

**Analysis of the Columbus City Schools'
Purchasing Department's Practices and Protocols
as Relating to LEDE Vendors**

November 9, 2017

**Conducted by
Dickinson Wright, PLLC**

Table of Contents

<u>SECTION TITLE</u>	<u>PAGE</u>
SCOPE OF INQUIRY (INCLUDING LIMITATIONS)	1
OBJECTIVES	1
EXECUTIVE SUMMARY	2
BACKGROUND INFORMATION	2
Previous Audits of the Columbus City Schools' Purchasing Department	2
The Retirement and Potential Rehiring of Mr. Dennis Carney as the Purchasing Director	2
INVESTIGATIVE EFFORTS	3
DETAILED FINDINGS	4
Issue 1: Is there any evidence that vendor solicitations and contract awards have been conducted inconsistently with Board of Education policy and administrative guidelines?	5
Issue 2: Is there any evidence of a bias against LEDE vendors in the vendor solicitation and contract award practices or procedures?	8
Issue 3: Is there any evidence that barriers to entry have been imposed that could inhibit LEDE vendors from participating in the Columbus City Schools' contract solicitation process?	17
RECOMMENDATIONS	24
CONCLUSIONS	25

SCOPE OF INQUIRY (INCLUDING LIMITATIONS)

The Columbus City Schools' Office of Internal Audit requested Dickinson Wright, PLLC conduct an independent investigative analysis (the "Analysis") of the District's Purchasing Department's practices and protocols as implemented and followed by the former Director of the purchasing department, Mr. Dennis Carney, to look for evidence of whether those practices and protocols (1) violated District policy, (2) demonstrated a bias against Local Economically Disadvantaged Enterprise ("LEDE") vendors in solicitation and contract award practices, or (3) created barriers to entry for LEDE vendors wishing to conduct business with the school district. Internal Audit also requested legal analysis and suggestions regarding the findings of this Analysis as appropriate.

This Analysis is not a complete and comprehensive investigation and/or inquiry into Board of Education policies, historical practices of the Columbus City Schools' purchasing department, or implementation of the LEDE participation goals. Rather, this inquiry is limited in scope due to budgetary and time restrictions that necessitated a more limited review of relevant documentation, witness interviews, policy review, and limited other research. Other issues discovered or identified during the inquiry will be forwarded to the office of internal audit separately to allow that office to review and, if necessary and appropriate, initiate further inquiry.

The information reviewed during this inquiry is significantly voluminous and is comprised of paper records (including printouts of emails, email attachments, policies, procedures, etc.), electronic documents (including electronic documentation, emails, email attachments, policies, procedures, etc.), and interviews of dozens of people related to this matter. The information contained in this report is not a detailed, comprehensive accounting of every document reviewed, interview conducted, or conversation had. Rather, this document is designed to provide an overview of issues raised, relevant analyses of those issues, and suggestions for remedying any problems identified during this inquiry as far as possible within the confines and limitations inherent in this investigation.

OBJECTIVES

The objectives of this inquiry are to analyze and address the following questions:

1. Is there any evidence that vendor solicitations and contract awards have been conducted inconsistently with Board of Education policies and administrative guidelines or that BOE bylaws, policies, or administrative guidelines have been violated?
2. Is there any evidence of a bias against LEDE vendors in the vendor solicitation and contract award practices or procedures?
3. Is there any evidence that barriers to entry have been imposed that could inhibit LEDE vendors from participating in the Columbus City Schools' contract solicitation process?

EXECUTIVE SUMMARY

Within the confines of the scope of this inquiry, the questions posed above can be answered as follows:

1. No evidence was found that vendor solicitations or contract awards were being conducted in violation of Board of Education policy or administrative guidelines.
2. The BOE policies and purchasing department practices are neutral on their face and support LEDE participation goals. Instances were found, however, in which LEDE vendor participation was addressed in a manner that appears inconsistent with the Community Inclusion goals and policies set forth in BOE Policy #6400 and BOE Policy #6450.
3. At least one practice was implemented that could have inhibited LEDE vendors from participating in the Columbus City Schools' contract solicitation process. No evidence was found, however, suggesting that any such practices were implemented with the purpose of inhibiting LEDE vendors from participating in the Columbus City Schools' contract solicitation process. The identified practice has since been remedied.

BACKGROUND INFORMATION

Previous Audits of the Columbus City Schools' Purchasing Department

On March 24, 2015, Schneider Downs issued a Purchasing Audit Report summarizing observations from its audit of the purchasing department's system of internal controls for 2014. That report identified seventeen areas of concern and identified the stakeholder responsible for each respective issue.

On August 22, 2016, the Office of Internal Audit issued a subsequent follow-up audit to assess the status of corrective actions taken by management regarding the observations identified by Schneider Downs in its audit report. The subsequent audit found that 76% (13 out of 17) issues had been sufficiently addressed.

Neither the Schneider Downs 2015 audit report nor the Internal Audit 2016 audit report addressed issues related to concerns regarding LEDE vendors specifically.

The Retirement and Potential Rehiring of Mr. Dennis Carney as the Purchasing Director

This inquiry was initiated subsequent to Mr. Carney's submission of a notice of retirement with intent to seek reemployment as the Director of the Columbus City Schools' purchasing department. After Mr. Carney submitted his notice of retirement, and pursuant to Ohio Revised Code Section 3309.345, public notice was given that the Board of Education would be holding a public meeting on May 16, 2017, at which time Mr. Carney's reemployment would be addressed. Mr. Carney's notice of retirement was accepted by the Board on March 21, 2017. On April 20, 2017, Mr. Carney requested to rescind his notice of retirement. The request was denied. On

April 28, 2017, the Board elected to not address Mr. Carney's retirement at the May 16, 2017 Board meeting. Mr. Carney's retirement became effective on May 31, 2017.

The notice of the public meeting sparked community interest and resulted in numerous community members expressing concern for a perceived bias against LEDE vendors seeking to conduct business with the Columbus City Schools.

On March 30, 2017, a "vendor focus group" meeting was organized by the local chapter of the National Association for the Advancement of Colored People ("NAACP"). A second vendor focus group meeting was coordinated by the NAACP and held on April 13, 2017 at 6:00 p.m. The focus group meetings were designed to address concerns of the LEDE community and obtain information about the businesses attempting to conduct business with the District, their varying level of success at winning contracts, barriers they felt impeded their efforts, and the responsiveness of officials in responding to requests for assistance.

On May 24, the office of Internal Audit began reviewing complaints regarding Mr. Carney and his leadership of the purchasing department.

INVESTIGATIVE EFFORTS

This inquiry consisted of the following:

1. Reviewing selected BOE policies;
2. Reviewing previous iterations of selected BOE policies;
3. Reviewing the Purchasing Solicitation & Vendor Management Guidelines;
4. Reviewing purchasing department practices and protocols;
5. Reviewing purchasing department records and documentation;
6. Reviewing email correspondence relevant to the LEDE program, the purchasing department, and Mr. Dennis Carney;
7. Reviewing the Vendor page of the District's website;
8. Navigating through the New Vendor Registration pages of the District's website;
9. Obtaining log-on credentials and reviewing the Public Purchase website;
10. Reviewing findings of previously conducted audits of the purchasing department;
11. Reviewing previously conducted investigative notes and other documentation provided by the internal auditor;
12. Interviewing Columbus City School employees and former employees;

13. Interviewing vendors who have conducted business with the Columbus City Schools, including LEDE vendors;
14. Interviewing community members who have expressed concern regarding the Columbus City Schools' implementation of the LEDE program; and
15. Interviewing community members who have expressed concern regarding Mr. Dennis Carney's tenure as the director of the purchasing department.

Attorney Justin Root, Of Counsel, Dickinson Wright, conducted interviews for this Analysis. Attorney Sara Jodka, Of Counsel, Dickinson Wright, assisted with interviews of Columbus City School employees.

