



Legislation Text

File #: O-294-23, **Version:** 1

Councilwoman Hartman

Amending Toledo Municipal Code Sections 187.03, 187.05, 187.08, 187.12, 187.42; Repeal Toledo Municipal Code Section 187.38; enact new Toledo Municipal Code Section 187.43; and declaring an emergency.

SUMMARY & BACKGROUND:

Toledo Municipal Code Chapter 187, Financial Management and Procedures, governs purchases and supplies, including standard evaluation criteria for construction contractors. Toledo Municipal Code Chapter 187 amendments improve and protect the integrity of Toledo Municipal Code procurement requirements for construction contracts, including, but not limited to, construction contracts for new construction, alteration, maintenance, repair and/or renovation contracts provide for greater transparency and accountability in contracting requirements, requires all construction contractors that provide services for the City of Toledo to adhere to the same standards.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That section 187.03 of the Toledo Municipal Code, which reads as follows:

187.03. Contract execution.

(a) No contract involving any expenditure of the amount of forty thousand dollars (\$40,000) or more shall be executed by any officer of the City in behalf thereof, except in pursuance of an advertisement or bids published at least twice in the City Journal, the first of which advertisements shall be at least ten (10) days preceding the opening of bids. The advertisement for such bids may be published prior to the time the ordinance authorizing the contract becomes effective, but no bids shall be accepted or contract executed until the ordinance authorizing the same is in full force and effect.

(b) The City may include in public improvement plans and specifications an estimate of the cost of the improvement. Whether or not an estimate of cost is included in the plans and specifications, no contract may be entered into for the construction of the improvement if the price of the contract exceeds the amount appropriated by City Council for the work. The execution of the contract with the successful bidder shall be completed within ninety days after the date on which bids were opened unless the time is extended by mutual consent of the City and the successful bidder. The contractor shall not begin work until granted a notice to proceed by the City, which shall not be unduly delayed.

(c) A contract, agreement or other procurement document, duly authorized by Toledo Council, as required by this Chapter, the Toledo Charter and pertinent AP&Ps, may be executed by the Mayor through an electronic format and with an electronic signature. Likewise, the corresponding, respective and required signatures of the pertinent Departmental Director, the Fiscal Officer (Finance Director), as well as the Director of Law, may also be secured to the contract, agreement or other procurement documents by electronic signature.

is repealed.

SECTION 2. That a new section 187.03 of the Toledo Municipal Code is enacted to read as follows:
187.03. Contract execution.

(a) No contract involving any expenditure of the amount of forty thousand dollars (\$40,000) or more shall be executed by any officer of the City in behalf thereof, except in pursuance of an advertisement or bids published at least twice in the City Journal, the first of which advertisements shall be at least ten (10) days preceding the opening of bids. The advertisement for such bids may be published prior to the time the ordinance authorizing the contract becomes effective, but no bids shall be accepted, or contract executed until the ordinance authorizing the same is in full force and effect.

(b) The City shall include in public improvement plans and specifications an estimate of the cost of the improvement. Public or private improvement for purposes of Chapter 187 means any construction, reconstruction, improvement, enlargement, alteration, demolition, repair, or maintenance of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and any other structure or work of any nature on City owned property or any such improvements funded in whole or in part by the City. No contract may be entered into for the public improvement if the price of the contract exceeds the amount appropriated by City Council for the work. The execution of the contract with the successful bidder shall be completed within ninety days after the date on which bids were opened unless the time is extended by mutual consent of the City and the successful bidder. The contractor shall not begin work until granted a notice to proceed by the City, which shall not be unduly delayed.

(c) A contract, agreement, or other procurement document, duly authorized by Toledo Council, as required by this Chapter, the Toledo Charter and pertinent AP&Ps, may be executed by the Mayor through an electronic format and with an electronic signature. Likewise, the corresponding, respective and required signatures of the pertinent Departmental Director, the Fiscal Officer (Finance Director), as well as the Director of Law, may also be secured to the contract, agreement or other procurement documents by electronic signature.

SECTION 3. That section 187.05 of the Toledo Municipal Code, which reads as follows:
187.05. Certain purchases to be authorized.

