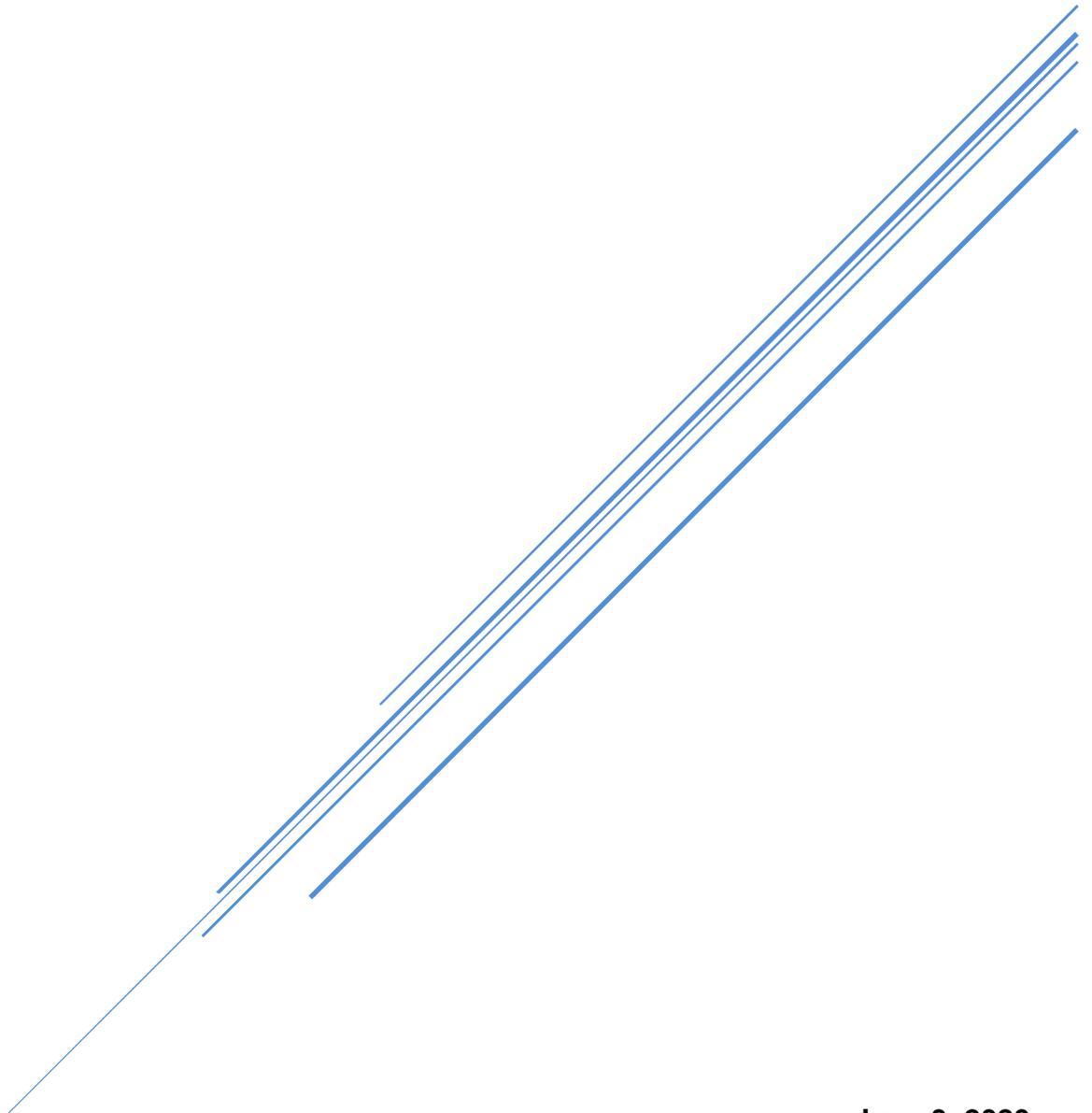


# COA PROCUREMENT AND INCLUSION REPORT



**June 3, 2020**

# Table of Contents

I.	Executive Summary .....	2
II.	Definitions .....	4
III.	Policy and Legal Structure .....	6
	<b>Recommendations</b> .....	22
IV.	Procurement .....	23
	<b>COA Survey Results</b> .....	30
	<b>COA Review of Certified Vendors Participation</b> .....	31
	<b>External Analysis of Cities and Authority</b> .....	33
V.	Diversity & Inclusion .....	40
	<b>City of Akron</b> .....	42
	<b>City of Dayton</b> .....	44
	<b>City of Grand Rapids</b> .....	46
	<b>Northeast Ohio Regional Sewer District (NEORS)</b> .....	48
	<b>Akron Certified Subcontractors</b> .....	50
	<b>Recommendations</b> .....	51
VI.	Technology .....	52
	<b>Recommendations</b> .....	54
VII.	Schedule .....	55
	<b>Procurement and Inclusion Report Schedule</b> .....	56
VIII.	Appendices SEPARATE VOLUME .....	57
	<b>A. Ordinances</b> .....	57
	<b>References</b> .....	59

## I. Executive Summary

The Elevate Akron report released in 2018 contained data showing that Akron's black population has been excluded from opportunity. Strategies developed to address the current market concerns included ensuring that Akron's black population is positioned to engage in, and benefit from, regional growth and prosperity. The report also identified the need to establish a unified culture of economic development and align organizations around a shared narrative that includes coordinated service delivery, connected firms and investment in research. The Elevate Akron report spurred this current initiative to take a deeper look at the City of Akron's current data and practices.

In November 2019, G. Stephens, Inc. and employees of the City of Akron (COA) embarked on a project to evaluate the current purchasing and contracting processes in both the Purchasing Division and Engineering Bureau. The goal was to evaluate operations related to inclusion of diverse vendors and contractors. By undertaking this initiative, the City has shown a commitment to increase economic inclusion, improve racial and gender inequity in our community, and advance opportunities for all.

In December 2019, the project team conducted a survey of eleven departments to determine City employees' understanding of the purchasing process, local preference ordinance, and minority subcontractor preference. The results reflect that the majority of the staff who completed the survey did not understand the City's purchasing process, local preference, or the minority subcontractor preference. Based on the results, it was clear the Purchasing Division failed to capitalize on opportunities to engage diverse, small and local businesses on service contracts and the procurement of goods. Additionally, a quantitative review of the 2019 spend clearly illustrates a minimal amount (1% less the one MBE contract for Fire Station #2) of the \$182 million was spent with diverse certified vendors.

Determining how the City can effectuate change and be more inclusive of populations and businesses who historically lack access to opportunities will require an evaluation of the current legal system and revisions of the City's Charter and Ordinances.

The attached report details the extensive research conducted through a comparative study. This study focused on other communities and one regional authority, similarly situated in both size and demographics. The research revealed these entities implemented economic inclusion best practices. For example, the City of Grand Rapids used the Government Alliance on Race and Equity (GARE) organization's tools to assist them in changing the culture of their municipality. These efforts have resulted in an increased use of diverse vendors and contractors.

The City has been slow to update technology to align with modern business practices. The lack of technology has led to systematic failures in notifying businesses of opportunities and has denied businesses the ability to submit quotes and bids electronically. The current system allows COA Purchasing Agents to use their sole discretion. The City needs to engage technology in order to modernize and bring the procurement and contracting process into the 21<sup>st</sup> Century.

#### Summary of Recommendations:

- Perform a comprehensive review of and revision to the City Charter to align with current municipal best practices for threshold amounts.
- Conduct a comprehensive overhaul of the Purchasing Division to modernize and align with current municipal best practices.
- Recruit and hire a Diversity and Inclusion Director to develop a business program which reflects municipal best practices.
- Purchase and implement a comprehensive technology system(s) to allow maximum efficiency and transparency for all municipal departments and external users.
- Join the [Government Alliance on Race and Equity \(GARE\)](#) to provide resources that will help develop methods to become more inclusive.

Implementation of the detailed recommendations outlined in the report is estimated to take up to 20 months. The costs associated will come in two areas: capital and annual (re-occurring). The estimated capital cost is \$1.7 million dollars. Based on the continued use of technology, the annual cost will be approximately \$1 million dollars, (which does not include inflation). Please note, transitioning to the new Enterprise Resource Programming (ERP) software will be a replacement cost.

The attached detailed report may be lengthy, but it outlines important information on the current shortcomings of the City of Akron, and also how the City can implement certain recommendations to combat institutional oppression of a segment of its community.

Many hours of work have gone into researching and preparing this document for review. The authors of this report are all passionate about this initiative and would like to thank and acknowledge all that have been a part of this project. This report is just the first step of a long road to achieve the recommendations suggested.

## II. Definitions

The following words, phrases, and terms shall be defined as set forth below:

1. "Bidder" means a Business Enterprise offering to contract with the City in response to an invitation to bid and includes a proposal in response to a request for proposal or other similar solicitation.
2. "Business Enterprise" means a firm, sole proprietorship, partnership, association, corporation, company, or other business entity of any kind including, but not limited to, a limited liability corporation, incorporated professional association, joint venture, estate, or trust.
3. "Certified Firm" means a DBE, EDGE, MBE, SBE, VBE or WBE as defined here.
4. "COA" means the City of Akron, Ohio.
5. "Construction" means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection, and other on-site functions incidental to construction.
6. "Contract" means a binding agreement for the Construction of any public improvement, including change orders or subsidiary agreements approved by the City during the performance of such Construction or a written agreement between the City of Akron and a seller in which COA agrees to purchase goods and/or services from the seller in exchange for payment.
7. "Contractor" means the Business Enterprise participating in the performance of a Contract and shall include a party in privity with a Contractor for implementation of a Contract.
8. "Disadvantaged Business Enterprise" or "DBE" means a Local Business Enterprise certified as a DBE under the Ohio Department of Transportation/Unified Certification Program or another similar program.
9. "Encouraging Diversity, Growth & Equity" or "EDGE" means a Local Business Enterprise certified as EDGE under the Ohio Department of Administrative Services/Unified Certification Program.
10. "Local" means within the City of Akron, Ohio corporate limits.
11. "Minority Business Enterprise" or "MBE" means a Local Business Enterprise certified as an MBE under the Ohio Department of Administrative Services/Unified Certification Program, the Northeast Ohio Regional Sewer District or other similar program.
12. "Small Business Enterprise" or "SBE" means a Local Business Enterprise certified as an SBE under the Ohio Department of Transportation/Unified Certification Program, the Northeast Ohio Regional Sewer District or other similar program.

13. "Veteran Business Enterprise" or "VBE" means a Local Business Enterprise certified as a Service-Disabled Veteran Owned Small Business or a Veteran Owned Small Business by the US Department of Veterans Affairs or another similar program.
14. "Woman Business Enterprise" or "WBE" means a Local Business Enterprise certified as a WBE by the Northeast Ohio Regional Sewer District or other similar program.

### III. Policy and Legal Structure

The City of Akron's purchasing and contracting processes are governed by the City Charter, Akron City Codified Ordinances, City of Akron legislation and Ohio Revised Code. While completing the research for this report and to further understand the contracting and procuring processes the City undertakes, it became apparent that there is no central location for information on the City's legal requirements, policies and current practices.<sup>1</sup>

The City of Akron is a home rule municipality. The home rule provisions of the Ohio Constitution generally authorize municipal corporations to govern themselves in local municipal matters independent of state law. A municipality exercises its home rule powers of local self-government by adopting a charter (Ohio Constitution Article XVIII, Section 7): "A municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government." Therefore, it is essential to understand the provisions in the Akron City Charter that relate to contracts and purchasing.

The City of Akron Charter defines the role of the Purchasing Agent, Board of Control and when City Council approval is required in regard to contracts and purchases in excess of a certain threshold. Section 95 of the Charter states:

**SECTION 95. - PURCHASING AGENT; BOARD OF CONTROL.**

(a) Purchasing Agent. The Purchasing Agent, under the supervision of the Director of Finance, shall purchase all material, equipment, and supplies for the City, according to specifications furnished by the Mayor, and, before approval of invoices therefor, inspect the same upon delivery to determine quantity and conformity to specifications.

Subject to the authority of the Council, he shall sell real and personal property of the City not needed for public use or condemned as useless by the director of a department.

No material, equipment, or supplies shall be purchased for a department unless there is to its credit an available and uncommitted balance sufficient to pay for the same.

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<sup>1</sup> The Purchasing Division did release a Standard Operating Procedures manual in July 2019. It has not been widely circulated. The manual is confusing and does not cover all relevant topics. It can be found on the City intranet page. <http://iwww/COAIntranet/Files/Finance/PurchasingSOP.pdf>

In making purchases, opportunity for competition among suppliers shall be given, and rules and regulations therefor may be prescribed by Council. Each order of purchase or sale shall be approved and countersigned by the Director of Finance, and monthly reports of purchases shall be submitted to him.

Contracts for material, services, equipment, and supplies in excess of fifteen thousand dollars (\$15,000) shall be authorized by Council and awarded to the lowest and best responsible bidder, after public advertisement.