DETAILED FINDINGS

The categorical allegations giving rise to this investigation included the following issues:

1. That under Mr. Carney's direction, the purchasing department allegedly conducted invitations to bid and requests for proposals contrary to BOE policy or otherwise violated BOE bylaws, policies, or administrative guidelines;
2. That under Mr. Carney's direction, the purchasing department has allegedly exhibited bias against LEDE vendors; and
3. That under Mr. Carney's direction, the purchasing department allegedly implemented barriers that frustrated LEDE vendors from participating in the Invitation to Bid (ITB) and Request for Proposal (RFP) processes.

Specific concerns comprising those categorical allegations included the following:

- That the purchasing department under Mr. Carney accepted bids and proposals late from non-LEDE vendors to the detriment of LEDE vendors;
- That the purchasing department under Mr. Carney did not take seriously the BOE's Community Inclusion policy, including the 20% dollar-spent goal for LEDE vendors;
- That the purchasing department under Mr. Carney unilaterally and without reason imposed a requirement that vendors have on file with the district an Internal Revenue Service Form W-9;
- That the purchasing department under Mr. Carney unilaterally imposed a requirement that vendors have insurance in place prior to registering as active vendors through the district's online contract acquisition system (and that vendors without such proof of insurance, or whose certificate of insurance had lapsed, were unable to participate);
- That the purchasing department under Mr. Carney demonstrated preferential treatment toward non-LEDE vendors over LEDE vendors;

- That the purchasing department under Mr. Carney unilaterally imposed additional vetting requirements on LEDE vendors that were not imposed on non-LEDE vendors; and
- That the purchasing department under Mr. Carney unilaterally imposed a vetting “checklist” to the detriment of LEDE vendors.

Issue 1: Is there any evidence that vendor solicitations and contract awards have been conducted inconsistently with Board of Education policy and administrative guidelines?

The purchasing department conducts business with various vendors in significant adherence to the “Columbus City Schools Purchase Order, Contract & Solicitation General Terms & Conditions” document (“Terms and Conditions”). Vendors who conduct business with the District are generally obligated to agree to the Terms and Conditions as a condition of responding to a solicitation or receiving a contract. The Terms and Conditions contain many categorical requirements. A claim addressed in this Analysis is that these requirements are not imposed by Board of Education policies but, instead, are just “rules” implemented by Mr. Carney. According to this argument, the implementation of these non-policy requirements may be improper and frustrates the Community Inclusion and Local Purchasing and Outreach policies.

The Columbus City Schools Board of Education has implemented policies addressing its purchasing and procurement practices and its local community outreach goals for including and doing business with certain local vendors. In May 2014, the Columbus Board of Education began a revision process under which policies and administrative guidelines have been and are being reviewed, revised, and reformatted. The primary BOE policies relevant to this inquiry are certain of the purchasing policies and the community inclusion policies.

Former BOE Policy #3212 (Acquisition of Services, Supplies, Equipment, and Construction) (adopted 8/6/02), appears to have been modified significantly and superseded by BOE Policy #6320 (Purchases) (adopted 6/30/15, effective 7/1/15 and 11/17/15) and BOE Policy #6325 (Procurement – Federal Grants/Funds) (adopted 9/6/16). The community inclusion policy, previously BOE Policy #3210 (adopted 11/18/03, amended 3/2/04 and 5/18/04) is now categorized as BOE Policy #6400 (adopted 8/4/15, effective 7/1/15) with the policy language remaining largely unchanged. BOE Policy #6450 (Local Purchasing and Outreach) (adopted 8/4/15, effective 7/1/15) is similarly relevant to this inquiry.

Former BOE Policy #3212 provided that “[o]nly the Board of Education has the authority to enter into contracts and to authorize purchases” but delegated to the Superintendent the authority to manage the purchasing process. Nevertheless, that policy also provided as follows:

The District’s purchasing function, centralized under the Director of Purchasing, shall establish and maintain a uniform set of procedures to insure that state legislation and Board of Education policies are followed.

The Director of Purchasing shall insure that superior business practices and ethical standards are met throughout the entire purchasing cycle. It is

imperative that purchasing conduct business without favor or prejudice. Every transaction between a buyer and a supplier involving the transfer of property or the rendering of services will be consummated using a purchase order and contract as applicable.

Authority to buy products and services for the District shall reside with the Purchasing Department. The specification of materials will be the prerogative of each department or school. However, supplier selection is at the discretion of the Purchasing Department. Purchasing shall have the authority to review the quality and appropriateness of products and services selected and make recommendations with respect to economy and fitness of purpose. Selection of all products and services shall be made in accordance with the procedures established in the purchasing manual¹ of the Columbus Public Schools.

Based on the text of former BOE Policy #3212, the authority to develop and implement “a uniform set of procedures to insure that state legislation and Board of Education policies are followed” regarding purchasing fell to the Director of Purchasing, which was Mr. Carney. During Mr. Carney’s interview on August 9, 2017, he stated that pursuant to this authority, he implemented the Columbus City Schools Purchase Order, Contract, & Solicitation General Terms & Conditions (“Terms & Conditions”), which has been utilized and revised over the term of his employment with the District.

Current BOE Policy #6320 delegates to the Superintendent “the authority to manage the purchasing process for all purchases of the organization.” BOE Policy #6320 makes no reference to the Director of Purchasing or the authority of that person to implement procedures to insure adherence to state legislation or BOE policies. Nevertheless, the most recent job description established for the Columbus City Schools’ position “Director, Purchasing & Logistics” (revised May 2017) includes the following (non-exhaustive) “essential duties” for that position:

- Develops and implements departmental policies, and procedures that maintain strict accountability, while ensuring timely and high quality service to customers; revises departmental work systems and procedures as necessary to improve the efficiency and productivity of the department.
- Investigates, explores and makes recommendations on adoption of innovative procurement methods, such as cooperative purchasing programs with other school districts and subdivisions of government, procurement cards, and/or e-commerce.
- Assists district personnel in establishing policies and procedures for compliance with requirements of related statutes, specifications, contracts and general purchasing standards.

¹ Although referenced in former BOE Policy #3212, the “purchasing manual” is not referenced in any current iteration of BOE policy.

- Assists in the development and implementation of district policies for local purchasing and outreach to business enterprises; ensures compliance with affirmative action laws and policies.
- Performs other duties as assigned.

Based on former BOE Policy #3212 and the job description established for the director of purchasing, it appears that the director of purchasing has been, and continues to be, charged with the responsibility of developing procedures consistent with BOE policies, or assisting with the development of such procedures, to facilitate purchasing for the District.

BOE Policy #6320 contains an Outreach provision affirming a commitment to diversity and inclusion “by assuring that our local economically disadvantaged enterprises which include contractors, subcontractors and goods and service providers have an equal opportunity to participate in all contracting and procurement activities” and imposing an obligation that “all purchases shall be in accordance with the Columbus Board of Education’s Community Inclusion Policy 6400.” The Columbus City Schools’ community inclusion policy, formerly BOE Policy #3210 (Community Inclusion), is now categorized as BOE Policy #6400 (Community Inclusion (Local Economically Disadvantaged Enterprises)). This policy, by its terms, is race and gender neutral and instead applies equally to any sole proprietorship, partnership, company, corporation or joint venture that has been in business for at least one year and that meets certain size limitations (“enterprises”), and that has either its principal place of business within Franklin County, Ohio or more than 50% of its full-time employees residing within the boundaries of the School District (“local”), and that is at least 51% owned and controlled directly or indirectly by one or more individuals, each with a personal net worth equal to or less than \$750,000 (excluding ownership interests in the enterprise or equity in a primary residence) (“economically disadvantaged”).