No purchase involving an expenditure of the amount specified in Section 228 of the Charter or more shall be made unless authorized by ordinance of Council. One or more purchases may be made under the authority of the same ordinance. Purchases may be authorized in installments under one advertisement for bids when bids are required. All requisitions for such purchases shall be approved by the Director of Law or his designee, and the Mayor before being forwarded to the Commissioner of Purchases and Supplies. Except in case of an emergency, such ordinance shall be passed before the requisition is forwarded to the Commissioner and the number thereof shall be placed on the requisition. In case of an emergency, the requisition may be executed and forwarded to the Commissioner before the passage of the ordinance, but no awards shall be made upon any bids, when bids are required, until the ordinance is passed and in effect. The emergency shall be set forth in the requisition. The following provisions as to competitive bidding apply only to expenditures of forty thousand dollars (\$40,000) or more.

is repealed.

SECTION 4. That a new section 187.05 of the Toledo Municipal Code is enacted to read as follows:
187.05. Certain purchases to be authorized.

No purchase involving an expenditure of the amount specified in Section 228 of the Charter or more shall be made unless authorized by ordinance of Council. One or more purchases may be made under the authority of the same ordinance. Purchases may be authorized in installments under one

advertisement for bids when bids are required, and the aggregate of such bids will be used to determine compliance with section 187.12. All requisitions for such purchases shall be approved by the Director of Law or his designee, and the Mayor before being forwarded to the Commissioner of Purchases and Supplies. Except in case of an emergency, such ordinance shall be passed before the requisition is forwarded to the Commissioner and the number thereof shall be placed on the requisition. In case of an emergency, the requisition may be executed and forwarded to the Commissioner before the passage of the ordinance, but no awards shall be made upon any bids, when bids are required, until the ordinance is passed and in effect. The emergency shall be set forth in the requisition. The following provisions as to competitive bidding apply only to expenditures of forty thousand dollars (\$40,000) or more.

SECTION 5. That section 187.08 of the Toledo Municipal Code, which reads as follows:
187.08. Bids.

(a) The City may request separate bids for each class of work to be performed on an improvement or may request an aggregate bid for some or all classes of work. The City may award separate contracts for each class of work to be performed on an improvement or may award an aggregate contract for some or all classes of work. The award of the contract shall be to the lowest and best bidder in accordance with section 187.12.

(b) Each bid shall be in writing on the form provided and shall be signed by the bidder and shall contain the full name of every person or company interested in it. Each bid shall refer to the proposed purchase.

is repealed.

SECTION 6. That a new section 187.08 of the Toledo Municipal Code is enacted to read as follows:
187.08. Bids.

(a) The City may request separate bids for each class of work to be performed on a public improvement or may request an aggregate bid for some or all classes of work. The City may award separate contracts for each class of work to be performed on an improvement or may award an aggregate contract for some or all classes of work. If the City requests separate bids for such public improvement, the aggregate of such bids will be used to determine compliance with section 187.12. The award of the contract shall be to the lowest and best bidder in accordance with section 187.12.

(b) Each bid shall be in writing on the form provided and shall be signed by the bidder and shall contain the full name of every person or company interested in it. Each bid shall refer to the proposed purchase.

SECTION 7. That section 187.12 of the Toledo Municipal Code, which reads as follows:
187.12. Awarding contracts.

(a) For contracts not covered by paragraph (c) of this section, the department director seeking to recommend a contract shall determine the lowest and best bidder, or he may reject any or all bids. For contracts covered by paragraph (c), the department director in concert with representatives of the Mayor's office, Finance Department, Law Department, and Office of Affirmative Action, Contract Compliance, and Purchasing, shall determine the lowest and best bidder, or they may reject any and all bids. The award of the contract or purchase shall be made by the Mayor to the successful bidder, and a public record shall be made of such award and signed by the Mayor, the Commissioner of Purchases and Supplies, the Finance Director and the Director of Law.

