

INCLUSIVE PROCUREMENT
AND CONTRACTING:

Policies, Programs, and Practices for Local Leaders

MUNICIPAL ACTION GUIDE



About the National League of Cities

The National League of Cities (NLC) is the nation's leading advocacy organization devoted to strengthening and promoting cities as centers of opportunity, leadership, and governance. Through its membership and partnerships with state municipal leagues, NLC serves as a resource and advocate for more than 19,000 cities and towns and more than 218 million Americans.

About the City Innovation Ecosystems (CIE) Program

Catalyzing the uptake and implementation of proven policies, programs, and practices that support inclusive, entrepreneurship-led economic growth in American cities. CIE connects city leaders to technical assistance providers, peer networks, and catalytic funding to help them achieve their goals.

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Introduction

Local governments, universities, hospitals, and other anchor institutions annually spend roughly \$2.5T procuring goods and services.^{1,2} New York City's annual procurement, alone, is valued at more than \$23B while even a smaller city, like Garland, TX, spends more than 25% of its annual budget on purchasing activities.^{3,4} Contracts for complex construction projects, architectural services, office supplies and more are highly sought after by large and small firms, alike. In addition to immediate financial reward, these contracts represent a guaranteed revenue stream and help make companies more attractive to future investors. Procurement, therefore, isn't just the sum total of a city's expenditures; it's also a tool for creating long-term wealth and more prosperous communities.

However, BIPOC business owners often struggle with gaining access to procurement markets. The problem is two-fold; these business owners are often a) poorly represented in highly procured industries and b) less utilized because of systemic barriers, including lack of access to government networks and, in some cases, because of outright discrimination.⁵ In an era when America's population and workforce is increasingly young and ethnically diverse, it is both a moral and market imperative for cities and anchor institutions to provide equitable access to contract opportunities.

Such efforts have been underway in cities for decades. The 1980s, in particular, witnessed an explosion in city government contracts reserved for minority-owned businesses through set-aside programs, many of which had a large and significant impact on Black business ownership and wealth accumulation.⁶ Since then, many local inclusive procurement policies have been judicially challenged or pre-empted by state governments.⁷ In some places, programs and policies to make city contracting more inclusive have been watered-down, made so complex as to be useless, or been dismantled entirely.

Intro Cont.

Many municipalities are working around restrictive state legislatures to expand procurement opportunities for Black and Latinx business owners. Examples of these strategies include strengthening data collection processes to understand current levels of supplier diversity, building the capacity of small contractors to be able to bid on larger projects, unbundling large contracts into smaller ones, and working with local hospitals, universities, or utility companies to increase their spending with local, minority-owned businesses.

While there is no one-size-fits-all inclusion policy or program, every city can take steps to address racial inequities in procurement. Through a community of practice, including 8 cities participating in NLC's City Innovation Ecosystems program, we've learned that the buy-in of city leadership is a crucial ingredient to effective policy change. This action guide includes concrete examples of evidence-backed interventions city leaders can implement to enable minority-owned businesses to successfully apply for and win contracts. These interventions are promising in closing the racial wealth gap and securing the economic future of families, cities and regions.

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Key Strategies

- STRENGTHEN DATA COLLECTION PROCESSES AND DISAGGREGATE BY RACE.** Collect and maintain up-to-date demographic information on city vendors.
- CONDUCT OUTREACH AND PLAY MATCHMAKER.** Connect highly qualified MBE vendors to networks of willing buyers.
- STREAMLINE BIDDING AND PAYMENT PROCESSES.** Simplify burdensome, inefficient bidding processes and ensure subcontractors are paid promptly.
- UNBUNDLE CONTRACTS.** When appropriate, break large contracts into smaller ones to create bidding opportunities for small businesses.
- CREATE SHELTERED MARKETS.** Limit bidding to small businesses on contracts under a pre-specified contract threshold.
- CREATE SUB-CONTRACTING GOALS.** Work with prime contractors to establish targets for the utilization of MWBE sub-contractors on specific types of projects.




Effective inclusive procurement strategies lower barriers to obtaining city contracts for minority-owned businesses. Equitable contracting is important because it

- 1 provides small businesses with a reliable revenue stream, enabling future growth,
- 2 retains jobs and localizes wealth in the community, and
- 3 promotes economic growth and an expanded tax base.