Pursuant to BOE Policy #6400 (formerly #3210), the Columbus City Schools has set a goal of awarding to LEDE vendors contracts and procurements that represent at least twenty percent (20%) of all dollars spent on an annual basis by the School District for contracting and procurement purposes. BOE Policy #6400 appears to be supplemented by BOE Policy #6450 (Local Purchasing and Outreach), which establishes an outreach program policy and details goals for improving LEDE participation including the establishment of an Outreach Program Committee. Together, these policies demonstrate a commitment on the part of the District to enhance community outreach.

No evidence was found that any invitations to bid or requests for proposal have been issued in facial violation of these policies. The obligations imposed by the Terms and Conditions appear facially neutral. As the director of purchasing, Mr. Carney appears to have been delegated the authority to develop and implement policies controlling the District’s purchasing of goods and services.

Issue 2: Is there any evidence of a bias against LEDE vendors in the vendor solicitation and contract award practices or procedures?

Concerns that the purchasing department's practices created a bias against LEDE vendors consisted of the following allegations:

- That Mr. Carney imposed "additional vetting" on LEDE vendors that was not imposed on non-LEDE vendors and unilaterally implemented a "vetting checklist" that was used on LEDE vendors but not on non-LEDE vendors;
 - That Mr. Carney accepted bids and RFPs from non-LEDE vendors after the deadlines for their submissions; and
 - That Mr. Carney did not take seriously the 20% dollars-spent goal for LEDE vendors and took actions that frustrated the achievement of that goal.
- A. *That Mr. Carney imposed "additional vetting" on LEDE vendors that was not imposed on non-LEDE vendors and unilaterally implemented a "vetting checklist" that was used on LEDE vendors but not on non-LEDE vendors;*

This issue was raised initially during this inquiry by Employee-1². During her interview on June 28, 2017, Employee-1 stated that she felt certain practices operated to nullify the LEDE program. Her primary concern related to vetting practices taken after solicitations were concluded, after a presumptive awardee was identified for issuance of the contract, but before the contract was actually awarded. Employee-1 identified three companies she believed were the victims of this unnecessary additional vetting, Company-A, Company-B, and Company-C. These three companies were cited several times by various witnesses as companies subjected to additional vetting and were therefore contacted as discussed below. Employee-1 also expressed concern over a "vetting checklist" implemented by Mr. Carney. According to Employee-1, Mr. Carney created the vetting checklist unilaterally and attempted to implement its use to screen LEDE vendors.

On June 27, 2017, Witness-1, president of Company-A, was interviewed regarding his experiences with the Columbus City School solicitation process. Witness-1 had previously responded to a solicitation from the District to supply office supplies but was notified by Mr. Carney that his company was not being considered as a LEDE vendor because he was not LEDE certified at the time of his submission. Witness-1 felt this was an unnecessary position to take as long as he could become LEDE certified by the time the contract was awarded.³ Ultimately, Witness-1 did not win the contract. Nevertheless, the following year he submitted a response to provide janitorial supplies to the District, which led to the "additional vetting" that forms the basis of Employee-1's concern.

² The Office of Internal Audit has advised that it traditionally uses pseudonyms in its reports. For consistency, that practice has been followed herein with the exception of Mr. Carney, whose identity is necessary to the Analysis.

³ The RFP template form presently explains expressly that LEDE certification, if claimed, must exist at the time of submission. It is not clear from the documentation when, precisely, the requirement was added to the form. The lack of an LEDE designation, however, would not have precluded Witness-1 from submitting his proposal as a prime vendor.

The additional vetting conducted of Witness-1's company consisted of an inspection of proposed products (paper towels, bathroom tissue, etc.), a review of the dilution ratios of proposed cleaning supplies, and concerns over the fit and sufficiency of the paper towels Witness-1 proposed to use for the dispensers in the schools. Ultimately, Witness-1 satisfied the concerns and was awarded the contract.

Views differ on the necessity of this additional vetting. Despite the fact that the purchasing department had an affirmative grant of authority under former BOE Policy #3212 to "to review the quality and appropriateness of products and services selected and make recommendations with respect to economy and fitness of purpose," some have suggested the authority has been used as a means to screen out LEDE vendors, with some suggesting it is used specifically to screen out minority-owned businesses. During Employee-2's interview, he reported that additional vetting would be conducted based on concerns raised by the "subject matter expert" ("SME") for the purchase, which was generally the department head requesting the purchase. For the specific custodial supply contract to which Witness-1 responded, the SME was Employee-3, the director of custodial services.

Employee-3 was interviewed on June 28, 2017. He reported that he was involved with that selection process. Employee-3 was asked about the additional vetting of Company-A and he stated that he did not believe any barriers were put up or that Company-A was subjected to any vetting procedures that other vendors were not. Employee-3 acknowledged that Mr. Carney had some concern about the thickness of the paper towels proposed by Company-A to replace the paper towels being used by the school at that time (which were produced by Georgia Pacific) but noted that it was also determined that the District was under contract with Georgia Pacific and that changing brands would have resulted in a significant cost expenditure that would have to have been absorbed by either the District or the vendor. Employee-2 also reported this issue and noted that after contacting Georgia Pacific, he was able to negotiate a solution by which Georgia Pacific would allow Company-A to procure Georgia Pacific paper products to supply to the District even though Company-A was not an authorized Georgia Pacific distributor.⁴

A second company reportedly subjected to unnecessary additional vetting was Company-B. On July 28, 2017, Witness-2 of Company-B was interviewed by telephone. Company-B had won a bid to provide transportation services to homeless students through the Columbus City Schools' "Project Connect."⁵ During the interview of Employee-1, she had opined that Mr. Carney and Employee-2, who conducted the additional vetting of Company-B, were attempting to eliminate Company-B from consideration. The additional vetting consisted of an inspection of Company-B's vehicles and business capabilities.

On July 28, 2017, Witness-2, owner of Company-B, was interviewed about his experience. Witness-2 noted that the vehicles in his fleet had been inspected by the State of Ohio (via the

⁴ Specifically, an agreement was reached that Company-A would be able to obtain Georgia Pacific products from an authorized Georgia Pacific distributor at distributor prices.

⁵ Project Connect is a program to provide transportation to homeless students enrolled in the Columbus City Schools. It is addressed by BOE Administrative Guidelines #5111.01, 8600, and Policy #8600.

Ohio State Highway Patrol) and had received safety inspection stickers that were displayed on the windshields. He also provided maintenance records to Mr. Carney demonstrating that the vehicles had been properly maintained and background check records for drivers demonstrating they had been properly vetted. Nevertheless, Mr. Carney insisted on an in-person inspection to occur on a Friday evening after a full work week. Witness-2 reported that District mechanics identified possible problems with which Witness-2 disagreed. Ultimately, Company-B's vehicles passed the inspection. Witness-2 stated that no reasons were given by Mr. Carney for the inspection. Witness-2 felt that the vetting was conducted solely because Mr. Carney wanted to do it. He also stated that he is unaware of any other vendor who faced similar vetting.

Mr. Carney was asked about the purpose of the vetting during his interview and he stated that it was conducted at the request of Employee-4 who was in charge of the transportation program seeking the services. Employee-2 also reported during his interview that the additional vetting was conducted at Employee-4's request. On August 29, 2017, Employee-4 was interviewed by telephone and asked about the vetting. She confirmed that she had requested the vetting of Company-B. According to Employee-4, she was new to the position at the time of the solicitation and wanted to be sure she satisfied her obligation to ensure that homeless students from the District were provided with transportation to and from school. She requested the vetting because Company-B was new to the district. Additionally, she reported that when she met with Witness-2 after his company was determined to be the presumptive winner the telephone number he provided was for a cellular telephone. She stated she was concerned by this because it suggested there might not be a physical office with sufficient staff, which could be problematic if she needed to contact the company. Essentially, she requested the additional vetting to ensure that Company-B had the capacity to perform the services. Based on Employee-4's confirmation that she requested the additional vetting for specific reasons, it cannot be said that Mr. Carney conducted the additional vetting on his own impetus. Rather, the vetting was conducted at the request of the head of the department requesting the services.