(b) In the case of contracts involving personal services or labor, no award based upon formal bids, or upon informal competition for ten thousand dollars (\$10,000) or more, shall be made until the successful bidder submits proof that he pays and will continue to pay during the life of any such contract the

prevailing rates of wages in the Toledo area for the industry involved. Such prevailing rates of wages shall be deemed to be those filed for the Toledo area with the Department of Industrial Relations of the State of Ohio, or in the event the prevailing rates of wages for such industry are not so filed, the prevailing rates of wages for the Toledo area shall be deemed to be at least equal to the highest rates established by collective bargaining agreements between bona-fide labor organizations and employers in the Toledo area for the particular industry or work involved.

Provided, however, that this section shall not apply where the Federal government or any agency thereof furnishes, by loan or grant, any or all of the funds used in any contract for a public improvement or other contract involving personal services or labor and where the Federal government or any agency thereof prescribed predetermined minimum wages to be paid to those laborers employed under the terms of such contract.

Provided further that in the case of contracts in excess of ten thousand dollars (\$10,000), the "living wage" requirements provided in Section 187.37 shall be applicable. No contracts in excess of ten thousand dollars (\$10,000) shall be awarded if the bidder has been convicted of or found to be liable under Section 545.22 ("wage theft") of this Code, or of Chapter 796 ("Wage and Tip Compensation Requirements") in the previous two years.

Furthermore, the City of Toledo will give preferential status for job creation and retention assistance to businesses that engage in responsible labor relations. (e.g. lack of recent National Labor Relations Board Charges).

(c) For all construction, alteration, and/or renovation projects in excess of one hundred thousand dollars (\$100,000), the following criteria shall be considered in determining the lowest and best bidder:

(1) Bidder's experience and background.

A. Related project experience - experience of the bidder on projects of the nature for which bids were solicited, to include previous related experiences with the City.

B. Project familiarity - bidder's familiarity with the project being undertaken, including all local standards, specifications and requirements and they are to be efficiently and effectively met.

C. Construction experience - a description of general construction contracts in which the bidder has performed, including a listing of the last ten (10) completed projects similar to the requested work.

(2) Bidder's workforce.

A. Continuity and experience of the bidder's workforce - extent of experience with the firm and in the area of construction for which the bid is submitted.

B. Availability of workforce - whether the bidder's employees are drawn mainly from Northwest Ohio and Southeast Michigan, to include Lucas, Wood, Williams, Defiance, Fulton, Henry, Ottawa, Sandusky, Seneca, Hancock, Putnam, Paulding, and Erie Counties in Ohio and Monroe and Lenawee Counties in Michigan.

C. Apprenticeship program - whether the bidder's employees participate in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council and the U.S. Department of Labor if such apprenticeship programs are available for their workforce.

D. Employee welfare - whether the bidder provides employee health insurance and retirement or pension plan for its employees.

E. Employee safety - whether the bidder provides for an OSHA (and if applicable, EPA) compliance safety plan for its employees and provides safety training as required.

F. Drug-free workplace - whether the bidder has in place a drug-free awareness program and notification requirements consistent with the requirements of the Federal Drug-Free Workplace Act of 1988.

(3) Record of compliance.

A. Bonding experience - whether bidder has a record of claims against performance bonds secured on public improvement construction projects, with an explanation of reasons for claims.

B. Tax laws - whether bidder is in compliance with City and State taxes on payroll and net profits, to include an affidavit as to no outstanding tax liens and as to no outstanding City income tax obligations.

C. Wage, hour and unemployment laws - whether bidder is in compliance with Federal, State or local laws or regulations regarding safety and health, fair labor standards, prevailing wages, minimum wages, unemployment and workers' compensation including, but not limited to, Section 545.22 and Chapter 796 of this Code.

D. Construction compliance - whether the bidder has a record for complying with and meeting completion deadlines and successfully controlling costs bid on similar construction projects, to include a review of the various construction experience and compliance in the preceding twelve (12) months covering the bidder's compliance with completion deadlines, the amount of any change orders for the job or cost overruns on each job undertaken, the reasons for the change orders or cost overruns, and the timely response to site clean-up and "punch" list.

E. Equal business opportunity - whether bidder is in compliance with any affirmative action or disadvantaged business enterprise program that the City is required by law to enforce in connection with funds to be spent under the procurement contract; and the bidder's compliance with the City's disadvantaged business enterprise program, describing any joint ventures, partnerships or subcontracts with DBEs certified by the City's Office of Affirmative Action and specifying the names of the companies, description of the work to be performed, and percentage of the contract to be awarded to DBEs.