Who are these strategies for?

- Local governments** spend big money procuring goods and services, but also face additional judicial scrutiny in pursuing race-conscious procurement policies. In this toolkit we provide a range of interventions for cities in various legal, political, and economic contexts.
- Anchor institutions**, including hospitals, universities, and utility companies, frequently have a social mission that includes economic inclusion. They are uniquely positioned to execute equitable procurement policies. Nationally, they have increased their spending with disadvantaged businesses from \$2 million to more than \$100 million over the last 20 years.⁸

How is this toolkit organized?

INTERVENTION TYPE	INTERVENTION FOCUS**	WHERE IT'S WORKING
 PRACTICES include actions that establish a foundation for inclusive contracting.	RACE-CONSCIOUS MWBE interventions create explicit incentives for awarding bids to MWBE firms	When possible, we use examples from small, medium, and large-sized cities representing a diverse range of political and legal contexts
 POLICIES include regulatory and legislative interventions.	RACE-NEUTRAL MWBE interventions support MWBEs but not through legal requirements	
 PROGRAMS are near-term interventions designed to build the capacity of minority-owned businesses.	SBE interventions level the playing field for small businesses, indirectly impacting MWBEs	

Strengthen Data Collection Processes & Disaggregate by Race



INTERVENTION TYPE
PRACTICE

FOCUS
Race-neutral MWBEs

CASE STUDIES
Memphis, Baltimore, Charlotte

OVERVIEW

Many cities lack data on the race, gender, payroll, and geography of past contractors and unsuccessful bidders, which makes it difficult to analyze and diagnose challenges to equitable procurement or assess the impact of any changes. Because of this, many cities contract with third parties to conduct disparity studies, which allow them to legally implement race-conscious procurement policies. Prioritizing data collection can help the city make more effective data-driven decisions about its policies and procedures.

KEY CONSIDERATIONS

Develop clear processes and protocols for how data will be collected, stored, and shared across departments and organizations. Cities and organizations should also establish procedures to protect the identities of residents and business owners when sharing data. In the absence of a disparity study, governments can use bid documents, payment records, and contract closeout affidavits to gather information on prime and subcontractors.⁹

Leverage internal departments and anchor institutions that have consistent touchpoints with local businesses. Likely sources of data include departments of planning & zoning, permitting, procurement, business licensing, and economic development. Community development corporations, main street districts, chambers of commerce, utility companies, and universities also frequently have databases of local businesses. Memoranda of understanding can be useful tools to formalize data-sharing relationships between entities.

Conduct surveys and interviews to help determine the capacity of local vendors to fulfill contracts. Interviews with local stakeholders, including business owners, chambers of commerce, incubators/accelerators, technical support providers (Small Business Development Centers, SCORE chapters, etc.) can be useful in identifying barriers minority business owners face pre-bid and during the bidding process.

Disparity studies are the most effective tool at cities' disposal to ensure that policies promoting MBE participation are legally sound.¹¹ These studies are conducted by third parties and are used to determine if a governmental entity is active or passively engaged in discrimination. They typically provide recommendations on whether a race-conscious policy response is warranted. Industry recommendation is to conduct a new analysis every 5-7 years.¹²

CASE STUDIES



THE CITY OF ANCHORAGE, AK implemented changes to its city vendor registration form in 2021 and began to request demographic information of its vendors. Vendors that win contracts are also now required to respond to a question asking for their race and gender.



THE CITY OF BALTIMORE, MD targets outreach to new firms using insights generated by a third party that utilizes data purchased by the Maryland Department of Assessment and Taxation.¹³



THE CITY OF CHARLOTTE, NC brought together departments leaders and business owners in 2017 to gather perspectives on ways to improve the procurement process for small and diverse businesses in Charlotte.¹⁴

Matchmaking and Outreach in Black & Hispanic/Latinx Communities



INTERVENTION TYPE
PROGRAM

FOCUS
SBEs and/or MWBEs

CASE STUDIES
Detroit, Chicago, San Antonio

OVERVIEW

Cities and anchor institutions often lack visibility into Black & Hispanic/Latinx businesses that are willing and able to bid for contracts, resulting in a return to the same pool of contractors over and over. Cities need to build trusted partnerships in places where Black and Hispanic/Latinx businesses operate and with the support organizations that serve them. Black and Hispanic chambers of commerce and local trade organizations are a good place to start. Civic leaders should also look to convene anchor institutions around their own set of procurement goals and find ways to regularly get them in front of qualified, performance-ready vendors.

