



MEMORANDUM

TO: Mayor and City Council
FROM: Milton Dohoney Jr., City Administrator
DATE: January 19, 2023
SUBJECT: Resolution R-22-347 – Resolution Regarding Consistency of Corporate Expression of Values and Corporate Action

Within the past few months City Council has made two requests of the administration, both pertaining to the procurement process. Resolution [R-22-347](#) – Regarding Consistency of Corporate Expression of Values and Corporate Action was approved on October 17, 2022. It essentially directed that the City Administrator examine the feasibility of gathering information from prospective bidders on City contracts that would identify their record of political contributions. The intent was for these contributions to be weighed against their stated company mission. In theory the City would evaluate if said political contributions were aligned with or contrary to their espoused mission statement. In a separate, but related Council request, the City Administrator was also to determine if demographic data could be collected on those who respond to City RFPs. Further, the intent of both directives was meant to ascertain if this information could be used in evaluating those entities who were bidding on City of Ann Arbor work. Though not specifically requested, it is both efficient, and relevant for both requests to be addressed in a singular response.

The administration's response will center on operational, logistical, and capacity issues related to the two requests. There will be no attempt here to opine on any legal implications of the request. Deference will be made to the City Attorney's Office to provide any appropriate counsel on the requested considerations. Staff believes that this report will spur further discussion. As there are various stakeholders associated with these topics, both locally and beyond, it is contemplated that City Council will remain in receipt of the report for a period-of-time before acting to provide further direction on the policy under consideration.

Procurement Background

The City of Ann Arbor's Procurement Office is contained within the Finance Department. Though there is some support lent from other offices, it is a one-person unit not unlike some of the other key functional areas of the organization. In a given fiscal year the office typically processes around 2,500 purchase orders, and contracts. Additionally, the office manages about 100 formal solicitations (bids/proposals) representing approximately \$60M in government spend.

The staff expertise is concentrated around contemporary procurement practices, and providing assistance to our service areas that need to procure goods and services. The procurement manager role is one of facilitation, and administrative leadership.

The responsibility for assessing bids, and proposals on the merits, rests with the administrative area whose budget supports the transaction. The impacted service area identifies the number, and makeup of the evaluation committee. The members come from within the service area or from other parts of the administration and their expertise is in most cases limited to the technical knowledge related to the service, trade, or good that we are attempting to procure. They are assembled to provide a collective technical analysis aimed solely at determining the overall competitive responsiveness of the bidders to whatever the bid specifications were. Therefore, incorporating a policy directive that is not of a purely technical nature must have a high level of clarity and guidance associated with it so that people without expertise related to this policy directive can successfully carry it out.

At present staff is not asked nor are they capable of rendering an evaluation of a submittal based upon philosophy, political affiliation, or mission-based criteria. This extends to an inability to review the records of political contributions leading to an evaluation of whether it is consistent or inconsistent with the bidder's company mission statement. Even if the evaluation team possessed the technical expertise to render such a judgement it would not be an appropriate role for staff to play.

It is also not our current practice to ask for demographic information from bid respondents. More will be covered on that in the upcoming sections of this report.

Logistics & Evaluation Challenges

The first issue that must be addressed is access to information. The City does not currently collect mission statements as part of the required bid documentation. There aren't any questions currently being asked regarding persons or causes that a bidder supports. There are potential bidders that view cause or candidate contributions as a strategic element of doing business. Some contribute to opposing candidates in the same race. Some medium and large firms create Political Action Committees (PAC) to actually manage those transactions. As these are separate legal entities from the business proper, and are usually handled by different staff a bid respondent could say in response to a question that their company makes no such contributions. It is also not uncommon for business executives at firms to make political contributions as individuals with or without the presence of a PAC.

Clarity of intent is of paramount importance for this type of policy to be operationalized. If the City is to begin asking for demographic information, it would require specific guidance on what is being sought. Is it demographic information on the business owner(s), executive team, entire workforce? Would it matter if it was a publicly traded firm? Are these two categories of informational questions to be submitted voluntarily or are they to serve as threshold questions for determining whether or not the entity is to be considered a responsive bidder?

Due to the City's lack of staff capacity, it would be not be feasible for staff to bear the responsibility for researching these areas of questioning of bid respondents. Either they submit it with their bid documents, or they would need to be viewed as deficient for failure provide the information.

For the sake of argument let's presume the City can successfully obtain the information that policymakers desire. The next issue entails determining value. Furthermore, is that valuation to be qualitative or quantitative. While the administration is deferring to the City Attorney's Office to opine on all of the relevant legal issues it has long been established in municipal circles that we cannot assign points based upon someone's demographic profile. Nor can we award a contract just because of it.

If the demographic data can legally be obtained it would seem reasonable that it could be used for greater municipal transparency purposes. Meaning, it would enable a daylighting of who is successfully obtaining city contracts. This determination would not fall to the transactional team that is evaluating a proposal, but rather be an element of overall reporting that the Finance Department might periodically provide.

Armed with this information policymakers would be free to make whatever comments they felt were appropriate. This could serve as a facilitating factor for a discussion on inclusion. It would be clear to the community at large why the information was sought.

With regards to assigning points for aligning political contributions with a firm's stated mission, staff cannot conceive of any way that could be accomplished. There are simply too many variables at play for it to be handled in any fair or transparent way. It would be extremely difficult if not impossible to evaluate each contribution against a mission statement. There may be no obvious connection between the two, and in the absence of one staff would be relegated to guessing. If there was an effort from policymakers to devise some type of scoring key, meaning if a contribution was made to "cause X" it means so many points, that too would not be manageable. Absent some type of glossary type guidance staff would simply not have the appropriate skill sets or sensibilities to render that type of judgment. The staff role must remain apolitical if this form of government is to succeed.

In extending the discussion in search of a possible solution, consideration was given to "what if policy makers were charged with scoring the political portion of the evaluation?" It is the position of the administration that would simply not be appropriate. It raises ethical concerns. It would also create an optics issue presenting the appearance of it being a pay to play environment.