F. Bidder's responsiveness - whether bidder has timely provided information or materials to document the foregoing criteria, including a listing of the percentage of the bidder's workforce residing in Toledo, Lucas County, Northwest Ohio, and Southeast Michigan.

The Director of Affirmative Action/Contract Compliance and the Commissioner of Purchasing shall prescribe the manner and form of submittal for the purpose of evaluating the considerations herein. All bid invitations and specifications for construction, repair, and any renovation work to the City shall advise prospective bidders of all the factors that may be taken into consideration by the City in determining whether the bid is not only the lowest, but best bid. The specifications shall contain provisions conforming to parts (c)(1), (2) and (3) of this section. On a project-by-project basis, the City may also evaluate the bidder's list of subcontractors as to compliance with the foregoing criteria. Bidders shall be advised with the bid packets as to whether the subcontractor compliance information will be required. The bidding department or division shall maintain in the contract file a record of evaluation determining the lowest and best bid.

(d) This Ordinance shall apply to only construction contracts, \$100,000 or greater, funded by the City of Toledo or other funding sources that do not exclude Project Labor Agreements.

For all projects defined in the preceding paragraph, once the successful bidder ("Bidder") is notified a pre meeting will be held involving the Bidder, the Northwest Ohio Building and Construction Trades Council ("NWOBTC"), the City of Toledo's Director of Diversity & Inclusion and the Director of Finance.

Within 15 days of this pre meeting, the Parties ("Bidder and NWOBTC collectively") shall negotiate a project labor agreement. The purpose of which is to advance the city's procurement interest in cost, efficiency, and quality while promoting labor management stability as well as compliance with applicable legal requirements governing safety and health, equal employment opportunity, labor and employment standards, and other related matters.

The bidding documents for each such construction project shall contain a written provision requiring the successful bidder, and all of the bidder's contractors and subcontractors, to comply with and adhere to all of the provisions of the project labor agreement negotiated by the Parties for the project.

is repealed.

SECTION 8. That a new section 187.12 of the Toledo Municipal Code is enacted to read as follows:
187.12. Awarding contracts.

(a) For contracts not covered by paragraph (c) of this section, the department director seeking to recommend a contract shall determine the lowest and best bidder, or he may reject any or all bids. For contracts covered by paragraph (c), the department director in concert with representatives of the Mayor's office, Finance Department, Law Department, and Office of Affirmative Action, Contract Compliance, and Purchasing, shall determine the lowest and best bidder, or they may reject any and all bids. The award of the contract or purchase shall be made by the Mayor to the successful bidder, and a public record shall be made of such award and signed by the Mayor, the Commissioner of Purchases and Supplies, the Finance Director and the Director of Law.

(b) In the case of contracts involving personal services or labor, no award based upon formal bids, or upon informal competition for ten thousand dollars (\$10,000) or more, shall be made until the successful bidder submits proof that he pays and will continue to pay during the life of any such contract the prevailing rates of wages in the Toledo area for the industry involved. Such prevailing rates of wages shall be deemed to be those filed for the Toledo area with the Department of Commerce of the State of Ohio, or in the event the prevailing rates of wages for such industry are not so filed, the prevailing rates of wages for the Toledo area shall be deemed to be at least equal to the highest rates established by collective bargaining agreements between bona-fide labor organizations and employers in the Toledo area for the particular industry or work involved. Proof of payment of prevailing rates of wages shall be provided through certified payroll reports in accordance with procedures established by the Office of Contract Compliance and in accordance with Ohio Revised Code Ch. 4115, if applicable.

Provided, however, that the prevailing rate of wages as set forth above shall not apply where the Federal government or any agency thereof furnishes, by loan or grant, any or all of the funds used in any contract for a public improvement or other contract involving personal services or labor and where the Federal government or any agency thereof prescribed predetermined minimum wages to be paid to those laborers employed under the terms of such contract if such wages are higher than those for the Toledo area as determined by the Department of Commerce of the State of Ohio.