KEY CONSIDERATIONS

Small, targeted outreach is better than efforts that are broad and generic. Large convenings or general messaging campaigns on the benefits of vendor certification are often less effective than targeted outreach to specific types of firms for specific types of projects. Outreach can occur both through representatives of the city and through intermediary organizations like chambers of commerce and other business associations.

Forecasting upcoming procurement opportunities allows more time for procurement personnel to conduct targeted outreach. Contractors who have pre-established relationships with the city may be made aware of upcoming opportunities ahead of other potential vendors, resulting in an inequitable playing field. Quarterly forecasting is a good entry point for cities hoping to make procurement processes more equitable.

Create systems and structures for performance-ready businesses to engage with potential buyers. Convene the big spenders – universities, hospital systems, utility companies – and set collective goals for buying from local, MBE vendors. Simultaneously, establish a portfolio of “buyer-ready” MBE contractors that are ready and able to meet the procurement needs of these large institutions.

For businesses that aren’t ready to become prime contractors, provide technical assistance and consider inviting procurement officers from the anchor institutions to help deliver the trainings.

CASE STUDIES



THE CITY OF DETROIT, MI launched an initiative called Detroit to Detroit (D2D) that convenes major anchor institutions and connects them to high quality businesses that historically lack access to opportunities to grow their revenues and networks.¹⁵



CHICAGO ANCHORS FOR A STRONG ECONOMY (CASE), a coalition of 15 anchor institutions, work to spend a greater percentage of procurement dollars on local businesses. Dedicated staff members at CASE play matchmaker between anchors and businesses, while also helping SBEs navigate the procurement process of larger institutions.¹⁶



THE CITY OF SAN ANTONIO, TX hosted a Vendor Round-Up with procurement personnel from city departments, local chambers of commerce, and other stakeholder groups.¹⁷ More than 200 firms participated and received assistance in registering as a vendor with the city.

Streamline the Bidding and Payment Process



INTERVENTION TYPE
PRACTICE

FOCUS
SBEs

CASE STUDIES
Memphis, St.Paul, Chicago, Tulsa

OVERVIEW

Many Black and Hispanic/Latinx-owned businesses are small businesses which tend to face greater cash flow challenges than larger firms. The lack of working capital is particularly daunting; many potential contractors do not have enough cash reserves to fulfill their work requirements while waiting to be paid until long after the work is completed. Other barriers exist in the form of over-complicated bidding and certification processes for MBE, WBE, and SBE firms. Cities can work to streamline their bidding and certification processes across departments, while ensuring prime and subcontractors receive prompt payment for their services.

KEY CONSIDERATIONS

Simplify the process for registering as a vendor and for placing bids on RFPs. Create an online, one-stop-shop with current and upcoming contract opportunities, where vendors have the option to file bids electronically. In many cases, these portals can be shared between local jurisdictions to save on cost. In cases where paper is used, consolidate forms across city departments that ask for similar information from vendors.

Institute prompt payment policies that require city-certified MBEs, SBEs, and WBEs to be paid 2-3 weeks after invoices are received. Programs that provide some degree of up-front payment to small businesses or that help contractors meet bonding and insurance requirements can also help under-capitalized businesses.

Increase protections for subcontractors who often wait the longest to be paid. Contracts should include a clause that requires timely payment of subcontractors by the prime. Consider instituting a policy requiring prime contractors to pay their subs before submitting an invoice and receiving payment themselves.

CASE STUDIES



THE CITY OF ST. PAUL, MN'S online "Supplier Portal" facilitates the exchange of information between vendors and buying organizations. It also centralizes critical information on bonding and insurance requirements as well as details on the city's Affirmative Action and Vendor Outreach Programs.¹⁸



THE CITY OF MEMPHIS, TN aims to pay city-certified MWSBE firms within five business days of receiving an invoice. The city identifies invoices of MWSBE firms, marks them received, and expedites them for payment.¹⁹



THE CITY OF CHICAGO, IL pinpointed inefficiencies in its RFP process, including non-uniform contract language and redundant vendor disclosure forms across departments, which they are seeking to reform.²⁰



THE CITY OF TULSA, OK, working with the Harvard Kennedy School Government Performance Lab convenes a cross-departmental "Procurement Excellence Steering Committee" every 2 months to identify pain points in the city's bid processes and to align practices across departments. Recent solutions include a new solicitation template that centers on project goals and a requisition dashboard that allows departments to track upcoming procurements. In addition, the City recently launched a business engagement survey, giving nearly 1,800 firms the opportunity to share their suggestions related to Tulsa's procurement process.