A third company, Company-C, was also reported as a company that experienced unnecessary additional vetting. On August 30, 2017, Witness-3 of Company-C was interviewed by telephone. Witness-3 has had a unique experience with the District during which she was reportedly advised that she needed to become a District employee to provide certain training services through one of her companies to the District. Thereafter, she became an "employee" of the district while providing those services. While employed with the District, she attempted to respond to the logistics services solicitation but was instructed by Mr. Carney that she could not be both employed by the District and attempt to seek work through the solicitation process because it would create a conflict of interest.⁶ Ultimately, Witness-3's concerns did not relate to her company's LEDE status or any additional vetting or use of a vetting form. Rather, her concerns related to business relationship issues independent of her company's LEDE status.

Another concern raised during this Analysis was a vetting form created and implemented by Mr. Carney. According to Employee-1, the questions on the form were immaterial and the form was to be used to put LEDE vendors through unnecessary obstacles. She stated that this form was first used to vet Company-C, which was conducted by Employee-5.

⁶ This interpretation appears consistent with Ohio law. *See, e.g.*, Ohio Rev. Code § 2921.42(A)(4).

Employee-5 was contacted and interviewed about the form on August 16, 2017. Employee-5 manages logistics services for the District and, therefore, was the subject matter expert to analyze prospective vendors for that service. Employee-5 confirmed he received a vetting form from Mr. Carney. Employee-5 reported that vetting of logistics companies is not unusual and he always confers with new vendors to review expectations and confirm the vendor will be able to perform the services. Employee-5 reported that the process was not new with respect to Company-C but that the form provided for vetting was. He reported that some of the items on the list were inapplicable to the vetting process so he did not use the list but did fill it in after conferring with Company-C. (Employee-5 reported that he asked the questions on the list but did not use the list.) Ultimately, Employee-5 reported that he believes the vetting form is proper. He stated that he sees it as “solidifying” the integrity of the vetting process. He also reported that he expressed to Employee-1 that he viewed the form as a smart business decision, not a mechanism to target LEDE vendors.

During his interview, Mr. Carney was asked about the vetting form. Mr. Carney confirmed that he created the form but stated the questions on the form were the same questions that had been used to vet vendors historically. He reported that the purchasing department needed something more formal and consistent to vet prospective contract awardees so he developed the form to streamline the process for all vendors. He stated that the form has been used only once, and that was in connection with Company-C.

It is difficult to conclude that the vetting procedures were utilized to eliminate LEDE vendors from participation. Facially, the explanations provided for the instances of additional vetting identified in this Analysis appear to be consistent with valid business concerns rather than a vendor’s status as LEDE.

B. That Mr. Carney accepted bids and RFPs from non-LEDE vendors after the deadlines for their submissions;

This issue was raised by Witness-4 during a telephone interview with him on July 27, 2017. In the interview, Witness-4 stated that he had received information from an unidentified member of the purchasing department that Dennis Carney had been observed shredding documents without authority to do so. Witness-4 suggested that the shredded documents might have substantiated the allegation that Mr. Carney had accepted late bids and/or proposals from vendors.

This Analysis uncovered one instance of a submission being accepted after a deadline. In 2006, Mr. Carney accepted a late proposal from a vendor in response to a solicitation to provide photocopiers to the District. The acceptance of the late bid led to vendor complaints and an internal audit review of the situation.⁷ That incident has been cited as evidence that Mr. Carney has worked to subvert the LEDE participation goals.

⁷ The acceptance of late bids was the subject of an internal audit inquiry conducted in 2006. That investigation found that seven vendors submitted proposals pursuant to the district’s request for proposals, that several of those vendors submitted more than one proposal, and that one vendor did not submit its proposal in time. According to the purchasing director, that vendor was contacted for an explanation and reported that it mistakenly believed it had another day to submit its proposal. After consultation with the District’s legal counsel, that vendor was allowed to

Under the current and previous electronic systems implemented to handle bids, Public Purchase and Munis, respectively, bids are submitted through the online system and cannot be submitted after the pre-set deadline. The risk of late submissions, therefore, is limited to the RFP process, which allows vendors to submit proposals in person or by parcel.

During the interview of Mr. Carney on August 9, 2017, the issue of late submissions was addressed. Mr. Carney stated that in the photocopier submission incident, there were only 4 or 5 submissions responding to the solicitation and that one of those submissions occurred after the deadline. He stated that he approached his supervisor, Witness-5, and asked if the late submission could be accepted. According to Mr. Carney, Witness-5 authorized the acceptance of the late proposal. Mr. Carney stated that this was a mistake from which he has learned and that he has not accepted any late submissions since. In fact, according to Mr. Carney, he now uses that situation as an example of why to not accept late submissions when he teaches purchasing classes through the National Institute of Governmental Purchasing (NIGP), an organization that describes itself as: “Developing, supporting and promoting the public procurement profession through premier educational and research programs, professional support, technical services and advocacy initiatives that benefit members and constituents since 1944.” (See <http://www.nigp.org/home/about-nigp>.) There have been no other verifiable allegations of proposals being accepted after the submission deadlines or discoveries of any such situations during this Analysis.

On August 28, 2017, Mr. Carney’s former supervisor, Witness-5, was interviewed by telephone to verify that Mr. Carney sought and obtained her approval to accept the late submission. Witness-5 stated that she did not remember the incident and could neither confirm nor deny that she had approved the receipt of the late submission.⁸

Mr. Carney was asked during his interview about the process in place to address late submissions of RFPs. Mr. Carney explained that when an RFP proposal comes into the office, it is time-stamped when it is received. If the submission is late, the process is to time-stamp the vendor’s envelope, photocopy the exterior of the time-stamped envelope, and return the original time-stamped envelope, unopened, to the vendor. The photocopy is then placed in the file to demonstrate that it was received late and rejected.

On August 30, 2017, the purchasing department was visited and a conversation was had with Employee-2 to inquire about the late submission process. Employee-2 offered to show an example of a late submission and produced a package that had been received from a vendor after the submission deadline. The package had a sticker placed on it with a date and time-stamp and Employee-2 produced a letter from the file discussing that the package was being rejected because it was not received prior to the deadline. That particular package, according to

submit its proposal late and ultimately won the contract award. The internal audit report determined that no Ohio laws were broken but that the procedure did not follow best practices. Internal audit made several suggestions as a result of that inquiry.

⁸ A previous investigation into this matter conducted by the office of internal audit noted that the District’s legal counsel had been contacted and had given approval for the acceptance of the late submission.

Employee-2, had been delivered by a commercial courier and arrived late to the purchasing department and, therefore, was set to be returned to the prospective vendor.

I asked Employee-2 to explain the receipt process and he stated that vendors and their couriers bring proposals to the purchasing department via the front door, where they are accepted by the front administrative staff. Those staff members then take the package to a special date/time stamper and stamp the envelope with the date and time. If the envelope or package is too large for the date/time stamping machine, a sticker is instead stamped and placed on the envelope or package.

The use of a date/time stamped sticker on larger packages does introduce a theoretical flaw in this validation assurance system by which a nefarious actor could time-stamp stickers within a submission window, hold those stickers, and apply them to late submissions of preferred vendors.⁹ There is no evidence, however, that this has ever occurred.

During Mr. Carney's interview, he was asked about the document shredding, which Witness-4 had suggested could have been the destruction of evidence of the acceptance of late submissions. Mr. Carney stated that the records he shredded pertained to an employee discipline matter and conceded that, because nobody else saw the content of the shredded documents, there was no way to verify his claim.¹⁰ Ultimately, however, aside from the instance in 2006, no substantiating evidence was found to support the suggestion that Mr. Carney accepted late bids from non-LEDE vendors to the detriment of LEDE vendors and in violation of purchasing department protocols, and no evidence could be found to support the suggestion that the shredded documents could have pertained to the acceptance of late submissions from non-LEDE vendors.