No contract, agreement, or other obligation involving the expenditure of money shall be entered into, nor shall be lawful, unless the Director shall certify thereon that there is an unencumbered balance in the Treasury to the credit of the fund from which it is to be drawn, sufficient to discharge the contract, agreement, or obligation.

(b) Board of Control. There is hereby established a Board of Control, which shall consist of the Mayor or his designated deputy, the Directors of Law, Finance, and Public Service, the President of Council, and the Chairman of the Finance Committee of Council or their designees. The Director of Public Service or his designee shall act as chairman thereof and shall maintain a record of its proceedings in his office.

No contract in excess of five thousand dollars (\$5,000) shall be awarded except upon the approval of the Board of Control.

Section 95 of the Akron City Charter is the only section within the Charter that addresses contracting. The next step in analyzing the legal structure with which the City must comply is a review of the relevant Akron Codified Ordinances.

Chapter 34 of the Akron City Ordinances (hereinafter referenced as ACO) addresses public contracting. Chapter 34 addresses contract compliance requirements, bond requirements, minority subcontractor preference, and local preference. Chapter 34 in its entirety is provided for reference:

#### Chapter 34 - PUBLIC CONTRACTS AND PROPERTY

##### Sections:

##### Article 1. - Public Contracts

##### 34.01 - Definitions.

For the purpose of §§ 34.02 through 34.09, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

" Bidder. " Any person, partnership, corporation, limited liability company, association, joint venture, or other business entity seeking to be awarded a public contract.

" Construction contract. " Any public contract for the construction, rehabilitation, alteration, conversion, extension or repair of buildings, streets, or other improvements to real property.

" Contractor. " Any person, partnership, corporation, limited liability company, association, joint venture, or other business entity which has been awarded a public contract and includes every subcontractor on such a contract.

" Local bidder. " An individual or business entity: (1) whose principal place of business is located within the corporation limits of the City of Akron as registered in official documents filed with the Secretary of State of the State of Ohio; or (2) the business entity has retail, wholesale or manufacturing facilities within the corporation limits of the City of Akron, the business entity makes capital investment in Akron, and the business entity pays City of Akron income taxes.

" Public contract. " Any contract awarded by the City whereby the City is committed to expend or does expend its funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, or any lease, lease by way of concession, concession agreement, permit or permit agreement whereby the City leases, grants, or devises property of the City, or otherwise grants a right of privilege to occupy or use property of the City.

" Subcontractor. " Any person, partnership, corporation, limited liability company, association, joint venture or other business entity which supplies any of the work, labor, services, supplies, equipment, materials, or any combination of the foregoing under a contract with the contractor on a public contract.

(Ord. 791-1997; Ord. 811-1994; Ord. 616-1970)

(Ord. 514-2009; Ord. 82-2017)

34.02 - Reserved.

Editor's note— Ord. 82-2017, § 3, adopted March 27, 2017, repealed § 34.02, which pertained to administration. See Code Comparative Table and Disposition List for complete derivation.

#### 34.03 - Equal employment opportunity.

All contractors agreeing to do business with the City shall abide by the following:

A. The contractor shall not discriminate in employment as defined in Sections 38.01 and 38.02 of this Code.

B. (Reserved).

C. The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the contractor's obligations under Section 38.02 of this Code.

D. The contractor shall furnish all information and reports required by the City, including the Human Relations Commission and/or the Akron Civil Rights Commission, regarding the contractor's compliance with the provisions of Section 38.02 of this Code.

E. The contractor shall take such action with respect to any subcontractor as the City may direct as a means of enforcing the provisions of this section, including penalties and sanctions for noncompliance.

F. The contractor shall file compliance reports with the City in the form and to the extent prescribed by the City and cause its subcontractors, if any, to do the same. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and its subcontractors.

G. The contractor shall require any subcontractors providing goods or services directly to the City to comply with the provisions of Section 38.02 of this Code.

H. Refusal or failure by the contractor or subcontractor to comply with any portion of this program as herein stated and described may subject the offending party to any or all of the following penalties:

1. Withholding of all future payments under the involved public contract until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract;
2. Refusal of all future bids for any public contract with the City or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that it has established and shall comply with the provisions of Section 38.02 of this Code;
3. Cancellation of the public contract and declaration of forfeiture of the performance bond;
4. In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure or as may be provided for by contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable laws, of contractors, subcontractors, or other organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent, directly or indirectly, compliance with the requirements as herein outlined.

(Ord. 616-1970)

(Ord. 514-2009; Ord. 82-2017)

#### 34.031 - Americans With Disabilities Act.

All contractors providing or making available governmental services, programs, and activities to the City shall, during the performance of such contracts, comply with all applicable provisions of the Americans with Disabilities Act of 1990 and any amendments thereto.

(Ord. 314-1993)

#### 34.04 - Contract compliance requirements.

A. All notices to prospective bidders published on behalf of the City shall include as a part of the contract specifications the condition that all bidders will be required to comply with the City Contract Compliance Program regarding equal employment opportunity.

B. All reports required herein shall be submitted in duplicate to the department, division, or other agency letting the contract.

C. Each bidder shall file as part of bid documents, contract employment reports with the City contracting agency or as may be directed by the Human Relations Commission or its representative. Such contract employment reports shall include such information as to the employment practices, policies, programs, and statistics of the contractor, and shall be in such form, as the Commission may prescribe.

(Ord. 616-1970)

#### 34.05 – Pre-award conference.

A. Following receipt and review of the employment information submitted by the bidders, and prior to award of a contract, the apparent successful bidder and his known major subcontractors shall be required to attend a pre-award conference, if called by the Contract Compliance Officer, at which time such bidder and major subcontractors shall submit affirmative action programs to promote equal opportunity in employment.

B. The Contract Compliance Officer shall determine whether or not the apparent successful bidder has complied with this chapter, and shall submit his determination and recommendation thereon to the Mayor, the director of the department involved and the Board of Control.

(Ord. 616-1970)

#### 34.06 - Project site reports.

A. Where a construction contract exceeds ten thousand dollars, a project site report shall be completed and submitted by the contractor and any subcontractor not more than ninety days from the beginning of the work on the site. Such project site report shall include such information as to employment practices and statistics of the contractor and each subcontractor and shall be in such form as the Contract Compliance Officer prescribes. Where the term of the contract exceeds ninety days, such project site report shall be submitted once each ninety days, or more frequently if the Contract Compliance Officer determines that such submittal is deemed necessary for a continuing evaluation of the work force composition. Subcontractors shall complete and submit such project site reports to the contractor for transmittal to the city.

B. Post award reports shall be reviewed as one means of determining contract compliance.

(Ord. 616-1970)

34.07 - Intergovernmental cooperation.

In the event specific discriminatory practices are found to exist in the administration and enforcement of this chapter, in addition to the sanctions that may be imposed as provided for by the terms of the contract, the City may forward all pertinent information to the appropriate federal and state agencies.

(Ord. 616-1970)

34.08 - Contract disposition.

A. In the event that a contractor fails to cooperate in reaching mutually satisfactory solutions or to implement contract compliance agreements previously made, the contract Compliance Officer shall review such cases to determine:

1. Whether further efforts or alternative approaches are desirable. Depending on the nature of the problem, such alternatives may involve contact with industry, related labor unions or requesting the assistance of the Ohio Civil Rights Commission or the office of Federal Contract Compliance and the particular federal agency involved for further negotiations; or
2. Whether any of the penalties set forth in § 34.093(H) is appropriate to the case.

B. In the event the Human Relations Commission determines that the contractor has violated or has failed to comply with the equal employment opportunity requirements of the contract, after affording such contractor a reasonable time to correct his situation and where negotiations have been of no avail, it shall make a finding under subsections (A) (1) or (2) of this section and shall transmit such findings and recommendation thereon to the Mayor for implementation. It shall also send a copy to the department involved.

(Ord. 616-1970)

34.09 - Public contracts—Bond requirements.

A. Except as provided in subsection E of this section, a bidder on a public contract is not required to post a bid bond if such bidder's bid is fifty thousand dollars or less.

B. Except as provided in subsection E of this section, a contractor on a public contract is not required to post a performance bond if such contract is for fifty thousand dollars or less.

C. At such time as the value of a public contract through amendment or adjustment, including without limitation changes in scope or in estimated quantities, exceeds fifty thousand dollars, the contractor shall be required to post a performance bond in the amount of one hundred percent of the value of the contract remaining to be performed; except however, a contractor shall be required to post a performance bond in the amount of ten percent of the value of the contract for:

1. Tree trimming and tree and stump removal contracts;
2. Custodial service contracts;
3. Yard waste composting contracts;
4. Grounds maintenance contracts;
5. Herbicide spraying contracts;
6. Tire disposal contracts.

D. For all crack-filling contracts which exceed fifty thousand dollars, a contractor shall be required to post a performance bond in the amount of twenty-five percent of the value of the contract.

E. The Purchasing Agent or Service Director may require bidders to post bid bonds with their bids and performance bonds with the execution of contracts otherwise exempt from such requirements under subsection B of this section upon a finding that one or more of the following conditions exist, in which case, the advertisement and specifications shall set forth the bond requirements:

1. The contract is for the purchase of goods to be specially manufactured or assembled or which are otherwise not normally available in suppliers' inventories.
2. The contract is to be paid in whole or in part from federal funds requiring compliance with the Federal Wages and Hour Act, Davis-Bacon Act or other federal procedures.
3. The contract involves services which, if improperly or inadequately performed, pose a substantial risk of harm to

persons or damage to machinery or assets the value of which exceeds fifty thousand dollars.

4. The contractor and/or bidder has no prior record of performance which the Service Director and/or Purchasing Agent may use to determine the contractor's or bidder's ability to perform.

F. Nothing contained in this section shall be construed to restrict the applicability of state prevailing wage requirements or to exempt transactions therefrom to the extent that such requirements would otherwise apply and be enforceable.

G. No payment or partial payment shall be made to a contractor proceeding without a bond under this section unless and until evidence satisfactory to the Director of Finance is presented showing that the contractor has completed the contract, or portion thereof for which payment or partial payment is sought, in accordance with the term of the contract and satisfactory to either the Purchasing Agent or Service Director and that the contractor is entitled to payment or partial payment.

(Ord. 639-1993; Ord. 870-1992; Ord. 10-1989)

34.10 - Minority subcontractor preference program.

A. As used in this section, "minority business enterprise" has the meaning given in R.C. § 122.71(E).

B. Any minority business enterprise that desires to be a minority business enterprise subcontractor or materialman under this section must first be certified by the Equal Employment Opportunity Coordinator of the Department of Administrative Services of the State of Ohio.

C. Any public contract valued at ten thousand dollars or more in which the contractor intends to subcontract ten percent or more of the total value of the contract shall provide that the contractor will award subcontracts to minority business enterprises according to the following minimum percentages:

1. Fifteen percent for construction, demolition, erection, alteration or repair of City buildings or improvements, including labor and materials;

2. Seven percent for equipment, supplies, materials and services other than professional services;

3. Five percent for professional services.

D. The Contract Compliance Officer may authorize a partial or total waiver of the subcontracting preference requirements of this section upon application and demonstration by the contractor that there are not sufficient, qualified minority business enterprises reasonably available to the contractor to fulfill the minority subcontracting requirements.

E. Any person who intentionally misrepresents himself as owning, controlling, operating or participating in a minority business enterprise for the purpose of obtaining subcontracts under this section shall be guilty of theft by deception as provided for in R.C. § 642.02.

(Ord. 499-1984)

34.11 - Severability.

Irrespective of any general rules of construction, §§ 34.01 through 34.10 and each part thereof are independent sections and parts of sections and notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of such sections, or the application thereof to any person or circumstances, is held invalid, the remaining sections or parts of sections and the application of such provision to any person or circumstances, other than those as to which it is held invalid, shall not be affected thereby and it is hereby declared that §§ 34.01 through 34.10 would have been enacted independently of such section, sections, or parts of a section or sections so held to be invalid.

(Ord. 616-1970)

34.12 - Local preference.

A. The award of all public contracts for supplies, equipment and materials, excluding construction contracts and contracts financed in whole or in part by contributions or loans from any agency of the State of Ohio or United States Government, shall be conducted in accordance with the following provisions:

1. In determining the lowest and best responsible bid, a local bidder shall receive a credit equal to 2.5 percent of the lowest bid submitted by a nonlocal bidder. This credit shall not exceed ten thousand dollars.

2. The City shall indicate in all its invitations to bid and specifications for all public contracts for supplies, equipment and materials, excluding construction contracts and contracts financed in whole or in part by contributions or loans from any agency of the State of Ohio or United States Government, that it shall apply a local bid preference as outlined in this section in the evaluation and award of bids received.

(Ord. 811-1994)

#### 34.13 - Project labor agreement.

The Mayor may execute a Project Labor Agreement ("PLA") with the Tri-County Building and Construction Trades Council, its successor, or any union that is a member of the Council, or its successor, for the construction of any capital improvement in the City of Akron where the total construction cost exceeds five hundred thousand dollars.