Unbundling Contracts



INTERVENTION TYPE
POLICY

FOCUS
SBEs

CASE STUDIES
Seattle, Los Angeles, Buckeye

OVERVIEW

Unbundling is when a large contract is divided into smaller contracts. This piecemeal approach to contracting tends to indirectly increase bidding opportunities for small businesses, among which MBEs are overrepresented.²¹ Larger contracts often have prohibitively high bonding and insurance requirements that prohibit small businesses from applying. Unbundling can benefit procurement departments by distributing risk across multiple firms and enhance competition and innovation among more segments of the economy.

KEY CONSIDERATIONS

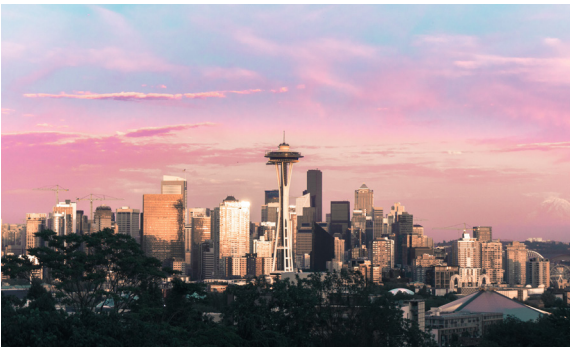
Conduct a threshold analysis to gain a better understanding of the current range of available contract opportunities for small businesses. Analyses should include the number and value of awards made across different contract size intervals. Whenever possible, analyses should be disaggregated by race and industry sector.

Good candidates for unbundling include contracts with a wide range of goods and services or which involve work in multiple locations.²² Contracts that include landscaping or maintenance can also usually be unbundled. Complex contracts with tight deadlines are usually not good candidates for unbundling.

CASE STUDIES



THE CITY OF LOS ANGELES' Bureau of Contract Administration looked for opportunities to unbundle contracts that included services like mobile truck washing and right of way construction.²³



THE MAYOR OF THE CITY OF SEATTLE issued an executive order in 2014 directing departments to unbundle tasks as part of a larger suite of requirements including enhanced technical assistance and prompt payment of invoices for contractors.²⁴



THE CITY OF BUCKEYE, AZ unbundled contracts related to the construction of the Buckeye Municipal Airport as a component of its Disadvantaged Business Enterprise program.²⁵ The city used this strategy as an alternative to small business set asides because set asides are disallowed by the city's procurement codes.

Sheltered Markets



INTERVENTION TYPE PROGRAM

FOCUS
SBEs

CASE STUDIES
Austin, Jackson, Portland

OVERVIEW

Sheltered market programs limit bidding on contracts below a pre-determined threshold to small and/or minority-owned businesses and are usually a component of a Small Business Enterprise program. Typically, the participation of a company in a sheltered market program is limited to a specific time frame (3-5 years, for example) after which, the firm graduates or leaves the program. The goals of sheltered markets are two-fold: 1) to provide bidding opportunities to small and minority-owned businesses that are frequently excluded from city contracts, and 2) to build the capacity of small firms so they are able to bid on larger projects.

KEY CONSIDERATIONS

Consider the availability of MBEs for a given project to ensure there are enough ready and willing firms in the relevant industry to enter bids. At a minimum, sheltered markets are usually implemented for construction and professional service contracts, but sometimes for consulting and general services as well. Disparity studies are useful in determining the availability of MBE firms in a given industry. In cases where few MBE firms exist, other programs can be adopted to address the imbalance.

Set clear goals and establish feedback mechanisms to track progress and course correct when necessary. Goals can be centered on the number of businesses participating in the sheltered market program by sector or geography, bids received per project, and the revenue growth of participating firms over the lifespan of the program. It's helpful to have a single agency coordinate and monitor the program across all relevant departments.