C. That Mr. Carney did not take seriously the 20% dollars-spent goal for LEDE vendors and took actions that frustrated the achievement of that goal;

Many people interviewed in connection with this Analysis suggested that Mr. Carney does not take seriously the District's commitment to LEDE vendors or the District's goal to spend on LEDE vendors 20% of all dollars spent on outside goods or services. Some have placed fault directly on Mr. Carney for the District's failure to meet the 20% goal while others have simply faulted him for allegedly not taking the goal seriously. Mr. Carney's sincerity and commitment to the 20% goal is a subjective matter. There is evidence that Mr. Carney takes these obligations seriously and works to achieve the goal of allocating 20% of all vending dollars spent on LED

⁹ The purchasing department practices include placing the time-stamped proposals in a secure, locked location after receipt, and a mechanism for addressing accidental early openings. The practices also reference opening the responses after the submission deadline to "check each one for the required documents" and to "[e]mail vendors for clarification or missing documents as needed." (Columbus City Schools Purchasing Solicitation & Vendor Management Guidelines, September 16, 2016.) It is not clear whether this process requires witnesses to verify that the packages have not yet been opened, which could help protect against claims of improper early access to the proposals to pass information to preferred bidders.

¹⁰ At the time of the shredding of these documents, May 30, 2017, Mr. Carney was under orders from his supervisor to maintain all records as they presently existed. Mr. Carney's shredding of these documents was in direct violation of that order.

enterprises. For example, as the director of purchasing, he has proposed, implemented, or helped to implement certain protocols to attempt to increase LEDE participation.¹¹ In contrast, however, he has also reportedly made statements or taken actions that have caused others to question his commitment to the LEDE participation goals.

Although former BOE Policy #3212 provided to the purchasing director broad authority over supplier selection, there are many purchases or service engagements over which the director of purchasing would have little if any control. Columbus City Schools has implemented a tiered system to control district spending on vendors. Under its present construct, the purchasing department should have relatively limited influence on which vendors are selected to conduct business with the District, provided those vendors are properly registered to conduct business with the District and are deemed “responsive” and “responsible.”¹² To be properly registered, vendors must sign up through the procurement system used by the district to track vendors as well as some contract awards. Historically, since the introduction of the Munis¹³ system in approximately July 1, 2012, vendors have been required to create an account, select a “commodity” in which to deal with the district, and submit an IRS Form W-9 and proof of insurance. (The requirement to submit proof of insurance became an area of concern and that requirement has since been rescinded as a condition of registering to do business with the District. That matter is discussed below.)

Once a vendor was properly registered and had submitted the required documentation, the vendor’s status in the Munis system would be set to “active.” If a vendor lacked proper documentation, including proof of insurance, the vendor’s status would be set to “stop.”

¹¹ For example, in an email dated November 26, 2015 (9:35 a.m.), Mr. Carney proposed a “hybrid” RFP/ITB process consisting of only 2 components, LEDE participation (20%) and price (80%). Additionally, under Mr. Carney’s direction, the purchasing matrix to score RFP proposals was changed to allow for more points to be attributed to prime vendors for utilizing various levels of LEDE subcontractors to encourage LEDE participation even at lower levels that might otherwise not garner the interest from non-LEDE prime contractors. (There is dispute as to whether this idea was Mr. Carney’s or originated elsewhere. In an email from Mr. Carney to the “management team” dated December 28, 2015 (11:08 a.m.), Mr. Carney suggested revising the scoring matrix for LEDE participation. This issue, however, was also a topic of conversation suggested by another employee on July 14, 2015 in an email to the “management team” and discussed in that group email thread. Nevertheless, Mr. Carney appears to have ultimately embraced the effort.) The purchasing department under Mr. Carney has also begun to award credit for both “direct” and “indirect” LEDE participation. “Direct” participation occurs when a prime vendor utilizes an LEDE subcontractor directly on the contracted project. “Indirect” participation occurs when an LEDE vendor supports the prime contractor in a manner other than by participating directly on the project. (It is unclear whether “indirect” participation would actually increase LEDE participation or merely create the appearance of an increase in participation. The issue of direct and indirect participation, however, is ultimately a policy decision that is outside the scope of the Analysis.)

¹² These terms and their definitions as used by the purchasing department are derived from Ohio Revised Code § 9.312 and are imposed presently by BOE Policy #6400 and referenced in BOE Policy #6320.

¹³ The District has transitioned to the use of the Public Purchase software but still requires prospective vendors to be properly registered with the District. The transition to Public Purchase caused some apparent disruption with the vendor notification process. According to Employee-1, the transition to Public Purchase caused many vendors to “fall off” the system. She referred to Mr. Carney as having “messed up” the process by switching things without concern for how it affects employees who buy or vendors who bid. According to Employee-2, the switch was necessary because Munis did not lend itself to changing procedures, and upgrades to the system led to unexpected problems once the system went live.

Vendors placed on “stop” are precluded from obtaining purchase orders from the District and, therefore, cannot do business with the district.

Under current protocols, as set forth in BOE Policy #6320 and the “Columbus City Schools Purchasing Solicitation & Vendor Management Guidelines” (“Vendor Management Guidelines”), vendor selection for transactions totaling less than \$10,000 in value require only a catalog pricing or verbal quote and do not require competitive bidding or the review of multiple vendors. In those situations, it is incumbent on the department head seeking the purchase to insure LEDE vendor participation if possible.

Vendor selection for transactions valued between \$10,000 and \$25,000 that are not required by law to be submitted for bid require an “informal solicitation” of at least three written quotes (but not sealed bids). For those transactions, the vendor who is “responsible and whose quotation or proposal is most responsive and beneficial to the District” may be chosen. Again, it is incumbent on the department head seeking the purchase to insure LEDE vendor participation if possible.

For transactions exceeding \$25,000, however, vendors are chosen by competitive bidding (when required by statute), or pursuant to BOE Policy #6320, “by competitive bidding, requests for proposals, requests for qualification, or other similar competitive process.” Both an invitation to bid (“ITB”) and a request for proposal (“RFP”) are made known to prospective bidders by posting notifications on the District’s Vendor’s page on its official website, <http://www.columbus.k12.oh.us/Vendors.aspx>, linked to <http://www.columbus.k12.oh.us/rfp>.

The bidding process is initiated by the District issuing an ITB on a specific contract. Selecting an ITB transfers a vendor to the bid specification page and provides a link to the bid portal page (previously Munis, presently Public Purchase) where the vendor can submit a bid. This procedure is used generally for purchasing contracts where specific items or items with specific specifications are sought. Under the bidding process, the department head seeking to make a purchase or otherwise conduct business exceeding \$25,000 submits the request to the purchasing department. The purchasing department will help formulate the invitation to bid and post the opportunity on the District’s purchasing portal. The lowest “responsive and responsible” bidder becomes the presumptive contract awardee subject to any additional review conducted to verify that the presumptive awardee can actually perform the work.¹⁴

The RFP procedure is similarly initiated by the District posting the RFP on its website. Selecting a request for proposal causes a document template to open regarding the request. Vendors can complete and save the document for later submission in line with the terms of the proposal. After the deadline passes, a panel of school district personnel from various areas is convened to review and score the proposals to identify a presumptive awardee utilizing a preset scoring matrix. The scoring matrix includes points to be awarded for various categories, including

¹⁴ As a general matter, the additional vetting occurs when the original requestor of the services (generally, the head of the department seeking the goods or services) requests that a vendor be vetted before the contract is awarded. Former BOE Policy #3212 granted affirmative authority to the director of purchasing “to review the quality and appropriateness of products and services selected and make recommendations with respect to economy and fitness of purpose.” Modernly, it appears this practice still occurs but it is not clear from the documentation if this is an official delegation from the Superintendent or merely a holdover practice derived from the previous policy.