Provided further that in the case of contracts in excess of ten thousand dollars (\$10,000), the "living wage" requirements provided in Section 187.37 shall be applicable. No contracts in excess of ten thousand dollars (\$10,000) shall be awarded if the bidder has been convicted of or found to be liable under Section 545.22 ("wage theft") of this Code, or of Chapter 796 ("Wage and Tip Compensation Requirements") in the previous five years.

Furthermore, the City of Toledo will give preferential status for job creation and retention assistance to businesses that engage in responsible labor relations. (e.g. lack of recent National Labor Relations Board Charges).

(c) For all public improvements in excess of seventy-five thousand dollars (\$75,000), the following criteria shall be considered in determining the lowest and best bidder:

(1) Bidder's and its subcontractor's experience and background.

A. Related project experience - experience of the bidder on projects of the nature for which bids were solicited, to include previous related experiences with the City.

B. Project familiarity - bidder's familiarity with the project being undertaken, including all local standards, specifications and requirements and they are to be efficiently and effectively met.

C. Construction experience - a description of general construction contracts in which the bidder has performed, including a listing of the last ten (10) completed projects similar to the requested work.

(2) Bidder's and its subcontractor's workforce.

A. Continuity and experience of the bidder's workforce - extent of experience with the firm and

in the area of construction for which the bid is submitted.

B. Availability of workforce - whether the bidder's employees are drawn mainly from Northwest Ohio and Southeast Michigan, to include Lucas, Wood, Williams, Defiance, Fulton, Henry, Ottawa, Sandusky, Seneca, Hancock, Putnam, Paulding, and Erie Counties in Ohio and Monroe and Lenawee Counties in Michigan.

C. Apprenticeship program - whether the bidder's employees participate in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council and the U.S. Department of Labor if such apprenticeship programs are available for their workforce.

D. Employee welfare - whether the bidder provides employee health insurance and retirement or pension plan for its employees.

E. Employee safety - whether the bidder provides for an OSHA (and if applicable, EPA) compliance safety plan for its employees and provides safety training as required.

F. Drug-free workplace - whether the bidder has in place a drug-free awareness program and notification requirements consistent with the requirements of the Federal Drug-Free Workplace Act of 1988.

(3) Bidder's and its subcontractor(s) record of compliance.

A. Bonding experience - whether bidder has a record of claims against performance bonds secured on public improvement construction projects, with an explanation of reasons for claims.

B. Tax laws - whether bidder is in compliance with City and State taxes on payroll and net profits, to include an affidavit as to no outstanding tax liens and as to no outstanding City income tax obligations.

C. Wage, hour and unemployment laws - whether bidder is in compliance with Federal, State or local laws or regulations regarding safety and health, fair labor standards, prevailing wages, minimum wages, unemployment and workers' compensation including, but not limited to, Section 545.22 and Chapter 796 of this Code.

D. Construction compliance - whether the bidder has a record for complying with and meeting completion deadlines and successfully controlling costs bid on similar construction projects, to include a review of the various construction experience and compliance in the preceding twelve (12) months covering the bidder's compliance with completion deadlines, the amount of any change orders for the job or cost overruns on each job undertaken, the reasons for the change orders or cost overruns, and the timely response to site clean-up and "punch" list.

E. Equal business opportunity - whether bidder is in compliance with any affirmative action or disadvantaged business enterprise program that the City is required by law to enforce in connection with funds to be spent under the procurement contract; and the bidder's compliance with the City's disadvantaged business enterprise program, describing any joint ventures, partnerships or subcontracts with DBEs certified by the City's Office of Affirmative Action and specifying the names of the companies, description of the work to be performed, and percentage of the contract to be awarded to DBEs.

F. Bidder's responsiveness - whether bidder has timely provided information or materials to document the foregoing criteria, including a listing of the percentage of the bidder's workforce residing in Toledo, Lucas County, Northwest Ohio, and Southeast Michigan.

The Director of Diversity, Equity, and Inclusion and the Commissioner of Purchasing shall prescribe the manner and form of submittal for the purpose of evaluating the considerations herein. All bid invitations and specifications for public improvements to the City shall advise prospective bidders of all the factors that may be taken into consideration by the City in determining whether the bid is not only the lowest, but best bid. The specifications shall contain provisions conforming to parts (c)(1), (2) and (3) of this section. The City shall require that bidders identify all subcontractors, and the City shall evaluate the bidder's list of subcontractors as to compliance with the foregoing criteria. Bidders shall be

advised with the bid packets that the subcontractor compliance information will be required. The bidding department or division shall maintain in the contract file a record of evaluation determining the lowest and best bid.