(Ord. 144-2006)

#### Article 2. - Management of City Property

##### 34.15 - Family housing.

The Director of Public Service shall be charged with the management of all family housing facilities owned by the city, and other real estate not devoted to specific public use.

(Ord. 714-1957)

##### 34.16 - Rental of property.

The Director of Public Service may rent or lease such property on a month-to-month basis, terminable at will, at rates reasonably comparable to those paid for other similar property.

(Ord. 714-1957)

##### 34.17 - Occupancy by City employees.

City property may be rented to employees of the City but for not less than the reasonable rental thereof except where City employees, in addition to their regular duties, perform outside of regular working hours, other duties for the City relating to such property or property adjacent thereto as custodian, janitor, watchman, groundkeeper, etc. In such cases, the rental rate of such property may be adjusted by

the Director of Public Service to furnish reasonable compensation for such additional services.

(Ord. 714-1957)

34.18 - Furnishing utilities.

Utility service, including electricity, gas and water, may be furnished to the tenants of City property and the reasonable value thereof included in the rent when such services are not separately metered or when for any reason it is of convenience for the City to do so. Telephone service may also be furnished if the tenant is a City employee performing additional duties which require the use of a telephone.

(Ord. 714-1957)

Article 3. - Sale, Lease and Vacation of City Property

34.25 - Personal property sale over one thousand dollars.

A. The following procedure is established for the sale of personal property of the City not needed for public use and having an estimated value in excess of one thousand dollars.

B. When the sale of such property is authorized by Council, the Purchasing Agent shall proceed to advertise the same for sale on two separate days, such advertisements to be separated by a period of not less than two days, and shall accept sealed bids, pursuant to such advertisement, or sell the property at public auction at the site advertised. The sale shall be made to the highest bidder on the approval of the Board of Control.

(Ord. 971-1990; Ord. 299-1961)

34.26 - Procedure for leasing City property.

A. Property of the City may be leased by the Director of Public Service when not immediately needed for any municipal purpose on such terms and conditions as Council, by a two-thirds vote of its members, approves and in such manner as Council approves.

B. Property of the City which is under the administration of the Public Utilities Bureau of the Department of Public Service and which is not immediately needed for the operation of such Bureau or which provides housing accessible to Bureau facilities for employees of such Bureau,

may be leased by the Director of Public Service for a term of one year or less, without the approval of Council. The Director shall submit to Council annually on April 1 of each year a list of the parcels of property he has leased for a term, together with the locations and rentals of each parcel and the names of the lessees at the time of such report.

(Ord. 135-1964)

#### 34.27 - Procedure for sale of City real estate.

On a finding by Council that real estate is not needed for public use, the property shall be advertised for sale once a week for three consecutive weeks in a newspaper of general circulation within the City, and shall be conveyed to the highest bidder upon approval of the Board of Control. However, advertising maybe dispensed with and the sale made to a named grantee at a fixed price when Council specifically so authorizes by a two-thirds vote of its members.

(Ord. 857-1990; Ord. 299-1961)

#### 34.28 - Charges for investigations for lease or sale of City land.

A charge shall be made for the investigation of each request for the sale or lease of City land, excluding urban renewal property, as follows:

A. A nonrefundable base fee of one hundred twenty-five dollars shall be paid by the petitioner for a sale, lease, or license to occupy City land, or any easements on City land, to reimburse the City for the cost of investigating the request.

B. Assuming the Planning Commission gives conditional approval of the land sale, subject to City Council concurrence, the petitioner shall also prepay a non-refundable fee of one hundred fifty dollars as the cost of an appraisal which shall be made of the land that is under study to be sold. Such appraisal shall be made by one professional real estate appraiser selected by the City.

C. City land may be sold to adjacent property owners on a negotiated basis at the market price as determined by the one qualified appraiser as referred to in subsection B of this section.

D. City land may be sold on a competitive bid basis at no less than the market price as determined by one qualified appraiser as referred to in subsection B of this section.

E. If the land is sold, it shall be priced at not less than the market value as determined by the appraisals referred to in subsections B, C, and D of this section.

F. The Board of Control may award the sale of land to the bidder submitting the proposal which is most in keeping with the use and design objectives set forth by the Planning Commission and Council.

G. The request for the sale of City land shall be processed the same as zoning changes insofar as it is done in cooperation with the Department of Planning and Urban Development on drafting a petition and processing the payment of fees.

(Ord. 683-1974; Ord. 455-1969; Ord. 82-1966)

#### 34.29 - Procedure required for thoroughfare vacations.

A. Request for Vacation. All requests for the vacation of thoroughfares in the City shall include the following.

1. Petition. A petition signed by the owners of property abutting the thoroughfare for which the vacation is requested; "abutting" includes property at the end of such thoroughfare;

2. Plat. An engineer's or surveyor's certified survey plat of the thoroughfare in question as required by R.C. § 711.39; and

3. Fees. A nonrefundable fee of one hundred twenty-five dollars to cover the cost of investigating the possible vacation of the thoroughfare in question. An additional fee of twenty-five dollars for the cost of advertising shall be prepaid if not all owners of land abutting such thoroughfare to be vacated sign the vacation petition.

B. Planning Commission Action. As provided in the City Charter, the City Planning Commission may approve or deny the requested vacation and, if approved, may add such conditions to the vacation as will protect the public interest. Such conditions shall be complied with before the effective date of the vacation of the thoroughfare in question.

C. Further Procedures. The following alternate procedures are required if and after the requested vacation is approved by the City Planning Commission:

1. The petitioners shall pay the remaining value of the public improvements or utilities to be abandoned in the thoroughfare in question. The petitioners shall also pay the estimated cost of restoration, relocation, replacement, or removal of curbs, paving, sewers, water, utility poles, wire or conduit lines, sidewalks, street signs, street trees, or other utilities, etc., where the vacated street may join a street to remain in place. The costs required shall be determined by the Director of Public Service and shall be prepaid to the city. The deposit for this work shall be made and the work completed before the effective date of the vacation of the thoroughfare in question.

2. If the Department of Planning and Urban Development determines that the City paid its grantor the fair market value to acquire title to the thoroughfare in question, the petitioners shall deposit the nonrefundable fee of one hundred fifty dollars with the City to cover the cost of one competent real estate appraisal of the land that is proposed to be vacated. Such appraisal shall be made by one professional real estate appraiser selected by the City. The land comprising the thoroughfare in question shall be sold to the abutting property owners on a negotiated basis at not less than the market value determined by the appraisal described above. The price shall be paid, and subsection (C)(1) of this section complied with, before the effective date of the thoroughfare in question.

D. Exceptions. Council may vary or suspend the above requirements as it deems it in the public interest where the petitioners are the United States of America or this state, or any political subdivision, taxing district, department, commission, board, institution, authority, or other agency of either.

(Ord. 504-1971)

In addition to the City Charter provisions and Akron City Ordinances, the City must also consider Ohio Revised Code Provisions that may relate. For example, the minority subcontractor preference program outlined in ACO 34.10 references the definition of minority business enterprise as defined in Ohio Revised Code section 122.71(E). Ohio Revised Code 122.71(E) states:

(E)

(1) "Minority business enterprise" means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.

(2) "Owned and controlled" means that at least fifty-one per cent of the business, including corporate stock if a corporation, is owned by persons who belong to one or more of the groups set forth in division (E)(1) of this section, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership. In order to qualify as a minority business enterprise, a business shall have been owned and controlled by those persons at least one year prior to being awarded a contract pursuant to this section.

The Ohio Constitution grants Ohio cities home rule authority. Some municipalities have enacted city charters as has the City of Akron. Other cities in Ohio have not enacted a city charter and therefore operate under the form of government as set forth in Title 7 of the Ohio Revised Code. These municipalities are referred to as statutory municipalities. Statutory municipalities must follow certain provisions of the Ohio Revised Code in reference to contracts and procurement. These ORC sections are: 715.18, 731.14, 731.141, 735.05, 735.051, 735.052, 735.053, 731.16, 735.07, 117.16(A), 723.52. These Ohio Revised Code sections can act as guidance to the City of Akron when determining best practices and what other municipalities may be mandated to do, but as a Charter municipality the City of Akron can self-govern in regards to competitive bidding, council authority thresholds, and other contract legal requirements.

The City of Akron also has legislation that has been enacted by Council that relates to bidding and contracting that has not been codified. This created issues at the project outset as it is very difficult to locate ordinances which have been passed by Council, but are not codified.

## **Recommendations**

- Revise the City Charter to increase the thresholds for requisitions that need to go to Board of Control and City Council.
- Revise the City Charter to remove the language “In making purchases, opportunity for competition among suppliers shall be given.” While competition is essential for certain large dollar item purchases, it is cost prohibitive to bid out certain low dollar items.
- Revise and provide more detail to Akron City Ordinances 34.01 through 34.13.

## IV. Procurement

### **Current COA Procurement Practices and Preferences**

The Purchasing Division is responsible for developing standards and policies relating to the City's procurement activities. City employees have a duty to safeguard the public trust and public resources and to ensure that public procurement is conducted in an environment of transparency. The National Institute of Governmental Purchasing (NIGP) defines an environment of transparency as "easily accessible and understandable policies and processes. This value is essential to demonstrate responsible use of public funds."<sup>2</sup>

Section 95a of the Akron City Charter details the duties of the Purchasing Agent. This section also details the makeup of the Board of Control and the thresholds at which a contract must go to Board of Control and City Council for approval. The Charter states: "No contract in excess of five thousand dollars (\$5,000) shall be awarded except upon the approval of the Board of Control." The Charter requires that "Contracts for material, services, equipment, and supplies in excess of fifteen thousand dollars (\$15,000) shall be authorized by Council and awarded to the lowest and best responsible bidder, after public advertisement." Therefore, any contract over \$5,000 must go to the Board of Control for approval and any contract in excess of \$15,000 must be authorized by Council and be publicly advertised.

The City of Akron's requirement that contracts in excess of \$15,000 be authorized by Council is more restrictive than the Ohio Revised Code and many other cities. Ohio Revised Code § 735.05 states that "The director of public service may make any contract, purchase supplies or material, or provide labor for any work under the supervision of the department of public service involving not more than fifty thousand dollars. When an expenditure within the department, other than the compensation of persons employed in the department, exceeds fifty thousand dollars, the expenditure shall first be authorized and directed by ordinance of the city legislative authority." This amount was increased from \$25,000 to \$50,000 by the Ohio Legislature in 2012.<sup>3</sup> The push for this increase was to avoid bureaucracy and to save money by allowing cities to get things done in a more efficient manner. The City could have a higher threshold than the one in ORC § 735.05 based on its powers of local self-

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<sup>2</sup> The NIGP is a nonprofit educational organization that provides best practices and promotes "the public procurement profession through premier educational and research programs, professional support, technical services, advocacy initiatives that benefit members and constituents..." The City of Akron is a member of the NIGP.

<sup>3</sup> See this September 15, 2012 Columbus Dispatch Article detailing the state law change <https://www.dispatch.com/article/20120915/NEWS/309159818>

government and home rule authority if voters increase the threshold by which expenditures need legislative authority.

Having such a low threshold requiring purchases in excess of \$15,000 to go to City Council inevitably takes more City resources and time. A common practice by departments is to split requisitions in order to avoid going to City Council. Rather than putting in one requisition for an amount over the current \$15,000 legislative threshold, they submit multiple requisitions for the same goods and/or services for \$14,900 or less. The City currently has no safeguards in place to reject split requisitions that would exceed the \$15,000 Council threshold besides the Purchasing Agent's assurance that she watches out for this practice. No City ordinance or purchasing policy defines or prohibits splitting. No random audit of requisitions is being done annually to ensure that the practice of "splitting" is not prevalent. This is a practice that must change.

The City of Akron's Codified Ordinances do not adequately lay out the legal requirements for the procurement of goods, materials and services by the Purchasing Division and Engineering Bureau. Additionally, the City has not adequately codified the legal requirements by which the Purchasing Agent and the Engineering Bureau should abide. This has created inconsistency in policy and procedures among the two divisions in regards to competitive bidding. Public contracts are briefly touched on in ACO § 34.01 through 34.13. However, much of the current legislation relied on by the departments, has not been codified, and is difficult to track. Without the legislation number, locating uncodified legislation applicable to contracts and bidding is almost impossible.

For example, Section 95 of the Akron City Charter details how the Purchasing Agent should dispose of surplus goods. The code states "Subject to the authority of the Council, he shall sell real and personal property of the City not needed for public use or condemned as useless by the director of a department." However, when inquiry was made as to why the City is not currently abiding by this charter provision to sell surplus goods, the Purchasing Agent pointed to Ordinance #383-2009 which states that the "Director of Finance, through the office of the Purchasing Agent, is authorized to enter into agreements to dispose of surplus equipment at the scrap yard and landfill after first being offered to other City departments and non-profit agencies."