LEDE participation. Specifically, the LEDE participation matrix designates a certain number of points (up to a maximum of 20) to be awarded based on the percentage of LEDE participation expected to be involved in the performance of a contract. Through this process, the committee, and not the purchasing director, selects the presumptive winner.

In contrast to the efforts to increase LEDE participation attributable to Mr. Carney (discussed above), he has also reportedly made statements or taken actions that have caused others to question his commitment to the LEDE participation goals and suspect bias against LEDE vendors. For example, one potential LEDE vendor, Witness-6 of Company-D, reported that she attended a pre-bid meeting to discuss a solicitation for LEDE participation tracking software on May 15, 2017. She stated that she was the only vendor to attend and that Mr. Carney asked her if she wanted him to go over the bid specifications since nobody else was there, which she took as a suggestion that she had attended the meeting as only an LEDE subcontractor and not as a potential prime contractor.¹⁵ She stated that she did want him to continue. During the presentation, Mr. Carney was reportedly reciting a portion of the specifications, and she noted that she had read the specifications in the RFP, to which he reportedly replied, “I’m glad you read it. So you’ve been reading the RFP.”¹⁶

Another vendor, Witness-1 of Company-A, stated that he attended a vendors meeting where Mr. Carney Spoke about LEDE participation. According to Witness-1, Mr. Carney was asked about prime contractors partnering with LEDE contractors and responded something to the effect of, “If it makes good business sense to not use an LEDE but you’ve talked to them, that’s your call and that’s what you should do. We’re required to bring them in and try to match you up with them but you are not required to use them.”

Similarly, Witness-7 of Company-E reported that she attended a vendor meeting where a contractor asked about LEDE goals and the meeting facilitator (not Mr. Carney) stated that it was “just a goal,” which led her to believe the goal was not taken seriously by the purchasing department.

In another situation, evidenced by an email chain on September 28, 2017, Mr. Carney inquired of the “management team” if anyone “[saw] any issue with inserting the following text in the RFP? LEDE vendors are not required to sign an exclusive agreement with prime vendors and are encouraged to partner with several prime vendors to enhance their chances of success.”

¹⁵ A similar account was provided by Employee-1. During her interview, she stated that Mr. Carney’s commentary toward the vendor was something to the effect of, “You’re probably here to be a sub; since there are no primes we’re not going to go through the whole agenda.” Employee-1 stated that she advised Mr. Carney to go through the agenda because the vendor was there as a prime. According to Employee-1, Mr. Carney’s actions give prime contractors the impression that they do not have to abide by board policy because the standard is a “good faith” effort to partner with LEDE vendors.

¹⁶ Witness-6 raised another issue regarding a separate bid to produce student identification cards for bus services to be offered to students through the Central Ohio Transit Authority (COTA). Her company had the lowest bid and was anticipating the contract award. The solicitation, however, was withdrawn before the contract was awarded to her company. In response to inquiries regarding the withdraw of the solicitation instead of awarding the contract to the LEDE vendor, Mr. Carney provided documentation evidencing that a subsequent study determined the work could be done in-house by the District more cheaply than the price of the contract with Witness-6’s company. That issue, therefore, appears to be a justified business decision to save the District money.

Employee-1 responded to this inquiry by suggesting, “Or how about: *‘and are encouraged to respond as a prime and/or partner with several prime vendors to enhance their chances of success.’*” Mr. Carney responded the following day with, “Good suggestion. Considerate [sic] done.”

In another situation, evidenced by an email thread beginning on December 9, 2016, Mr. Carney had an apparent conversation with a prospective prime vendor regarding a trash collection and recycling bid that Mr. Carney confirmed in email by writing, “This will confirm our conversation regarding the trash collection and recycling bid. LEDE participation will not be part of the evaluation since this is not an RFP. As such, the information regarding LEDEs can be removed. I’ve copied [Employee-3], [Employee-6], and [Employee-1], our [job title], so they can comment if they feel otherwise.” Six minutes later, Employee-1 responded to the email by writing, “If it is practical and feasible to do so, all vendors should make a good faith effort to engage our local (LEDE) small business community. It is good business to be inclusive whenever there is an opportunity to do so. If there is any opportunity for subcontracting or purchasing of materials and supplies, you should attempt to contract those services to an LEDE business.” Thereafter, on December 13, 2016, Mr. Carney responded, “[Employee-1] is correct. Please leave the LEDE information in the trash collection bid.”

In another situation that caused concern of disparate treatment between LEDE and non-LEDE vendors, a situation was found where a non-LEDE vendor, Company-F, had been designated as “inactive” in the Munis system at the time of a bid submission, which should have precluded it from participating in the bid process. Employee-1 sent an email to Mr. Carney (June 5, 2016 (11:38 a.m.)) asking for clarification and he responded that Company-F had been designated as inactive because the stores could no longer accept District purchase orders but Company-F was allowed to bid because it was still a registered vendor. Mr. Carney wrote, “There is no requirement that they be active, only registered.”¹⁷

As noted above, Mr. Carney’s commitment to the Community Inclusion Policy, including the LEDE participation goals, is a subjective matter. Mr. Carney has taken demonstrative action that can be viewed as an effort to increase LEDE participation rates. He has also, however, made comments or oversights that can be interpreted as a failure to take the goals seriously as evidenced by certain email conversations and instances of reported interactions with members of the LEDE vendor community.

Issue 3: Is there any evidence that barriers to entry have been imposed that could inhibit LEDE vendors from participating in the Columbus City Schools’ contract solicitation process?

Concerns that the purchasing department’s practices created barriers to LEDE vendors’ participation in District solicitations consisted of the following allegations:

¹⁷ In his interview, Mr. Carney stated initially that he did not remember this incident but then, after being shown a portion of the email thread, stated that the designation was likely changed to prevent District employees from attempting to purchase items from Company-G through the “catalog” or “three quotes” processes in place for smaller purchases because Company-G stores could not accept District purchase orders but that this did not affect its status as a registered vendor.

- That IRS Form W-9 was required of vendors to participate in the solicitation process; and
- That a certificate of insurance was required to be on file with the District before a prospective vendor could participate in the solicitation process.

A. *That IRS Form W-9 was required of vendors to participate in the solicitation process.*

IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”) is used to collect from vendors tax identification numbers (TIN) that are then used to report to the Internal Revenue Service certain payments made to contractors. Form W-9 is not sent to the IRS for tax purposes but is instead kept by the business for which a contractor performs work or offers some product or other service.

Some concern has been raised that requiring the submission of a form W-9 at the time of registration operates as a barrier to entry for LEDE businesses wishing to conduct business with the District. This requirement, however, is unlikely to be an unreasonable impediment. Unlike the insurance requirement (addressed below), there is no prohibitive cost associated with completing and submitting Form W-9. The form itself is available for free on the IRS’s website (www.irs.gov/pub/irs-pdf/fw9.pdf). The online form has interactive sections that can be filled in online and printed. To the extent a vendor needs to obtain an Employer Identification Number (EIN), the information to do so is included on the downloadable W-9, and additional information to obtain an EIN is also available elsewhere on the IRS website (*see* www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-numer-ein-online).

Additionally, the District’s definition of LEDE vendors under BOE Policy #6400 requires the enterprise to have “been in business for at least one year prior to the date of determination in connection with the school district’s contracting and procurement activities” to qualify for LEDE status. This will generally require that a vendor has been through at least one “tax year” as contemplated by the Internal Revenue Service. Thus, the information sought through Form W-9 should have been previously obtained by a vendor seeking or having already obtained LEDE status prior to attempting to register with the District for that designation. Even if those vendors need to obtain a Tax Identification Number, that process is also explained on the IRS website and applications can be submitted online (*see* <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>). The requirement to submit a W-9 as a condition of registering with the District therefore imposes no additional obligations or burdens on LEDE vendors than are imposed on any other vendors and does not appear to create a disparate impact by its application. Accordingly, it does not appear that requiring prospective vendors to file a Form W-9 as a condition of registering imposes any unfair barrier to entry for LEDE vendors.

