the Board pursuant to Section 34-283 upon acceptance of the Contractor's Good Faith Effort Transparency Report no later than one week prior to the Board meeting where the Contract seeks approval by the Board.

- (h) If the CCD ~~finds that a~~ rejects the Contractor's Contractor, Person, or Business' ~~did not make sufficient Good Faith Efforts Transparency Report,~~ the CCD shall communicate this finding to the Purchasing Department and recommend that the bid/proposal be rejected. A Contractor may protest this determination pursuant to the County's bid protest procedures.

Effective date: This Ordinance Amendment shall be in effect **September 1, 2019.**