The process of passing legislation but not codifying it in the municipal code has led to the City not being transparent with internal and external partners as to the current legal requirements. The City does not have a procurement manual that details uncodified ordinances and policy for both internal and external stakeholders.<sup>4</sup> The lack

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<sup>4</sup> For example, see the City of Cincinnati Procurement manual which is a valuable resource to employees and vendors and which defines best practices. <https://www.cincinnati-oh.gov/purchasing/purchasing-resources/procurement-manual/>

of a manual and failure to codify all ordinances related to contracting has resulted in Engineering, Purchasing and external Vendors lacking adequate instruction on what they can and cannot do.

The City of Akron Charter Section 95 states that “In making purchases, opportunity for competition among suppliers shall be given.” This wording has required even the simplest purchase of low dollar goods to go through the arduous quoting process with the Purchasing Department. If a department wants to purchase a \$20.00 good, they must submit a requisition which will be assigned to a buyer, who will send out request for quotes by fax/mail to three vendors chosen by the buyer (if the requisition is estimated to be under \$15,000). The response time given to vendors to respond with pricing is between seven (7) and fourteen (14) days.<sup>5</sup> The requisition process involving small dollar goods can take weeks and inevitably costs the City more in labor, postage and paper than any savings that would be garnered by the process. City departments have expressed frustration over the length of time it takes to acquire small dollar goods requested through the requisition process.

Currently, the City has issued only 33 purchase cards to a limited number of employees (mostly cabinet and upper level management). These purchase cards are used mostly for travel and paying for conferences. Some departments have utilized the purchase cards to purchase small dollar goods to avoid the lengthy requisition process. Because the purchase cards are administered by the Treasury Division (versus the Purchasing Division) these actions have been allowed without reprimand. This is problematic because of the current Charter states “In making purchases, opportunity for competition among suppliers shall be given.”

The City of Akron Purchasing Division currently requires anything over the amount of \$15,000 to be competitively bid by sealed bid. The term “sealed bidding” is derived from the off-line world where bids are submitted in sealed envelopes that are stored in a secure location and are opened and the results read aloud at a specific date and time in a public forum. There is no legal requirement for sealed bidding in the Akron City Code or the Ohio Revised Code. Sealed bidding is costly and creates impediments to contracting with the City especially for small and diverse businesses. Sealed bidding is more appropriate for large, complex services and construction projects where selection is made using subjective criteria and therefore the projects can be unlawfully influenced. As part of sealed bidding, the Purchasing Division requires mandatory pre-bid meetings for service contracts. The Law Department has advised the Purchasing Division that this is not best practice and the City cannot require vendors to attend a mandatory pre-bid meeting. This practice of mandatory pre-bid meetings

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<sup>5</sup> See page 6 of the Purchasing Division Standard Operating Procedures.

may preclude small local businesses from being able to bid on a job if they are working or have other commitments during the mandatory pre-bid meeting.

The City advertises all sealed bid opportunities on the City of Akron website (albeit difficult to locate), for two consecutive weeks in the Akron Beacon Journal, and for one week in The Reporter. Charter Section 95 which states that anything over \$15,000 must be approved by Council and publicly advertised is costing the City of Akron \$525-\$592 in advertisement costs per bid.<sup>6</sup> The Purchasing Division spent \$178,535.56 publishing bids in 2019. The City lacks a platform to systematically and consistently notify *all* vendors of opportunities.

Currently, sealed bids must be submitted (either by mail or by dropping off) to the purchasing office in sealed envelopes by the due date on the bid; there are no exceptions to this rule. There is no opportunity to submit bids online. Mailed bids can take up to a week to be delivered and hand delivered bids must be dropped off from 8:00 am - 4:30 pm on the 5<sup>th</sup> floor of the Municipal Building. Failure to follow the bid packet directions and not completing the pricing in full can cause the bids to be rejected. Bids must be publicly opened and read on a certain date and time. This rigid practice of sealed bidding creates roadblocks for local and/or diverse companies to freely compete within the City of Akron.

Informal requests for quotes (currently \$15,000 and less) are not required to be submitted in sealed envelopes, do not require as much rigidity and formality, do not have a strict deadline, can be accepted by email or fax, and are not required to be publicly read, thus creating more flexibility for the vendors. If a vendor does not respond to a request for quote, the Purchasing Division will follow up with a second request but a strict deadline for response is not imposed.

In 1994, Akron City Council passed legislation to provide a system of preferences for local businesses to benefit the local economy, increase local job opportunities, and to generate additional tax revenues for the City of Akron.<sup>7</sup> Local preference located in ACO § 34.12 and as discussed herein is not for construction contracts. After a review of the Board of Control meeting minutes and discussions with the Purchasing Division, it was determined that local preference was not being applied as required by the ordinance.

Local preference is a 2.5% preference that is calculated by giving a local bidder(s) a credit equal to 2.5% of the lowest bid submitted by a non-local bidder. The credit should not exceed \$10,000. The City of Akron needs to evaluate if this

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<sup>6</sup> The City still incurs the cost of two weeks of advertising in the newspaper despite the fact that the Ohio Legislature provides for abbreviated publication in ORC §7.16 which if utilized would drastically reduce the City's publications costs.

<sup>7</sup> See O-811-1994 which amended section 34.01 and added 34.12 of the Akron Codified Ordinances.

percentage is adequate to obtain the goals of the ordinance. The City has not raised the local preference percentage since inception or added an additional preference percentage for certified small, women, and minority owned businesses as has been done in other communities.

While conducting the research for this initiative, it was discovered that local preference was not being calculated by the Purchasing Department. Rather, City departments are required to calculate local preference, which many have not been doing or have been calculating incorrectly. When departments are provided a bid recommendation form, it states "Please consider the 2.5% local preference, where it applies." Requiring City departments to calculate local preference on sealed bids (anything over \$15,000) is troublesome, as only 31.3% of City employees who were polled were aware of the local preference ordinance and how it is applied.<sup>8</sup>

A recent example of how local preference is not being utilized was apparent at the February 3, 2020, Board of Control meeting. At this meeting a contract for cleaning services of a City building was to be awarded to a company from Tallmadge. A review of the bid tabulation provided by Purchasing reflected that the second to lowest bidder was an Akron company who would have been the lowest bidder upon application of the local preference percentage. Upon discussions with the Manager who completed the bid recommendation, it was determined that the Manager believed that the Purchasing Division applies the local preference *before* completing the bid tabulation. She expressed an interest in awarding the contract to the company located within the City of Akron, but did not believe she could do so since the bid tabulation did not rank them as the lowest and best bid. The City should not require the awarding departments to calculate local preference. Rather, this should be calculated by the Purchasing Division and clearly explained on the bid tabulation that summarizes the bidding companies and bid amounts.

While conducting research for this report, it was discovered that the City of Akron Purchasing Division is also not applying any local preference to goods, materials or services that are being sought through request for quotes. A request for quote is issued to at least three vendors (selected by the buyer) when the Purchasing Division receives a requisition that does not exceed the \$15,000 threshold at which the Purchasing Division requires sealed bidding. The City should immediately start applying local preference to all requests for quotes to allow local businesses to obtain an advantage when competing for business with the City.

Businesses are also not receiving notification and the opportunity to compete on City of Akron opportunities. Currently, the Purchasing Division requires vendors to register on a paper application. This is unheard of in the procurement field today. The

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<sup>8</sup> Results of the City of Akron Purchasing Survey that was sent out in December 2019.

vendor registration form states multiple times that failing to respond to bid invitations or request for quotes (either by bidding or contacting the City to explain why you cannot bid) will result in your removal from the vendor file. This is not an inclusive statement. Completed vendor paper applications are stored in the Purchasing Division. There is no central repository, list or spreadsheet being utilized by buyers to make sure they are notifying all companies who can potentially compete for the job with the City of Akron. They do have an Access database which does contain some vendor information, but they rely on it infrequently. This lack of notification may correlate with the fact that not one certified MBE/SBE/WBE/EDGE business was awarded a quote or bid from the Purchasing Division in 2019.<sup>9</sup>

For requests for quotes on purchases under \$15,000, the buyer assigned to the requisition selects (mostly from memory or institutional practice) which three companies will have an opportunity to compete. There is no policy or even internal practice that mandates that the buyers send these opportunities to certified firms or local businesses before expanding their scope of qualified vendors. No other companies besides the three that are chosen by the buyer will get an opportunity to compete on RFQ's.

The current practice of the Buyers and the Purchasing Manager being able to direct the competition and the opportunities to bid or quote is extremely concerning. These individuals are directing the City of Akron spend to whomever they choose and are not ensuring that all businesses including diverse businesses are notified of the opportunity to compete. Requests for quote opportunities are not put on the website and are not publicly advertised. The City is mailing or faxing requests for quotes to a limited amount of vendors rather than electronically notifying all companies via email as other organizations are doing. This is due to a lack of technology.

In regards to sealed bids (anything over \$15,000), the Division does take greater steps to notify vendors, but not in a uniform manner. Sealed bid opportunities are mailed or faxed to vendors as selected by the Purchasing Division. They will determine who gets notified by looking at who bid last year and anyone else they may know of who provides the good or service needed. A point of concern is that when notifications are sent by postal mail, they inevitably take unnecessary time to get to the vendors. Additionally, the Purchasing Department will require a mandatory pre-bid meeting, and vendors will have to follow the extensive list of requirements outlined by the bid instructions to compete for the job. The extensive list of requirements plus the requirement to mail/drop off a sealed bid packet is probably why the City often does not receive many responses to sealed bid opportunities. The City has remained entrenched in an antiquated and rigid system that discourages parties from wanting to contract with the City if they even receive notification for the opportunity.

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<sup>9</sup> Per data analyzed for this project completed by City of Akron Economist, Alyssa Gregg.

The City currently pays for a yearly membership to NIGP and purchased NIGP codes to try to update the City's vendor classifications. The NIGP Code is most commonly used to classify vendors and to track spend data for use in strategic sourcing and spending analysis. The database is often incorporated into the procurement software utilized by an entity for use in e-procurement. The NIGP Code is now the standard classification taxonomy for 33 states and thousands of local entities within North America. The Purchasing Division never implemented the NIGP codes despite purchasing them. The City currently does not use commodity codes, a practice unheard of in the governmental purchasing world. The Purchasing Division must start using them because it is essential that vendors can register with the City online and receive electronic notification of opportunities based on their commodity codes. Using commodity codes has several benefits such as better management and analysis for purchases. Using NIGP codes would allow proper classification and control over purchases. Proper spend analysis using these codes may allow the City to consolidate purchases and get volume discounts.

The Purchasing Division desperately needs operational change management. The City of Akron Purchasing Division is doing everything by manual processes that are extremely inefficient. Although certain processes have been executed the same way for a long time, it doesn't necessarily make it the best option. The City of Akron must provide mechanisms to achieve transparency and openness to successfully break down the lack of understanding related to the Purchasing Division practices.

Compared to other communities of similar size, the department is currently overstaffed, apparently from operational deficiencies. The department has eight staff members. An example of their inefficiencies were evident when inquiry was made as to how long it would take for a purchase order to get mailed out, Staff responded that it would take up to a week. When questioned why, they explained that one employee prints the purchase orders, a different employee checks them for accuracy and typos, and then a third employee folds them to get them in the mail. This process is done electronically at other municipalities, so using three different employees to process one paper purchase order before it is sent out in the mail exemplifies inefficiency. This is only one example of the inefficiencies within this department.

## COA Survey Results

The City of Akron survey identified that the City of Akron employees who interact with the Purchasing Division do not understand the Purchasing Division's processes or policies. As research was being conducted for this project, it became evident that the reason others do not understand the process is because it is overly complicated and that a system of rules has been put in place that are not supported by reason or law. The survey was sent out to 90 employees comprised of cabinet, managers, and employees who most frequently interact with the Purchasing Division. Survey results indicate that less than 75% of the staff who responded to the survey report that they do not have a good understanding of the City's procurement policy. More alarming, it appears the Purchasing Division's own staff is not utilizing standard practices to assist local vendors. With the exception of a low percentage of respondents in the Engineering Bureau, no one appears to understand why there is a Certified Vendor Program.<sup>10</sup> Once again this could also explain why not even one Certified Vendor was utilized for services, materials or goods by the Purchasing Division in 2019.<sup>11</sup>

The Purchasing survey has identified the need for extensive training of City staff on purchasing processes. In addition to annual training for current employees, the City should provide onboarding for new employees. Training must be developed to instruct new employees on how and when they need to complete requisitions and the legal and policy requirements for purchasing goods and contracting for services. Before implementing any training, the City should revise current policies and draft a detailed manual to provide to staff at the training.

City of Akron Procurement and Inclusion Survey Summary	 Adobe Acrobat Document
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<sup>10</sup> See City of Akron Procurement and Inclusion Survey Summary.

<sup>11</sup> Per data analyzed for this project completed by City of Akron Economist, Alyssa Gregg.