B. That a certificate of insurance was required to be on file with the District before a prospective vendor could participate in the solicitation process.

A recurring source of concern raised in this Analysis is the former requirement (now rescinded) that vendors provide a certificate of insurance before being designated in the Munis system as “active.” Prior to the rescission of this requirement, vendors who were not designated as “active” in the Munis system were prevented from receiving purchase orders from the District and therefore could not conduct business with the District.¹⁸

Numerous people raised this concern during this Analysis including Witness-4, Witness-7, Witness-8, Witness-9, Witness-10, and Employee-1. According to critics, requiring a vendor to produce a certificate of insurance as a condition of registering to be an active vendor with the Columbus City Schools has a detrimental impact on LEDE vendors. According to the argument, LEDE vendors, by definition, are already “economically disadvantaged” and cannot afford to incur unnecessary expenses just to solicit contracts they are not guaranteed to receive. Many of these economically disadvantaged enterprises, according to this argument, would be capable of conducting business with the district but may not be actively conducting business with any organizations at the time of the solicitation and, therefore, would not need to incur the expense of obtaining insurance until a contract was awarded, at which time the vendors could obtain the necessary insurance and provide proof thereof to the District.

Several witnesses have described the pre-existing insurance requirement as being a barrier to entry for LEDE vendors wishing to conduct business with the District.¹⁹ And while Mr. Carney consistently holds the belief that requiring proof of insurance as a condition of registering is a good business decision, he also acknowledges that the insurance requirement is, and is designed

¹⁸ Aligned with this matter is the concern that vendors whose insurance coverage lapsed were placed on a “stop” status and are reported to have no longer received notices of solicitations. The designation of various vendors with a “stop” status may have been at least in part a function of the Schneider Downs 2014 audit (and the internal audit department’s follow up audit) that noted several vendors’ insurance certificates were expired but that the vendors were still in an active status. That concern was presented as an issue to be remedied. *See, e.g.*, Schneider Downs Purchasing Internal Audit Report, Observations 2–4 (faulting the District for allowing vendors to be designated as “active” despite missing or expired proof of insurance). The Terms and Conditions at that time required proof of insurance prior to and after registration to be placed or kept in an “active” status, respectively. The present practice is to require proof of insurance before a contract is awarded to a vendor. The purchasing department presently has an employee responsible for notifying vendors of lapsed insurance certificates. Notification of opportunities is reportedly controlled by the commodities identified by vendors as services they can offer, rather than by the “active” and “stop” statuses.

¹⁹ Of the vendors and prospective vendors interviewed in this Analysis, none had been precluded from participation in the solicitation process due to a lack of insurance. An effort was made to identify prospective vendors who would have participated in a solicitation response but for the insurance requirement but no such prospective vendors could be located. Witness-8 of the Columbus Chapter of the NAACP opined that she would be unlikely to locate any such vendors who would be willing to speak on the record due to a fear of retaliation from the District or its employees. Witness-9 of Company-H voiced similar skepticism that any such prospective vendors would be willing to speak on the record. Both Witness-8 and Witness-9 agreed to attempt to locate such persons but neither has yet to provide any such names. As evidence of the frustration arising from the insurance requirement, however, Witness-9 reported that he routinely advises students completing training to not bother with small contracts such as those available through the District because of the hassle of the registration process. Witness-9 was not aware that the insurance requirement had been recently changed and felt that the District has not sufficiently publicized that fact to the LEDE community.

to be, a barrier to entry. In an email from Mr. Carney to Employee-6 dated March 9, 2016 (9:40 a.m.) regarding the insurance requirement, as supplemented by a subsequent email from Mr. Carney dated March 10, 2016 (2:34 p.m.), Mr. Carney wrote:

I understand that this [the requirement to have insurance prior to registering through Munis] is a barrier to entry. That's the purpose of insurance. It protects our students, staff, and community from vendors who are not committed to their customers and professional enough to enter a business segment fully prepared.

This email was written in response to an inquiry from Witness-4 questioning why a supplier of items such as kitchen equipment (purchased from the manufacturer and shipped by common carrier) would be required to have insurance. Mr. Carney's response expanded beyond the confines of kitchen equipment, however, and spoke more generally. And although it appears that Mr. Carney's statement that the "barrier to entry" applied to all vendors required to have insurance²⁰ and not just LEDE vendors, he later acknowledged that requiring vendors to acquire insurance before allowing them to participate in the bidding process was a "burden" and that the District's decision to remove that requirement would "help [vendors] participate in the bidding process...." (See email from D. Carney to Columbus Branch NAACP #3177, March 20, 2017 (4:57 p.m.).)

The mandate that vendors must provide proof of insurance is controlled not necessarily by BOE policy but instead by the "Columbus City Schools Purchase Order, Contract & Solicitation General Terms & Conditions" document ("Terms and Conditions") as updated from time to time. During this investigation, various iterations of the Terms and Conditions were reviewed. The insurance requirement did not appear in the June 2009 version of the Terms and Conditions. Rather, the first instance of that provision found in this Analysis was in the March 4, 2013 revision of the document. Other references to this requirement, however, were found indicating that the requirement has been in place since at least July 1, 2012. For example, the "Columbus City Schools Vendor Self-Service User Manual – Updated April 29, 2015" shows a picture of the Vendor Self Service website (<https://columbus.munisselfservice.com/Vendors/default.aspx>) displaying the following message on Page 1:

General Information

As of July 1, 2012, Columbus City Schools will begin using a new software system called MUNIS.

In order to take advantage of the new system, all vendors must "register" using this web site. This site is referred to as Vendor Self-Service or VSS. (Many of the vendors with whom we have done business in the past will already be in the MUNIS system, but registration in MUNIS is still required.)

²⁰ Not all vendors are required to have insurance to participate in the solicitation process or to do business with the district. The District maintains a "Vendor Insurance Exception List" available by navigating to <http://www.csoh.us/Vendors.aspx> and clicking on the "Vendor Insurance Exception List" link. The current version of the exception list was last updated on February 29, 2016.

All vendors must have an active company e-mail address because all purchase orders will be sent to vendors electronically via e-mail. This registration process will also allow registered vendors to:

- *Submit Bid Responses*
- *View 1099 Forms*
- *Check Payment of Invoices*
- *View Purchase Orders*

Vendors may submit responses to bids using the MUNIS system. However, you must register with MUNIS to be able to submit responses to those bids. (If you don't register, you will be able to view the bids but will not be able to respond.)

During the registration process, each vendor must attach a current W-9 and current General Aggregate Liability Insurance Certificate, and indicate the products or services (commodities) that they provide.

Additionally, the “Vendor Self-Service User Manual – Updated April 29, 2015” instructed on page 7 that vendors registering with the Munis system must “[u]pload W-9 and Insurance Certificate attachments. (You cannot be a vendor with the Columbus City Schools if you do not attach these documents.)”

Mr. Carney stated during his interview that because Munis was being used, the technological restraints of that system required vendors to be registered and active in Munis, and that to be registered and active in Munis, vendors had to have insurance. Mr. Carney noted, however, that the insurance requirement was of his design and that it could have been turned off if he had chosen to do so.

It is important to clarify that the technological restraint appears to have been that within the Munis system, vendors could be designated as having a current, valid certificate of insurance or not having a current, valid certificate of insurance. Turning off this feature would affect both new and existing vendors and would result in an apparent need to verify with every purchase order requested that the vendor had insurance, which was otherwise an automated feature of the system. Accordingly, requiring vendors to have insurance at the time of registration appears to have been implemented as a means of accommodating the Munis vendor management system.²¹ Nevertheless, the requirement may have had a disparate impact on LEDE vendors.