(d) For all public improvements, public improvements for which the City's plans and specifications for all phases of the project include an estimate of the cost of the improvement, and any public or private improvement funded in whole or in part by the City of Toledo, the provisions of this section shall apply when such estimates, costs, contracts, or funds are \$100,000 or greater, unless otherwise prohibited by federal or state law. Approved appropriations for public improvements shall not be subdivided to avoid the requirements of this section, including prevailing rate of wages requirements.

For all projects defined in the preceding paragraph, once the successful bidder ("Bidder") is notified of bid award, a pre-job conference shall be held within 15 days of the award notification between the Bidder and the Northwest Ohio Building and Construction Trades Council ("NWOBTC"). The City of Toledo's Director of Diversity, Equity, and Inclusion, the Director of Finance, or designees may attend the pre-job conference.

Within 15 days of this pre-job conference, the Parties ("Bidder and NWOBTC collectively") shall negotiate a project labor agreement, the purpose of which is to advance the city's procurement interest in cost, efficiency, and quality while promoting labor management stability, a bidder's compliance with applicable laws governing employment taxes, safety and health, equal employment opportunity, labor and employment standards, and other related matters.

The bidding documents for each such public improvement or private improvement funded in whole or in part by the City of Toledo shall contain a written provision requiring the successful bidder, and all the bidder's contractors and subcontractors, to comply with and adhere to all of the provisions of the project labor agreement negotiated by the Parties for the project.

SECTION 9. That section 187.38 of the Toledo Municipal Code, which reads as follows:
187.38 Living Wage Review Committee, enforcement, notices.

(a) The Living Wage Review Committee will be responsible for oversight of this section and the Office of Contract Compliance shall be responsible for enforcement. The Living Wage Review Committee will be appointed by the Mayor, thirty (30) days after passage of this legislation, and subject to confirmation by Toledo City Council. It shall be composed of (7) members with one representative from a large business; one representative from small business; one representative from labor; one representative from city council; one representative from a community development corporation; one representative from the Development Department; and, one representative from the Office of Contract Compliance.

(b) The Office of Contract Compliance shall investigate employee complaints of violation of this section and forward each complaint of violation, upon its receipt, to the Living Wage Review Committee who shall monitor the investigation and the resolution of the complaint. The Living Wage Review Committee shall review the resolution of each complaint, as reported by the Office of Contract Compliance and may forward all unresolved matters to the Director of Law for any appropriate legal action.

(c) All City contracts shall provide that upon a violation of any provision of this section the City financial assistance recipient, contractor or subcontractor who is out of compliance shall have thirty (30) days to come into compliance. Such contracts shall further provide that after thirty (30) days if the City financial assistance recipient, contractor or subcontractor remains out of compliance, the City may terminate the contract and otherwise pursue legal remedies that may be available including the repayment of, or payment for, all or part of the financial assistance provided. If a City financial assistance recipient, contractor or subcontractor violates the provisions of this section twice, the City shall terminate all contracts already in force and that City financial assistance recipient, contractor or

subcontractor shall be prohibited from receiving City financial assistance or contracting with the City for a period of five (5) years.

(d) City contracts to which this section applies shall expressly prohibit retaliation against any employee who claims violation of the provisions of this section or reports or testifies regarding an alleged violation.

(e) A City financial assistance recipient, contractor and/or subcontractor, subject to this section, shall post a notice stating that the employees may be subject to this ordinance; the current living wage with and without single coverage medical benefits. The notice shall be written in English as well as Spanish and shall state the following: "This employer is subject to the Living Wage and must be paying his employees \$ 8.58 per hour or 110% of the updated federal poverty level for a family of four plus making available single health coverage in an amount not to exceed 15% of the employee's monthly wages. If the employer does not provide single health coverage, the wages must be \$ 10.15 per hour or 130% of the updated federal poverty level".