## COA Review of Certified Vendors Participation

A policy should be implemented that City departments procure goods from certified and/or local vendors. If none are available to supply the goods needed, then it would be permissible to select a vendor who is not a certified business and/or local vendor. Random audits should be conducted on purchases to ensure staff is purchasing through local and/or diverse vendors.

### **How many vendors were on the vendors list in 2019? / How many vendors from the 2019 list did business with the COA? / How many Certified vendors were registered with the city in 2019?**

“Vendor list in 2019” references all those vendors who were registered with the City of Akron in 2019 to potentially do business. This question identified a problem with the purchasing process, in that there is no database of registered vendors with the City. Vendors register with the Purchasing Division by filling out a paper form that is stored only as a physical copy; only those vendors that did business with the City have a digital record. At present, it would not be an efficient use of time to digitize the forms for analysis.

### **How many Certified vendors received contracts with the COA in 2019?**

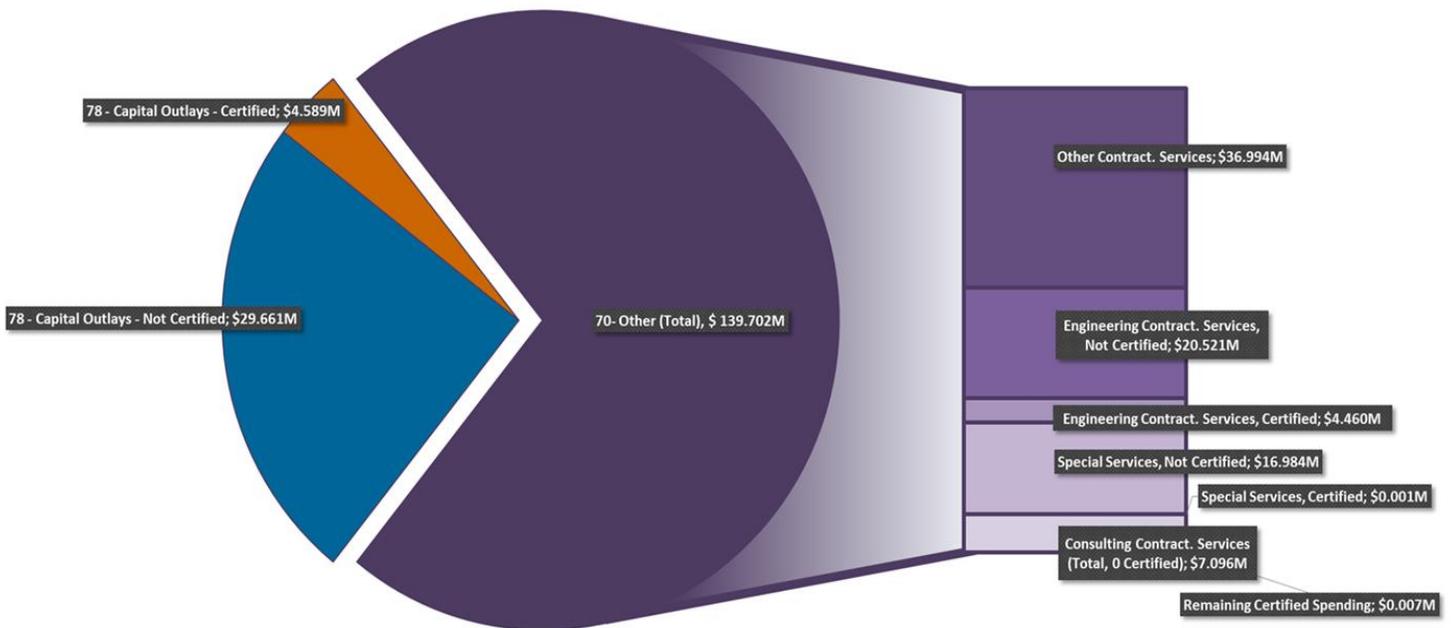
Six certified vendors received contracts with the COA in 2019 for a total spend of \$9,058,203.50, which is 5% of \$182,750,929.56 spent on all vendors. Of that amount, one vendor received a Construction Manager-at-Risk (CMAR) contract, Fire Station No. 2 for \$5,568,100.00, which indicates that less than 2% of the COA spending went to the remaining five certified vendors.

Certified Vendors				
Vendor	Certifications	Spend Per Vendor	Percent of Total spend	Year of First Contract
CTL Engineering, Inc.	MBE	\$ 686.95	0%	2017
DLZ Ohio, Inc.	MBE	\$ 1,493,196.35	1%	1997
G. Stephens, Inc.	MBE, EDGE, SBE, DBE	\$ 7,555,943.23	4%	1997
Rely Supply, LLC	MBE	\$ 6,337.60	0%	2018
Robert Louis Group, LLC	MBE	\$ 789.37	0%	2016
Valley Park Transportation	MBE, EDGE	\$ 1,250.00	0%	2019
<b>Total Certified Spend</b>		<b>\$ 9,058,203.50</b>	<b>5%</b>	
<b>Total Spend</b>		<b>\$ 182,750,929.56</b>	<b>100%</b>	

What are the major areas of spend for the COA (Construction, Engineering, Legal, other, etc.)? / What was the 2019 spend in each of the before mentioned areas?

Major Areas of Spend		
Areas of Spending	Total Spend	Certified Vendor Spend
<b>Account Type</b>	<b>\$ 182,750,929.56</b>	<b>\$ 9,058,203.50</b>
76 - Rentals and Lease	\$ 8,797,312.04	-
78 - Capital Outlays	\$ 34,250,667.24	\$ 4,589,481.24
70 - Other	\$ 139,702,950.28	\$ 4,468,722.26
<b>Top 4 Account Codes within OTHER</b>	<b>\$ 86,057,571.07</b>	<b>\$ 4,461,595.29</b>
70126 - Other Contractual Services	\$ 36,994,214.52	-
70102 - Engineering Contractual Services	\$ 24,981,340.98	\$ 4,460,345.29
70127 - Special Services	\$ 16,985,587.91	\$ 1,250.00
70110 - Consulting Contractual Services	\$ 7,096,427.66	-
<b>Remaining Certified spending in Account type Other</b>		<b>\$ 7,126.97</b>

Major Areas of Spend



## **External Analysis of Cities and Authority**

City of Akron's contract threshold requiring Council approval is well below other communities. Currently, Canal Winchester, a fellow chartered municipality, has one of the highest thresholds in the State for contract authorization by Council. Canal Winchester does not require Council approval or competitive bid if the expenditure is less than \$75,000.<sup>12</sup> Canal Winchester has a charter provision which states that Council can set the threshold by City Ordinance, therefore Council is able to increase the amount requiring legislative approval with inflation and not requiring voters to approve every increase. A review of other cities within the State of Ohio reflects that many in addition to Canal Winchester have adopted a higher threshold. Both the City of Columbus and the City of Cuyahoga Falls require Council approval once expenditures exceed \$50,000.<sup>13</sup> In 2018, the City of Canton increased its threshold for Council approval to \$25,000 for professional services and the purchase of goods, and amended the City ordinance to allow purchases of up to \$50,000 without competitive bidding.<sup>14</sup>

Although Akron has not addressed splitting in its policies and ordinances, other municipalities have. For example the City of Lima defines splitting in their ordinance as "Split purchase orders or invoices means dividing purchases into lesser amounts to circumvent dollar ceilings in the City's purchasing policy" and then forbids this practice by stating "There shall be no 'split' Purchase Orders or Invoices as a means to circumvent dollar ceilings per our purchasing policy."<sup>15</sup>

An analysis of other cities in Ohio reflects that other city ordinances go into much greater detail than Akron has when defining the legal requirements for bidding, bonds, and detailing programs to increase diversity and inclusion.

An evaluation of other municipalities within Ohio shows that decentralized purchasing, i.e. departments procuring their own small dollar goods, is common practice. For example, the City of Cincinnati in its procurement manual states "If the price is less than \$5,000, the purchase may be made on a non-competitive basis from a certified SBE (Small Business Enterprise), ELBE (Emerging Local Business Enterprise), or SLBE (Small Local Business Enterprise) contractor/supplier."<sup>16</sup> Another example of a city not requiring small purchases to go through the three quote process is the City of Hamilton located in southwest Ohio. The City of Hamilton has mandated that repetitive type items whereby the estimated price of the materials, equipment, supplies, or

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<sup>12</sup> See City of Canal Winchester Code § 161.02.

<sup>13</sup> City of Columbus Ordinance § 329.18. The City of Cuyahoga Falls has not codified this amount rather they rely on ORC 735.05.

<sup>14</sup> See City of Canton Codified Ordinance 105.09 and 105.10. Please also see <https://www.cantonrep.com/news/20180514/canton-city-council-increases-bid-threshold-for-goods-and-services>

<sup>15</sup> See City of Lima City Ordinance 228.07

<sup>16</sup> See the City of Cincinnati Procurement Policy located at <https://www.cincinnati-oh.gov/purchasing/purchasing-resources/procurement-manual/>

services is \$2,500 or less may be purchased based on one verbal quote, provided the price is deemed to be fair and reasonable. Additional competition may be obtained whenever there is a reason to believe a quotation is not a fair and reasonable price.”<sup>17</sup>

After engaging on a discovery mission and personally visiting with the City of Dayton, City of Grand Rapids, and the Northeast Ohio Regional Sewer District, it was determined that Akron is the only one of these organizations that requires three quotes for goods or materials of a nominal value below \$500.00. In these other organizations, departments have purchase cards and can acquire goods as needed to continue operations without having to go through the lengthy requisition process. While all of these organizations had a threshold of not requiring three quotes for purchases less than \$500, they all expressed that this amount was still too low. They suggested an amount anywhere from \$1,500 to \$2,500 per good/service.

During the team’s visits and conversations with representatives from the City of Dayton, City of Grand Rapids and the Northeast Ohio Regional Sewer District (NEORSD), representatives all recommended an expansion of the purchase card program. They also encouraged the City to use an Amazon Business Prime account. This would allow City employees to obtain small dollar goods through Amazon at state contract pricing. Items would be shipped next day and the City would have access to in-depth reporting on the spending habits of City departments and the ability to audit departmental purchases.

The City of Toledo conducts its bidding process through software called Planet Bids.<sup>18</sup> In Toledo, anything over \$40,000 that requires a sealed bid is publicized in its Council’s Toledo City Journal, a newsletter that is online as well as printed and distributed to subscribers. Toledo does not pay to publicly advertise in the newspaper. Rather, Planet Bids provides vendors the ability to manage their own profile as a new or existing vendor, receive automatic e-mail notifications for selected bid opportunities based on product/service categories, search for all types of requests at any time, submit electronic bidding, and much more. The City of Toledo highly recommended Planet Bids to bring the City’s purchasing process into the 21<sup>st</sup> century. In addition to this platform that Toledo uses, there are many on the market that can potentially reduce publication and postage costs and provide electronic notification to vendors.

The City of Toledo does not require services/goods to go via formal sealed bid process unless the amount will be in excess of \$40,000.<sup>19</sup> The City of Canton is required to advertise, receive competitive sealed bids, and enter into a contract for any

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<sup>17</sup> See City of Hamilton Administrative Order issued on 8/29/2016 located at <https://www.hamilton-city.org/DocumentCenter/View/2141/Administrative-Directive-204---Purchasing-Procedures>

<sup>18</sup> See City of Toledo Purchasing Website- <https://toledo.oh.gov/services/finance/purchases-and-supplies/bidding-process/>

<sup>19</sup> See City of Toledo Purchasing Presentation located at <https://toledo.oh.gov/media/8247/purchasing-presentationjanuary2020.pdf>

good or service that exceeds \$50,000.<sup>20</sup> The City of Hamilton requires three informal competitive quotes for anything between the amounts of \$5,001-\$49,999, and three sealed competitive bids if the amount is \$50,000 or greater.<sup>21</sup> A review of other municipal governments in Ohio reflects that Akron is unique in its requirement that anything over \$15,000 utilize a sealed bid process.

The City of Cincinnati allows for either competitive quoting or bidding. Cincinnati has mandated that departments elect to use local firms that are certified with the City of Cincinnati before quotations should be solicited from non-certified businesses. The City of Cincinnati's procurement manual states "If the price is in excess of \$5,000 and a bid is not going to be sought, price quotations should be solicited from contractors/suppliers to ensure the price is fair. Quotations shall be solicited by certified SBEs (Small Business Enterprises), SLBEs (Small Local Business Enterprises), and ELBEs (Emerging Local Business Enterprises) in the commodity class prior to soliciting quotes from non-certified firms."<sup>22</sup>

A study of other municipalities demonstrates that both the City of Dayton and the City of Toledo are offering preference of up to 5% for local businesses.<sup>23</sup> The City of Dayton also offers an additional 5% preference for being a certified SBE (Small Business Enterprise), WBE (Woman Business Enterprise) or MBE (Minority Owned Business Enterprise).<sup>24</sup>

The Purchasing Division's practice of having buyers select which three companies will have an opportunity to compete on quotes for purchases under \$15,000 could not be identified as occurring elsewhere and in fact shocked other Procurement Managers. Every other researched community including Columbus, Dayton, Toledo, Canton, Cincinnati, Grand Rapids, and the Northeast Ohio Regional Sewer District allows vendors to register online and select commodity codes of what goods/services they provide and vendors are electronically notified of any opportunities to compete based on commodity codes.