The terms of acceptable insurance are controlled generally by the Terms and Conditions. In the 2013 revision of the Terms and Conditions, the document provided:

The vendor will maintain a comprehensive insurance program. An updated Certificate of Insurance reflecting the type of coverage and amount must be maintained on file with the Columbus City Schools. The vendor must maintain comprehensive liability insurance of \$2,000,000 aggregate with a \$1,000,000

²¹ The transition to Public Purchase for bids appears to have remedied this technical limitation.

limit per occurrence. The vendor must also maintain automobile liability insurance of \$2,000,000 with a \$2,000,000 limit per occurrence. If providing professional services, the vendor must maintain professional liability (error & omissions) insurance of \$2,000,000 with a \$2,000,000 limit per occurrence. CCS must be notified in writing 30 days in advance of any changes in vendor's insurance. If changes occur, a new certificate must be supplied to the Columbus City Schools. CCS reserves the right to approve all deductible and levels of self-insurance retention. CCS reserves the right to ask that the District and the Board of Education be named as additional insured entities on the vendor's policy.

The October 15, 2015 revision of the Terms and Conditions revised the insurance mandate to read as follows:

19. The vendor will maintain a comprehensive insurance program including general business liability insurance with coverage that is appropriate to the level of risk associated with the products and services provided. If providing professional services, the vendor must maintain professional liability (errors & omissions) insurance that is appropriate to the level of risk. And updated Certificate of Insurance reflecting the type of coverage and amount must be maintained on file with the Columbus City Schools. CCS must be notified in writing 30 days in advance of any changes in the vendor's insurance. If changes occur, a new certificate must be supplied to the Columbus City Schools. CCS reserves the right to approve all deductibles and levels of self-insurance retention. CCS reserves the right to ask that the District and the Board of Education be named as additionally insured entities on the vendor's policy. It is the vendor's responsibility to insure that any subcontractors maintain appropriate levels of insurance as described herein. Vendors that deliver goods or perform services using a vehicle, which is owned, leased, hired, or rented by the vendor must maintain combined, single limit coverage for personal injury, bodily injury (including death) and property damage of not less than \$2,000,000 per accident.

The implementation of this requirement into the Terms and Conditions originated from Dennis Carney as the Director of the purchasing department. During his interview on August 9, 2017, Mr. Carney verified that the Terms and Conditions have evolved during his tenure with the District and he believes that requiring vendors to have insurance is “good business.” He therefore implemented the insurance requirement. Mr. Carney explained that the authority for him to implement this requirement was delegated to him by virtue of his position as the director of the purchasing department. Additionally, Mr. Carney explained that he submitted any updates to the Terms and Conditions to the District's legal counsel, Mr. Larry Braverman, prior to implementing any changes. Additionally, the purchasing practices ensured that these Terms and Conditions, including the insurance requirements, become part of the contract with the vendor to whom a contract is awarded.

The propriety of requiring vendors to have insurance after a contract is awarded does not appear to be in dispute. The consistent concern, however, is that requiring vendors – specifically, LEDE vendors – to obtain an insurance policy to merely respond to a district solicitation imposes a

barrier to entry for LEDE vendors wishing to respond to District solicitations and, therefore, runs counter to the goals expressed in the BOE Community Inclusion policy. The fact that the District has now altered this requirement to allow prospective vendors to register to conduct business with the District without providing proof of insurance demonstrates that the now-abandoned mandate was not a necessary business practice. Additionally, Mr. Carney's March 10, 2016 email to Employee-6 expressly acknowledged that the insurance requirement was designed to be an impediment to entry, albeit for all vendors without proof of insurance, not just LEDE vendors without proof of insurance.

Nevertheless, frequent criticisms of this requirement being an undue hardship on LEDE vendors appear to place the requirement in conflict with the Outreach commitment of BOE Policy #6320 (Purchases) ("The Columbus City Schools is committed to diversity and inclusion by assuring that our local economically disadvantaged enterprises which include contractors, subcontractors and goods and service providers have an equal opportunity to participate in all contracting and procurement activities. Accordingly, all purchases shall be in accordance with the Columbus Board of Education's Community Inclusion Policy 6400.") and BOE Policy #6400 (Community Inclusion (Local Economically Disadvantaged Enterprises)), which provides in part:

The Board acknowledges that a number of local businesses that support the School District have a competitive disadvantage with respect to School District contracting and procurement opportunities because of their size, economic and social status. These Local and Economically Disadvantaged Enterprises ("LEDEs") contribute financially to the School District through payment of taxes and/or employment of School District residents, who themselves support the School District through the payment of real estate and other local taxes. The Board believes that the growth and development of LEDEs will increase the number of qualified business competitors in the local marketplace and will improve and strengthen the tax base which supports the School District. Additionally, the Board believes that the growth and development of LEDEs will increase the employment of local residents in the workforce having a positive effect upon students attending the Columbus City Schools. Consequently, the Board, through its contracting and procurement opportunities, has an obligation to support the growth and development of LEDEs.

Based on the foregoing, there is evidence that the implementation of the insurance requirement as a condition of registering to respond to solicitations may have been detrimental to LEDE vendors who are, by definition, already economically disadvantaged. Without finding specific examples of vendors who were unable to participate due to this requirement, however, it is not clear how many prospective vendors could have been affected by this issue. Anecdotal evidence from people such as Witness-8 and Witness-9 suggest it has occurred but that suggestion remains unverified. Nevertheless, the now-rescinded requirement for vendors to submit proof of insurance as a condition of registering with the District to respond to solicitations, even if implemented as a means of utilizing the vendor management software, appears to have been in conflict with the Community Inclusion policy.

RECOMMENDATIONS

- The District should work to expand its outreach program. Additional resources allocated to the outreach program could help open amicable conversation between the District and the LEDE vendor community and could assist with educational efforts when and if practices change.
- The purchasing department and the community outreach department should work more collaboratively to explore how proposed changes would affect the LEDE vendor community prior to implementation of such changes. Concerns should be raised and addressed in a more formal manner with a resolution process involving additional layers of management to ensure concerns are addressed in a timely manner without negatively impacting LEDE vendor participation opportunities or District interests.
- Additional oversight should be provided to ensure LEDE participation is facilitated. A mechanism should be implemented to more consistently monitor funds spent on LEDE vendors and efforts should be collaboratively addressed on a scheduled basis to track and improve LEDE participation rates.
- A policy should be developed to address specifically when and how additional vetting will be conducted of all vendors.
- Vendors subjected to additional vetting should be tracked and analyzed on at least an annual basis to develop a statistical model of whether the vetting process is being implemented properly.
- The District should continue working to identify LEDE and non-LEDE vendors who were unable to participate in the contract solicitation process due to the requirement for vendors to provide proof of insurance at the time of registration.
- The RFP intake process should be modified to eliminate the risk of inaccurate time and date stamped stickers being placed on larger proposal packages to prevent allegations of improper acceptance of late proposals.
- The District should ensure that all policies are reviewed and updated. Although this is an ongoing process, certain former policies relating to the purchasing operations provided more affirmative guidance to the purchasing department. That guidance is absent from present policies and it is therefore not always clear what express authority the Board intends to provide to the director of purchasing. Additionally, outdated versions of policies still archived and available on the District's website should be watermarked or otherwise designated as being superseded or outdated to prevent confusion.
- The District should consider conducting a peer-review of the purchasing department's practices and protocols by an independent subject matter expert, ideally from or experienced with an equivalently sized school district, to provide outside, unbiased guidance on any practices that deviate from industry standards.

CONCLUSIONS

No evidence was found during this Analysis of overt violations of BOE bylaws, policies, or administrative guidelines. Instances of commentary and actions have been identified that appear to conflict with the Board's LEDE commitments, and at least one implemented practice was potentially unfairly detrimental to LEDE vendors. The implemented practice has since been remedied and does not appear to have been implemented with purpose of negatively impacting LEDE vendors, although detriment was conceded after the issue was brought to the forefront.