(f) The City financial assistance recipient, contractor and/or subcontractor, subject to this section must twice yearly give to his/her employees a notice stating that the employee may be subject to the living wage ordinance and explaining the current living wage amount with and without single medical coverage. Employees may report any violations of this ordinance to the Living Wage Review Committee after attempting to resolve this matter with the employer.

is repealed.

SECTION 10. That a new section 187.43 of the Toledo Municipal Code is enacted to read as follows: 187.43 Living and Prevailing Wage Review Committee, enforcement, notices.

(a) The Living and Prevailing Wage Review Committee will be responsible for oversight of this section and the Office of Contract Compliance shall be responsible for enforcement. The Living and Prevailing Wage Review Committee will be appointed by the Mayor, thirty (30) days after passage of this legislation, and subject to confirmation by Toledo City Council. It shall be composed of (7) members with one representative from business; one representative from AFL-CIO; one representative from the Northwest Ohio Building and Construction Trades Council; one representative from city council; one representative from a community development corporation; one representative from the Development Department; and, one representative from the Office of Contract Compliance.

(b) The Office of Contract Compliance shall investigate employee or interested party complaints of violation of this section and forward each complaint of violation, upon its receipt, to the Living and Prevailing Wage Review Committee who shall monitor the investigation and the resolution of the complaint. The Living and Prevailing Wage Review Committee shall review the resolution of each complaint, as reported by the Office of Contract Compliance and may forward all unresolved matters to the Director of Law for any appropriate legal action.

(c) All City contracts shall provide that upon a violation of any provision of this section the City financial assistance recipient, contractor or subcontractor who is out of compliance shall have thirty (30) days to come into compliance. Such contracts shall further provide that after thirty (30) days if the City financial assistance recipient, contractor or subcontractor remains out of compliance, the City may terminate the contract and otherwise pursue legal remedies that may be available including the repayment of, or payment for, all or part of the financial assistance provided. If a City financial assistance recipient, contractor or subcontractor violates the provisions of this section twice, the City shall terminate all contracts already in force and that City financial assistance recipient, contractor or subcontractor shall be prohibited from receiving City financial assistance or contracting with the City for a period of five (5) years.

(d) City contracts to which this section applies shall expressly prohibit retaliation against any

employee who claims violation of the provisions of this section or reports or testifies regarding an alleged violation.

(e) A City financial assistance recipient, contractor and/or subcontractor, subject to this section, shall post a notice stating that the employees may be subject to this ordinance; the current living wage with and without single coverage medical benefits; or the applicable prevailing wage rate for the project as established by the Ohio Department of Industrial Compliance (ODIC) for the Toledo area. The Living Wage notice shall be written in English as well as Spanish and shall state the following: "This employer is subject to the Living Wage and must be paying his employees \$8.58 per hour or 110% of the updated federal poverty level for a family of four plus making available single health coverage in an amount not to exceed 15% of the employee's monthly wages. If the employer does not provide single health coverage, the wages must be \$ 10.15 per hour or 130% of the updated federal poverty level".

(f) The City financial assistance recipient, contractor and/or subcontractor, subject to this section must twice yearly give to his/her employees a notice stating that the employee may be subject to the living wage ordinance and explaining the current living wage amount with and without single medical coverage. Employees may report any violations of this ordinance to the Living Wage Review Committee after attempting to resolve this matter with the employer.

(g) The Living and Prevailing Wage Review Committee and the Director of Law shall conclude the investigation conducted under Section 187.43(b) and make a determination within 90 days after the complaint is filed.

SECTION 11. That section 187.42 of the Toledo Municipal Code, which reads as follows:
187.42 Two tiered selection.

The following two-tiered selection process may be undertaken to competitively award a contract where a public improvement project has been fairly estimated to cost in excess of ten million dollars or where the completion of a public improvement project is made time-sensitive by court order or the order of an administrative agency with jurisdiction.

(a) Request for qualifications/prequalification.