During the research, the City of Grand Rapids was picked as comparable due to similarities of size and demographics with the City of Akron. Grand Rapids, in contrast, has only four employees in the purchasing department. The City of Toledo has two

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<sup>20</sup> See the City of Canton's website at <https://www.cantonohio.gov/448/Purchasing-Procurement>

<sup>21</sup> See City of Hamilton Administrative Order issued on 8/29/2016 located at <https://www.hamilton-city.org/DocumentCenter/View/2141/Administrative-Directive-204---Purchasing-Procedures>

<sup>22</sup> See City of Cincinnati Procurement Manual <https://www.cincinnati-oh.gov/purchasing/purchasing-resources/procurement-manual/>

<sup>23</sup> City of Toledo Municipal Code 187.34 and City of Dayton Ordinance #31023-10.

<sup>24</sup> See City of Dayton Ordinance #31023-10 passed by the Dayton City Commission which provides for Local Business and MBE, WBE or SBE preferences for goods and services purchase by the City of Dayton.

employees in their purchasing department. This is due to the departments being much more efficient and properly engaging technology to streamline processes.

The City of Dayton currently provides training for new employees as they come on board and provides refresher training yearly for current employees.<sup>25</sup>

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<sup>25</sup> This information was obtained per Glen Stephens and Shelley Goodrich's January 21, 2020 visit with Melissa Wilson, City Purchasing Agent for the City of Dayton.

### Purchasing Threshold Comparison Chart

Locality	Using agency direct purchasing w/o higher authority	Purchasing Agent purchasing w/o higher authority	Formal (advertised) bid requirements	Publication of bid opportunities	Bid bonds	Performance bonds
Akron, OH	N/A	< \$5,000	< \$15,000	> \$15,000	Yes	Yes
Columbus, OH	<ul style="list-style-type: none"> <li>• &lt; \$500: Petty Cash Purchases;</li> <li>• &lt;\$5,000</li> </ul>	<ul style="list-style-type: none"> <li>• &lt; \$5,000: total expenditures under any single contract;</li> <li>• &lt; \$50,000: procurement of materials, supplies, equipment and services, <i>not including</i> construction &amp; professional services;</li> <li>• &lt; \$100,000: Universal Contracts</li> </ul>	> \$100,000	> \$100,000	Yes	Yes
Baltimore, MD	< \$100 small purchases	< \$7,500, except on noncompetitive bidding purchases	To be set by ordinance	>\$25,000, 2 times in 2 newspapers	Yes – > \$100,000	Yes – > \$100,000
Knoxville, TN	< \$5,000	set by the director of administration and finance and by the city purchasing agent and as approved by the council	<ul style="list-style-type: none"> <li>• solicits quotes by email or fax for purchases \$5,000 - \$25,000;</li> <li>• &gt; \$25,000</li> </ul>	> \$25,000	N/A	N/A
Dayton, OH	City Manager approve < \$10,000.00	City Manager approve < \$10,000.00	> \$2,500	All	Director waive <\$75,000	Review Board, waive <\$200,000
Grand Rapids, MI	<\$2,500	< \$10,000	> \$10,000	> \$10,000	N/A	N/A

**Purchasing Threshold Comparison Chart**

Cleveland, OH	N/A	Council ordinance required for purchases above \$50,000; 2/3 vote by City Council required to raise limit	N/A	N/A	N/A	N/A
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**Purchasing Competitive Formal Bid Threshold Comparison Chart**

<b>Locality</b>	<b>Using Agency Purchasing Authority Limit</b>	<b>Procurement Director Purchasing Authority Limit</b>	<b>Competitive Formal Bid Threshold</b>
Akron, OH	> = \$5,000	< \$15,000	> \$15,000
Columbus, OH	\$5,000	\$50,000	\$100,000
Baltimore, MD	\$1,000	\$5,000 unless transactions are approved by the Board of Estimates	\$25,000
Knoxville, TN	\$5,000	\$5,000 - \$25,000	\$25,000
Dayton, OH	\$10,000	\$10,000	N/A
Grand Rapids, MI	\$5,000	\$25,000	N/A
Cleveland, OH	\$0	\$50,000	\$50,000

## Recommendations

- Expand the use of purchase cards to all departments and decentralize the purchasing process up to a certain threshold (\$2,500) to allow departments to easily procure goods in a timelier fashion. This would empower City employees to make small dollar purchases for tangible materials, equipment, supplies and services needed for operations without undue delay independent of the Purchasing Division. Streamlining the acquisition process would lower overall transaction costs.
- Assemble the Charter Review Commission this year to revise the wording of the Charter in order to allow the City to not require competition below a certain dollar amount. Until then, decentralize purchasing of these items to avoid the lengthy requisition process for purchases up to a certain threshold (\$1,500-\$2,500) by obtaining three formal quotes online or by other methods with a focus on local and diverse businesses.
- Set up an Amazon Business Account to allow departments to easily purchase small dollar goods at state contract pricing through Amazon. The City will also receive additional rebates from the expanded use of purchase cards for most small dollar goods. The City would save money through preferred business pricing, free shipping, and the ability to monitor and audit purchases.
- Institute a policy that mandates departments procure goods from WBE/MBEs and Local Businesses before going to other businesses.
- Stop the cost prohibitive and exclusive practice of requiring sealed bidding for anything greater than \$15,000 as well as requiring attendance at mandatory pre-bid meetings. Increase the threshold that the City requires for competition by sealed bids. Allow informal quotations for purchases between \$15,000-\$50,000
- Engage technology and develop an online vendor registration system that allows businesses to receive notification of *all* competitive opportunities.
- Engage in proper change management of the Purchasing Division. Map all processes and identify operational changes. Obtain feedback and buy-in from affected City stakeholders and effectuate changes to increase customer service to our internal and external partners.
- Consider requesting Summit County to conduct an audit to allow the City to determine what internal controls need to be improved. Research for this project uncovered many concerning errors present in current operations that are widespread within the department.
- In order to improve purchasing transparency, establish a code of conduct which includes ethics, guidelines, and standards.
- Create and implement training programs to ensure that employees understand the purchasing process and are taught in conformity with City code and policy.

## V. Diversity & Inclusion

### **Scope of Diversity and Inclusion Analysis**

In an effort to provide some insight into the current state of the City of Akron's economic inclusion, we examined the current procedures and practices while comparing them to several other communities' and authorities' diversity and inclusion best practices. Initially five states, 12 cities, and three authorities were considered for their inclusion programs. It was determined that we would perform an in-depth analysis on two cities (Dayton, Ohio and Grand Rapids, Michigan) and one Regional Authority (Northeast Ohio Regional Sewer District) NEORS.

The criteria used to select the final communities included:

- Stated inclusion goals
- Community demographics
- Ability to visit the communities and Authority in January 2020

Additionally, other economic inclusion programs and materials from Government Alliance on Race and Equity (GARE), City of Toledo, City of Columbus, and the City of Baltimore were used to assist in the evolution of the current policy. The analysis focused on the stated Inclusion policy, established goals and administrative procedures.

<b>Cities and Authority Inclusion Comparison</b>				
	City of Akron, OH	City of Dayton, OH	City of Grand Rapids, MI	Northeast Ohio Regional Sewer District (NEORS)
Equal Business Opportunity Office	N/A	Yes, Human Relations Council office, 3 persons	Yes, 1 person assigned within Purchasing	Yes
Policy for Inclusion	Yes	Yes	Yes	Yes
Certifying Agency	No	Yes	No	Yes
Accepts other agencies' certifications	Yes	Yes, for one year	Yes, for one year	Yes
Stated time for revising policy	No	No	No	No
Has Administrative guidelines	N/A		Yes	Yes
Established Goals	AWR WBE 3% DMVE 15%			Project specific
Policy includes construction projects	Yes	Yes	Yes	Yes
Policy includes goods and services	Yes	In process	No	Yes
Minimum contract dollar value	N/A			
Race/Gender-based program	Yes	Yes	No, Micro Local	Yes
Local Business Preference Program	No data	Yes	Yes	Yes
Requires registration	Yes	Yes	Yes	Yes
Requires local office for 6 mo.	No	No	Yes	No
Provides assistance program to Certified firms	No	Yes	Yes	Yes

It appears the City of Akron has made progress toward establishing a policy that is similar to other communities but, it is not being used across all departments and there appears to be a lack of consistency with implementation.

## **City of Akron**

A City ordinance and the AWR! inclusion program seeks to provide greater opportunities for Certified Businesses. Also, when receiving federal funding for transportation projects the City has always deferred to the DBE program which does not focus on Local Certified Businesses.

The local bidder preference, ordinance number 811-1994 provides a credit equal to 2.5 percent of the lowest bid submitted by a nonlocal bidder. This credit shall not exceed \$10,000 for bids on material, services, goods of any dollar amount excluding construction contracts, and excludes contracts financed in whole or in part by contributions or loans from any agency of the State of Ohio or United States Government. However, prior to the establishment of the AWR! program it was not able to be determined when in the past decade the program was implemented with consistency from any COA department.

With the Combined Sewer Overflow AWR! program in 2015, the City implemented a goal-based program to assist Certified firms gain better opportunities to Engineering design and construction contracts. This program was developed in conjunction with the Workforce Program that seeks to provide construction opportunities for Akron residents who were being asked to pay for the \$1.2 Billion sewer improvement program. Initially, the COA Service Director established a goal of 15% for certified D/M/WBE businesses across both Engineering design and construction contracts for Local Certified Businesses. The COA is not a certifying agency; they decided to accept the certification from other municipal, State, or Federal agencies. In 2017, it was determined that the WBE goal should be separate from the D/M/WBE goal due to the State of Ohio Water Development Authority (OWDA) funding source the City was using to fund several of the major projects. It was at that time the goals were separated to 3% WBE and 15% D/M/WBE for all CSO projects.

In 2015, two software programs (B2Gnow and LCPtracker) were introduced and implemented by the COA's Engineering Bureau to assist the City with tracking and monitoring the participation of certified firms, prevailing wage reporting, and local workforce participation. These software programs remain in use today for AWR! and selected non-AWR! projects as determined by the Engineering Bureau. In 2015, the Akron Urban League (AUL) was hired to provide the construction monitoring for prime and sub-contractors working on AWR! projects. The contract included verifying the prime contractor's inclusion plan was complete and in place at time of bidding. Unfortunately, the AUL was not able to fully monitor the compliance on each project due to a number of barriers and challenges they encountered internally with Engineering's uncertainty regarding the value of an inclusion program and external contractor's desire to continue doing business as usual without consequence.

In 2017, the City of Akron's AWR! Program Management Consultant introduced a policy that would provide a standard by which the City and or their designees could administer the economic inclusion policy. In 2019 the City Engineering Bureau and Law Department agreed on a policy that would govern the implementation of the AWR! and selected non-AWR! projects. This policy provided the guideline for how the economic inclusion program should be administered. Unfortunately, no formal training followed the rollout of the policy either internally to COA staff, or externally to contractors and consultants. As a result, there are still questions about the City's true commitment to economic inclusion and Engineering's role in implementing the program to insure economic inclusion.

## **City of Dayton**

On January 21, 2020 the City's Deputy Director of Finance and consultant traveled to Dayton to meet with the City Purchasing Agent, Ms. Melissa Wilson, and the Human Relations Council (HRC) Executive Director, Ms. Erica Fields, as well as her Compliance Officer, Ms. Chrisondra Goodwine Esq. The HRC was established in 1962 to keep the peace, order, and harmony among the residents and visitors of Dayton. It works to ensure equal treatment and opportunity for all. The focus of the HRC concentrated on the Certification, Bidding/Procurement Opportunities and Business Assistance Programs. The HRC reports to the City Commissioners that include the HRC Director, City Manager, Procurement Manager, and a Chamber of Commerce member. The portion of the HRC responsible for compliance consists of a Director (with shared responsibilities), two technical staff, and an administrative assistant. The Business Assistance Division, which is co-funded through the State of Ohio's Minority Business Assistance Center, offers a wide range of programs to small businesses including technical assistance, procurement information, organizational assessment, and access to seminars and conferences. Also, the HRC has developed a Micro-Lending Program in conjunction with First Financial Bank which offers loans to small, minority-owned, and at-risk business within the Dayton community. This program is staffed by two technical persons with all housed under the HRC umbrella.