Accelerate the transition of sub-contractors to primes by combining an MBE sub-contracting program with an SBE sheltered market program. After MBE firms in the sub-contracting program achieve the required capacity and revenue growth to become prime contractors, they can “graduate” into the sheltered market program for SBEs.

One benefit of this strategy is that cities have greater latitude in their approach to pursuing inclusivity with sub-contractors than they do with prime contractors.

CASE STUDIES



THE CITY OF AUSTIN, TX combines an MBE sub-contracting program with an SBE sheltered market program. Localities have more flexibility in pursuing race-conscious goals in sub-contracting than they do in prime contracting.²⁶



THE CITY OF JACKSON, MS proposed a sheltered market program in 2021 that would reserve 10 percent of the city's discretionary spending for pre-qualified Black and Hispanic/Latinx business owners. Thirty-five percent of contracted work would have to be performed by the minority firm's workforce.



THE CITY OF PORTLAND, OR has a two-tiered sheltered market program for state certified MWBE firms participating in the sheltered market program. One allows up to half of construction projects from \$100,000 to \$200,000 to be reserved for bidding by firms in the program. The other reserves city contracts between \$5,000 and \$100,000 for participating firms.²⁷

Set Inclusive Sub-contracting Goals



INTERVENTION TYPE
POLICY

FOCUS
MWBEs and/or SBEs

CASE STUDIES
Seattle, Houston

OVERVIEW

What gets measured is usually what gets accomplished. Some cities use subcontractor utilization goals, crafted by the contract compliance office or a goal-setting committee, as a tool to increase business for small and Black & Hispanic/ Latinx-owned firms. When goals are realistic and data-driven and paired with effective monitoring, such efforts can lead to positive outcomes. Whether goals are legally binding for primes depends on the legal context of the state and whether race-conscious policies are permitted.²⁸

KEY CONSIDERATIONS

Larger projects are likelier candidates for the inclusion of sub-contracting goals. These goals can still be an effective lever for small projects, but it may be more impactful to set goals around MBEs as prime contractors the smaller the project is. Ultimately, specific sub-contracting goals should be data-driven and based on the availability of performance-ready small and MBE businesses for a given type of project and at a given contract size.

Engage community partners in identifying subcontractors. When necessary, procurement personnel should help primes identify subcontracting pools through widespread outreach and strategic partnerships with chambers of commerce and other business-oriented organizations.

Accountability and consistent data reporting are crucial elements to program success. It may be prudent to designate a single agency that is responsible for contract compliance and reporting out on sub-contracting goals. Municipalities should require reporting of all subcontractors solicited and anticipated to be utilized on contract opportunities to capture the full universe of vendors and avoid data gaps.

CASE STUDIES



THE CITY OF SEATTLE, WA requires prime contractors to commit to a percentage of MWBE subcontractors, which then gets locked into contracts. In this case, the percentage goal of MWBE subcontractors is created by the bidder, not mandated by the city.²⁹



THE CITY OF HOUSTON, TX applies sub-contracting goals on all construction projects over \$1 million and on professional service contracts of any size. Roughly 25 percent of its contracts are now awarded to MBEs.³⁰



Conclusion

Racially inclusive procurement practices are an important tool for policymakers intent on building community wealth through the channel of BIPOC-owned businesses. Whenever possible, they should be implemented in tandem with targeted business supports and a capital access program that helps entrepreneurs of color at all stages of the revenue spectrum grow their businesses. It's also critical that public, private, and civic leaders champion these efforts and commit to monitoring progress towards ambitious, measurable goals.

In 2021, the Biden Administration is poised to enact aggressive legislation addressing the nation's crumbling infrastructure. With the federal spigot turned to full blast, public and private actors will play

a key role leveraging the impact of these funds, and by connecting prime and sub-prime contractors to federally funded projects. This represents a historic opportunity to increase the flow of dollars to BIPOC-owned businesses, even in states where race-conscious procurement policies are pre-empted.

Lastly, while the recommendations in this action guide may appear "zero-sum" (i.e., helping business owners of color at the expense of white business owners), city leaders should choose to widen their perspective. Achieving economic parity is an enormous opportunity for all residents; it means new markets, more innovation, higher-paying jobs, and more resilient local economies.

Endnotes

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