The City of Dayton strongly encourages business inclusion across departments. The HRC has a working relationship with both Purchasing and Engineering, which handle 95% of all purchases for goods and construction. However, they do not have goals established for professional services. This is a work in progress. HRC works with departments to develop acceptable language that is included in the front-end specifications for each project. The HRC assists these divisions during the procurement process to make sure all goals are clear to businesses seeking to do business with the City of Dayton. The current race and gender-based goals are 15% MBE and 5% WBE. To assist in establishing the race and gender-based program, the City completed a \$375,000 Disparity Study to verify that the lack of opportunities offered to some was truly based on race and gender. The City currently has over 100 Certified vendors in its data base providing goods and services in all markets. Their certification program is titled Affirmative Action Assurance (AAA). However, if a business is certified by another recognized community, it is granted permission to do business with the City of Dayton for up to a year before being required to become certified with the City of Dayton. The City of Dayton is a State of Ohio certifying agency, which allows HRC to process certifications for both the City's program and the State of Ohio's EDGE program. HRC must stay in compliance with all of the State's rules and regulations which govern them in performing certifications for the State of Ohio. However, all vendors doing business with the City must be registered with the Purchasing Department. The City strongly

relies on a software program called CityBOTS to track compliance for all vendors and to notify Certified vendors of opportunities. They track local spend, local workforce, and minority and women's participation. They report back to the Commissioners quarterly on whether they are meeting their goals. Due to the advocacy of HRC and the support of the Administration and the contracting community they consistently meet their goals.

## **City of Grand Rapids**

The City of Grand Rapids' form of government is run by three Commissioners and a City Manager. The City is not permitted by law to have a race or gender-based program because of the 2014 ruling by the Supreme Court against the States in the *Schuetz v. BAMN*.<sup>26</sup> However, the City and its citizens realized that inequities still existed, so they explored other means to bring about equality. In 2016, the City joined the Governmental Alliance on Race and Equality (GARE).<sup>27</sup> This governmental professional group helped the City examine ways to address racial inequities through equitable opportunities in the absence of a race-based program. Grand Rapids committed to using a racial lens for all City programs, services, and activities to achieve fairness towards equitable:

- Public Policy
- All City programs and activities
- Public services and opportunities
- Resources
- Employment

In 2017, the City requested and was accepted into GARE grant program to study and learn more about the GARE concepts that are being used by multiple US cities. The team of department heads and leaders were selected to be trained with other cities over a one-year period. City leaders and middle managers went through racial training to better prepare themselves to develop methods to become more inclusive. It was during this training that the Grand Rapids team was introduced to Mark Watson, the Deputy City Manager of San Antonio, Texas, who in 2018 became the City Manager of Grand Rapids. Under his leadership and with the participation of the City's Commissioners, the City unveiled a strategic plan in October of 2019. The plan includes the department managers in leading the continued racial training with staff.

To achieve greater economic opportunity inclusion, the City developed a Micro-LBE program in April 2019 through their City Commission policy on Equal Business Opportunity-Construction Policy (<sup>Appendix page 60 PDF documents 5, 6 and 7</sup>). The policy targets local businesses located in Kent County doing business with the City of Grand Rapids. It strives to do three things:

1. Ensure non-discrimination in the performance and administration of City contracting and sub-contracting

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<sup>26</sup> See the United States Supreme Court ruling on *Schuetz v. BAMN* at [https://www.supremecourt.gov/opinions/13pdf/12-682\\_8759.pdf](https://www.supremecourt.gov/opinions/13pdf/12-682_8759.pdf)

<sup>27</sup> See the Governmental Alliance on Race and Equality (GARE) website at <https://www.racialequityalliance.org/>

2. Promote supplier diversity by providing all business enterprises access and an equal opportunity to participate in the performance of all City contracts, and
3. Utilize strategies that enhance the growth and development of local small and emerging business.

Appendix number (600-12)

The program requires businesses to register with the federal government's System for Award Management (SAM) and the Grand Rapids Purchasing Department. It takes 30 days to process the application. Entering the program provides vendors technical assistance with bonding and insurance, bid preparation, and financing. The participants are encouraged to participate in the City's sponsored Monday Group. This group of primes and subcontractors meet once a month to discuss hot topics and build better relationships between prime contractors and subcontractors. To ensure that primes are using Micro-LBE Certified companies on City projects, they offer a financial incentive for bidders, a bid discount from 1-5% ([www.ci.grand-rapids.mi.us/1541what](http://www.ci.grand-rapids.mi.us/1541what)). The program details how to obtain a bid discount, Second Tier discounts, Joint Venture discounts, Target Acquisition discounts, Workforce discounts, Income Tax incentives and General Target Area discounts.

This program is administered through the procurement office of Diversity and Inclusion. One designated Business Development Specialist is responsible for the program's implementation and advocacy for the Micro-LBE firms. In his role, he spends time with prime contractors and subcontractors, union and non-union companies, and sits on the Western Michigan Minority Contractors Association board that advocates for greater participation for diverse contractors. They have determined it is their mission to celebrate all wins small and large that showcase the City's Inclusion.

## **Northeast Ohio Regional Sewer District (NEORS)**

NEORS is the regional sewer district that owns and operates three treatment plants in Cleveland. Plants treat billions of gallons of wastewater every year to reduce pollution and improve the water quality throughout the region. The regional district not only supports the City of Cleveland but also provides regional conveyance of combined sewer flow from the inner-ring of suburban communities to Cleveland. For the past decade, NEORS has purchased over \$150,000,000 in goods and services annually. NEORS is governed by an appointed seven-member board of trustees (three by the Mayor of Cleveland; two by the council government from the suburban communities, one from the Authority, and one from the County Executive).

The economic inclusion program, now called the Business Opportunity Program (BOP), has undergone changes over the past two decades. Initially the program was a race and gender-based program. However, based on challenges during the early 2000's it was converted into a race and gender neutral (Small Business only) program for 5 years. In 2008 the District's board agreed to have a Disparity Study conducted. The study of the service area in N.E. Ohio showed that in fact there were inequalities in business opportunities based on race and gender. In addition to Small Business promotion, the BOP also promoted race and gender base opportunities. The BOP services businesses across 12 counties throughout N.E. Ohio. The prime functions of the program are:

- Certification of business
- Establishing goals for inclusion
- Business outreach
- Compliance Monitoring
- Notification of business opportunities to Certified businesses

The program is administered by a Compliance Manager, Ms. Tiffany Jordon, and four additional staff persons. In addition to the MBE Certification, the staff is one of only three entities in the State of Ohio that provide WBE certifications to businesses. NEORS will only recognize businesses that retain certifications from other approved State of Ohio certifying authorities. NEORS tracks the eligibility of businesses (i.e. construction and engineering and goods and services) through the NAICS Code Size Standard.<sup>28</sup> To track the Certified Business participation and workforce, NEORS uses two software programs (B2Gnow and LCPtracker). They implemented these programs when the program moved to a race and gender-based goal program. The purpose was

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<sup>28</sup> See the NAICS Code Search at NAICS Association website at <https://www.naics.com/search/>

to accurately track and report the economic impact that the program would have for Certified firms and to verify that correct taxes were being paid by all workers working on NEORSD projects throughout the services area.

The BOP works in collaboration with the Purchasing, Engineering and Construction Departments to establish goals on a project by project basis. The program tracks the sizes and capacities of the certified business to offer meaningful goal recommendations. Typically, the highest goals are established for construction projects based on the fact that over 90% of the nearly 200 businesses certified provide some form of goods or services directly or indirectly to the Construction and Engineering Industry.

Based on the efforts of the BOP program, support of the administration and willingness of both primes and subcontractors, goals are typically met on construction projects. However, the Purchasing Department's procurement has not enjoyed the same level of success. NEORSD has expressed that an ongoing strategic effort is underway to improve the economic inclusion in purchasing.

## **Akron Certified Subcontractors**

Twelve Certified contractors and consultants worked on projects for the City of Akron on AWR! projects in 2019. Eight Certified firms are Akron based businesses. These eight firms have been in business from 4 to 30 years. The firms all provide a commercially useful function for projects being completed in the AWR! Program. To better understand some of the obstacles and barriers they face, three Certified construction firms were selected to discuss these issues. In this meeting, three questions were presented for discussion:

1. Do you have any concern with doing business with the City of Akron?
2. What are the major concerns you have in business?
3. What do you need to grow/sustain your business?

Each one of the business owners shared personal stories on obstacles and barriers that continue to prevent their operations from being successful. They include:

1. Slow payments from City of Akron on prime contracts
2. Delayed payments to subcontractors after primes are paid (net 45-60 days) hurt and prevent growth
3. Insufficient bonding levels to perform as a prime and sometimes as a subcontractor
4. Access to capital for growth
5. Financial training
6. Assistance with estimating
7. Access to more City of Akron projects
8. Better relationships with the prime contractors working for the City of Akron
9. Limited knowledge regarding some of the key management processes
10. Finding skilled and dedicated staff to perform the work
11. Access to officials to better understand the system for quoting and invoicing work

In general, the firms all agreed the top three items dealt with obtaining the work, bonding and financing.

## **Recommendations**

Partial list:

- Recruit and hire a Diversity and Inclusion Specialist
- Refine the bidder discount program
- Collaborate to develop a meaningful business assistance program
- Establish an 18-month mentor-protégé program with a one-year renewal
- Develop a strategic annual outreach program
- Develop a prompt payment policy
- Develop partnership to support a bonding and loan program
- Require all certified vendors and contractors to register with the City of Akron
- Become a member of GARE

## VI. Technology

Per the directive of the COA Procurement Reform Committee, G. Stephens, Inc. (GSI) was enlisted to review other communities' procurement and economic inclusion processes for ideas to improve the COA purchasing and economic inclusion policies through the use of cloud-based software solutions. The ongoing study reviewed compliance monitoring software for vendor registration as well as cloud-based strategic sourcing solutions designed specifically for the procurement professional in public and private sectors.

Since April 2015, the COA Engineering Bureau of the Public Service Department has used B2Gnow and LCPtracker cloud-based solutions for tracking major construction project contracts that require subcontracts and participation by Local Certified Firms. The projects to be entered are determined on a case-by-case basis by construction contract amount and suitability for subcontracting opportunities. The Engineering Bureau uploads the legal notices advertising construction projects to the COA website and advertises the projects in the Akron Beacon Journal local newspaper. They also make bid documents available through local blueprint companies through a yearly contract. The bid documents are available for viewing and purchasing by the construction companies and subcontractors through the blueprint companies' websites.

The B2Gnow web-based Compliance Monitoring System (CMS) automates contract compliance reporting. This web-based software system replaces cumbersome paper reporting with a streamlined online process to help facilitate compliance reporting requirements for firms doing business with City of Akron.

The system is accessible to all firms doing business with City of Akron and includes the following key features:

- Fully automated online vendor registration
- Flexible reporting capabilities
- Automated tracking of contract goals and participation
- Online submission and workforce reporting
- Certified Payroll Reporting online through LCPtracker eliminates paper reporting and streamlines the process for vendors and City of Akron staff

The CMS was implemented for the COA to have the ability to track local contractors, local certified firms and Akron resident workers of those firms. In using CMS, the COA can search for vendor information and certifications on vendors registered through the City of Cleveland and the Northeast Ohio Regional Sewer District (NEORS), since these public entities both use B2Gnow CMS.

The COA Purchasing Division of the Finance Department also advertises with legal notices on its COA website pages for major spend items and projects subject to award by the COA Board of Control. Typically, the legal notices are for purchase of items totaling more than \$15,000 estimate per bid. The bid documents are made available for download from the COA Purchasing Division website, or copies directly from the Purchasing Division at a per page cost. The Purchasing Division currently does not use the B2Gnow CMS for vendor registration. Vendors who want to apply for registration through Purchasing, download a vendor registration form from Purchasing's web page and submit the registration form by mail, email, fax or in person. The Purchasing Division keeps the vendor registrations on file. It does not store the information from the registrations in a database or spreadsheet to enable tracking of vendors and certified firms.

During the review of procurement processes, it was determined that a comprehensive software solution for all COA departments to use would best serve the Elevate Akron goal of economic inclusion for Akron's minority community and small businesses. In this search, G. Stephens, Inc. looked to public agencies that it services in other communities. One of these is the Pittsburgh Water and Sewer Authority (PWSA), which is implementing Bonfire as a procurement software.

### **Bonfire: Strategic Sourcing Platform Overview**

Bonfire's cloud-based strategic sourcing solution is designed specifically for the procurement professional in public and private sectors. End-to-end capability captures all sourcing workflows in one place, with key features including online bidding, e-sourcing, and vendor performance management. Bonfire offers the depth and flexibility required to complete online evaluations so a public agency team can spend less time on administration and more optimizing its sourcing process. According to Bonfire's features as shown below, it has:

- **High Adoption Rate** - +95% recommendation rate from both evaluators and vendors feature Bonfire ERP System
- **In-depth Evaluation** - Side-by-side qualitative comparison, price scenario analysis, auto-scoring, and reverse auctions
- **Vendor Management** - Gather vendor performance data, address issues, and improve relations
- **Contract Management** - Track milestones, receive reminders, create contracts, and proactively manage contracts
- **Cloud-based** - The solution is offered as software as a service, which makes it accessible anytime, anywhere
- **Vendor Managed** - Bonfire assigns clients a dedicated Customer Support Manager that manages all implementation and support, including questions from vendors and proactive issue deflection

- **Online database for all sourcing and procurement needs** - All activities can be completed online, unlike many ERP systems that still require some activities to be completed offline

There are two communities in Ohio using Bonfire, the City of Columbus and the City of Westerville. References for those responsible for procurement in those communities were given by the Bonfire representatives, and GSI is in the process of arranging for a discussion with them.

During the software review process, GSI found that the COA is looking to replace its accounting and human resources software (Banner and Peoplesoft) with an Enterprise Resources Planning (ERP) solution that could have an e-sourcing and procurement module as part of its ERP solution. The software programs that the COA are studying is Oracle ERP and Workday cloud ERP system. The COA is planning this replacement in 2020-2021. A decision on what solution to use has not been made.

### **Workday Procurement Review**

The Workday cloud ERP system procurement software was presented through a webinar to show how it may help in receiving vendor registrations and flagging the registration for commodity types and certified firm types. Some of its features are: End-to-End Goods and Services Procurement, Self-Service Supplier Management, Supplier Contracts, Real-Time Spend Insights, and Global Controls. It will allow or transfer after scrubbing the COA vendors' data tables. The vendors will then be able to enter Workday and update and verify their firm's information. Workday allows for export of spend on vendors and certified firms spend amounts for goods and services. It does not seem to be a good tool for the bidding and evaluation of construction projects. The Workday representative said there may be work-arounds that can be implemented for using the module for tracking payments and contracts on construction projects.

### **Recommendations**

- In the short-term GSI recommends that the City of Akron direct all vendors (Purchasing Division vendors included) to use and register in the B2Gnow CMS and to use LCPtracker for all COA certified payroll entry of contractors for contract durations of more than thirty days.
- Engage the Proof-of-Concept use of Bonfire by the COA Engineering Bureau to test its usability on online bidding, e-sourcing, and vendor performance management.
- Engage technology and develop an online vendor registration system that allows businesses to receive notification of *all* competitive opportunities.

## VII. Schedule

Implementing the detailed recommendations outlined in this report will require up to 20 months, plus both a \$1.7 M initial capital cost and a re-occurring approximate cost of \$1 M (not including inflation) annual cost to allow continued use of technology. Once implemented, the new Enterprise Resource Programming (ERP) software will replace both PeopleSoft and Banner and eliminate all costs associated with those programs' annual maintenance.

The proposed implementation schedule separates activities into four categories, all beginning in March 2020. Early in March 2020, City staff would begin a thorough review of the City's Charter and Ordinances followed by necessary modifications for an update to conclude by November 2020. Simultaneously, technology updating would begin. The City should renew both B2Gnow and LCPtracker at a cost of \$65,000. In April 2020 the City selected the Workday software to replace Banner and PeopleSoft. Implementation should be complete by April 2021.

By mid-March 2020, the City would begin to address issues related to the Purchasing Division and its lack of diversity inclusion. The City would immediately begin recruiting an Inclusion and Compliance Director to spearhead development of a new Business and Inclusion Program to roll out by December 2020. Initial recruiting would cost approximately \$30,000 with an expected annual cost of approximately \$140,000.

The following schedule includes additional detail regarding projected costs and timelines for each category.

## Procurement and Inclusion Report Schedule

<b>Charter, Ordinance Review and Modifications Timeline</b>	<b>Original Duration</b>	<b>Start</b>	<b>Finish</b>	<b>Capital Cost</b>	<b>Annual Cost</b>
Charter, Ordinance Review and Modifications Timeline	247	3/2/20	11/2/20		
Procurement Department Review	247	3/2/20	12/2/20	\$150,000.00	\$5,000.00
Hiring of Consultants / 3rd Party to Audit Purchasing	70	3/12/20	5/20/20	\$150,000.00	\$0.00
Audit of Purchasing Division	166	6/5/20	11/17/20	\$0.00	\$0.00
Final Report			12/2/20	\$0.00	\$0.00
Diversity Inclusion	269	3/12/20	12/5/20	\$30,000.00	\$140,000.00
Recruit and Hire Inclusion and Compliance Director	93	3/12/20	6/12/20	\$30,000.00	\$140,000.00
Development of Business and Inclusion Program	134	7/10/20	11/20/20	\$0.00	\$0.00
Program Role out	0		12/5/20	\$0.00	\$0.00
Technology	640	3/2/20	12/1/21	\$1,500,000.00	\$1,565,000.00
Renew B2G Now & LCP Tracker Software	60	3/2/20	4/30/20	\$0.00	\$65,000.00
Determine Final Replacement Software for Banner	107	3/12/20	6/26/20	\$0.00	\$0.00
Purchase Software and Develop Detail Schedule with Training for Implementation	524	6/26/20	12/1/21	\$1,500,000.00	\$1,500,000.00



Adobe Acrobat  
Document

## VIII. Appendices SEPARATE VOLUME

### A. Ordinances

1.	City of Akron, Code of Ordinances-Chapter 34, Article 1; Public Contracts	 Adobe Acrobat Document <i>Figure 1 Chapter 34 Article 1 COA (9 pages)</i>
2.	City of Akron, Code of Ordinances-Section 95 Purchasing Agent; Board of Control	 Adobe Acrobat Document <i>Figure 2 Section 95 COA (2 pages)</i>
3.	City of Dayton, Procurement Enhancement Plan Ordinance for Services, Supplies, and Construction	 Adobe Acrobat Document <i>Figure 3 PEP City of Dayton (21 pages)</i>
4.	City of Grand Rapids, City Commission Policy, 2015	 Adobe Acrobat Document <i>Figure 4 Grand Rapids 600-15 Goods and Services 2015 (3 pages)</i>
5.	City of Grand Rapids, Administrative Guidelines for the Equal Business Opportunity – Goods and Services Policy May 2017	 Adobe Acrobat Document <i>Figure 5 City of Grand Rapids Goods and Services Guidelines May 2017 (51 pages)</i>
6.	City of Grand Rapids, Administrative Guidelines for the Equal Business Opportunity – Equal Business Opportunity – Construction Policy June 2018	 Adobe Acrobat Document <i>Figure 6 City of Grand Rapids Admin. Guidelines Construction Policy June 2018 (39 pages)</i>
7.	City of Grand Rapids, Equal Business Opportunity – Certification ADP-04-01	 Adobe Acrobat Document

		<i>Figure 7 City of Grand Rapids, ADP-04-01 Equal Business Opportunity Certification (5 pages)</i>
8.	City of Grand Rapids, Professional Services – Contracting – ADP-73-09	 <p>Adobe Acrobat Document</p> <p><i>Figure 8 City of Grand Rapids, ADP-73-09 Professional-Services-Contracting</i>  <i>Figure 9 City of Grand Rapids Professional-Services-Contracting ADP-73-09 (5 pages)</i></p>
9.	City of Grand Rapids, CCP-600-12 Equal Business Opportunity-Construction	 <p>Adobe Acrobat Document</p> <p><i>Figure 9 City of Grand Rapids, CCP-600-12 Equal Business Opportunity Construction (3 pages)</i></p>
10.	North East Ohio Regional Sewer District, Business Enterprise (MBE_WBE) Program Policies and Procedures Manual	 <p>Adobe Acrobat Document</p> <p><i>Figure 10 NEORSD, Business Enterprise Program Policies and Procedures Manual (MBE/WBE) (24 pages)</i></p>
11.	Government Alliance on Race and Equity (GARE): Contracting for Equity	 <p>Adobe Acrobat Document</p> <p><i>Figure 11 GARE: Contracting for Equity (17 Pages)</i></p>
12.	Procurement Approval Process Study for Baltimore Efficiency and Economy Foundation	 <p>Adobe Acrobat Document</p> <p><i>Figure 12 Procurement Approval Process Study for Baltimore Efficiency and Economy Foundation (55 Pages)</i></p>

## References

<sup>1</sup> The Purchasing Division did release a Standard Operating Procedures manual in July 2019. It has not been widely circulated. The manual is confusing and does not cover all relevant topics. It can be found on the City intranet page.

<sup>2</sup> The NIGP is a nonprofit educational organization that provides best practices and promotes “the public procurement profession through premier educational and research programs, professional support, technical services, advocacy initiatives that benefit members and constituents...” The City of Akron is a member of the NIGP.

<sup>3</sup> See this September 15, 2012 Columbus Dispatch Article detailing the state law change <https://www.dispatch.com/article/20120915/NEWS/309159818>

<sup>4</sup> For example, see the City of Cincinnati Procurement manual which is a valuable resource to employees and vendors, and which defined best practices. <https://www.cincinnati-oh.gov/purchasing/purchasing-resources/procurement-manual/>

<sup>5</sup> See page 6 of the Purchasing Division Standard Operating Procedures

<sup>6</sup> The City still incurs the cost of two weeks of advertising in the newspaper despite the fact that the Ohio Legislature provides for abbreviated publication in ORC §7.16 which if utilized would drastically reduce the City’s publications costs.

<sup>7</sup> See O-811-1994 which amended section 34.01 and added 34.12 of the Akron Codified Ordinances.

<sup>8</sup> Results of the City of Akron Purchasing Survey that was sent out in December 2019.

<sup>9</sup> Per data analyzed for this project completed by City of Akron Economist, Alyssa Gregg.

<sup>10</sup> See City of Akron Procurement and Inclusion Survey Summary

<sup>11</sup> Per data analyzed for this project completed by City of Akron Economist, Alyssa Gregg.

<sup>12</sup> See City of Canal Winchester Code § 161.02. [http://library2.amlegal.com/nxt/gateway.dll/Ohio/canalwinchester\\_oh/codifiedordinances/ofcanalwinchesterohio?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:canalwinchester\\_oh](http://library2.amlegal.com/nxt/gateway.dll/Ohio/canalwinchester_oh/codifiedordinances/ofcanalwinchesterohio?f=templates$fn=default.htm$3.0$vid=amlegal:canalwinchester_oh)

<sup>13</sup> City of Columbus Ordinance § 329.18. The City of Cuyahoga Falls has not codified this amount rather they rely on ORC 735.05.

<sup>14</sup> See City of Canton Codified Ordinance 105.09 and 105.10. Please also see <https://www.cantonrep.com/news/20180514/canton-city-council-increases-bid-threshold-for-goods-and-services>

- <sup>15</sup> See City of Lima City Ordinance 228.07  
[http://library.amlegal.com/nxt/gateway.dll/Ohio/lima\\_oh/codifiedordinancesoflimaohio?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:lima\\_oh](http://library.amlegal.com/nxt/gateway.dll/Ohio/lima_oh/codifiedordinancesoflimaohio?f=templates$fn=default.htm$3.0$vid=amlegal:lima_oh)
- <sup>16</sup> See the City of Cincinnati Procurement Policy located at <https://www.cincinnati-oh.gov/purchasing/purchasing-resources/procurement-manual/>
- <sup>17</sup> See City of Hamilton Administrative Order issued on 8/29/2016 located at <https://www.hamilton-city.org/DocumentCenter/View/2141/Administrative-Directive-204--Purchasing-Procedures>
- <sup>18</sup> See City of Toledo Purchasing Website-  
<https://toledo.oh.gov/services/finance/purchases-and-supplies/bidding-process/>
- <sup>19</sup> See City of Toledo Purchasing Presentation located at <https://toledo.oh.gov/media/8247/purchasing-presentationjanuary2020.pdf>
- <sup>20</sup> See the City of Canton's website at <https://www.cantonohio.gov/448/Purchasing-Procurement>
- <sup>21</sup> See City of Hamilton Administrative Order issued on 8/29/2016 located at <https://www.hamilton-city.org/DocumentCenter/View/2141/Administrative-Directive-204--Purchasing-Procedures>
- <sup>22</sup> See City of Cincinnati Procurement Manual <https://www.cincinnati-oh.gov/purchasing/purchasing-resources/procurement-manual/>
- <sup>23</sup> City of Toledo Municipal Code 187.34 and City of Dayton Ordinance #31023-10.
- <sup>24</sup> See City of Dayton Ordinance #31023-10 passed by the Dayton City Commission which provides for Local Business and MBE, WBE or SBE preferences for goods and services purchase by the City of Dayton.
- <sup>25</sup> This information was obtained per Glen Stephens and Shelley Goodrich's January 21, 2020 visit with Melissa Wilson, City Purchasing Agent for the City of Dayton.
- <sup>26</sup> See the United States Supreme Court ruling on Schuette v. BAMN at [https://www.supremecourt.gov/opinions/13pdf/12-682\\_8759.pdf](https://www.supremecourt.gov/opinions/13pdf/12-682_8759.pdf)
- <sup>27</sup> See the Governmental Alliance on Race and Equality (GARE) website at <https://www.racialequityalliance.org/>
- <sup>28</sup> See the NAICS Code Search at NAICS Association website at <https://www.naics.com/search/>