The Commissioner of Purchasing together with the Director of the Department undertaking the public improvement project shall prepare a request for qualifications that shall be advertised for at least two consecutive weeks. The request for qualifications shall describe the project and make clear that the bidding is being conducted in accordance with the two-tiered process set forth herein. The request for qualifications will ask that interested bidders supply at least the following information:

1. A brief written description of the bidder's planned approach to the project;
2. The expertise, size and composition of the team the bidder plans to use to undertake the project;
3. A list of comparable projects, if any, undertaken by the bidder and/or projected team members;
4. A brief description of the bidder's current workload;
5. At least three references of the bidder;
6. A verifiable statement confirming the bidder's capacity and financial wherewithal to undertake the project;
7. A demonstration of the bidder's adherence to substantial completion dates on infrastructure projects of similar size and function to the subject project;
8. The bidder's OSHA citation/rate history for each of the past three years; and
9. A description of any litigation, administrative orders or claims in the past five years naming the bidder that involve issues with bidder's performance, delay or safety, and a description of the current status or outcome of those matters.

Each of the above-stated categories or criterion, or other such criteria as may be requested by the City in the advertisement shall have been assigned a scoring range between zero (0) to fifteen (15) from which the evaluating division can choose in order to appropriately reflect their relative importance. For

example, a criterion not applicable to this particular project would be worth zero (0) points whereas a highly important criterion could be assigned fifteen (15) points. The minimum weighted score necessary to receive an invitation to bid on the project will be included with the advertisement.

(b) Evaluation of responses to request for qualifications/ prequalification.

After the requests for qualifications are received and opened, all timely responses will be forwarded to the Department or Division responsible for letting the contract. The Department or Division will then promptly convene a panel of at least three persons familiar with the project to evaluate all responses. All responses, as determined by weighted score, that meet or exceed the minimum score will be invited to issue a bid on the project via the contact information contained in the response.

(c) Bid process.

Persons or entities invited to bid on a project will be provided with a date and time at least three weeks from the date the invitations were announced to provide a bid for the project. The time and date will be the same for all invited bidders and will serve as the opening date. After opening, the bids will be evaluated and awarded in the same manner as non-two-tiered bids as set forth in this Chapter.

is repealed.

SECTION 12. That a new section 187.42 of the Toledo Municipal Code is enacted to read as follows:
187.42 Two tiered selection.

The following two-tiered selection process may be undertaken to competitively award a contract where a public improvement project has been fairly estimated to cost in excess of ten million dollars or where the completion of a public improvement project is made time-sensitive by court order or the order of an administrative agency with jurisdiction.

(a) Request for qualifications/prequalification.

The Commissioner of Purchasing together with the Director of the Department undertaking the public improvement project shall prepare a request for qualifications that shall be advertised for at least two consecutive weeks. The request for qualifications shall describe the project and make clear that the bidding is being conducted in accordance with the two-tiered process set forth herein. The request for qualifications will ask that interested bidders supply at least the following information:

1. A brief written description of the bidder's planned approach to the project;
2. The expertise, size and composition of the team the bidder plans to use to undertake the project;
3. A list of comparable projects, if any, undertaken by the bidder and/or projected team members;
4. A brief description of the bidder's current workload;
5. At least three references of the bidder;
6. A verifiable statement confirming the bidder's capacity and financial wherewithal to undertake the project;
7. A demonstration of the bidder's adherence to substantial completion dates on infrastructure projects of similar size and function to the subject project;
8. The bidder's OSHA citation/rate history for each of the past three years; and
9. A description of any litigation, administrative orders or claims in the past five years naming the bidder that involve issues with bidder's performance, delay, safety violations, labor and employment laws or standards, wage and hour laws, prevailing wage, or taxation, and a description of the current status or outcome of those matters.

Each of the above-stated categories or criterion, or other such criteria as may be requested by the City in the advertisement shall have been assigned a scoring range between zero (0) to fifteen (15) from which the evaluating division can choose in order to appropriately reflect their relative importance. For example, a criterion not applicable to this particular project would be worth zero (0) points whereas a highly important criterion could be assigned fifteen (15) points. The minimum weighted score necessary

to receive an invitation to bid on the project will be included with the advertisement.

(b) Evaluation of responses to request for qualifications/ prequalification.

After the requests for qualifications are received and opened, all timely responses will be forwarded to the Department or Division responsible for letting the contract. The Department or Division will then promptly convene a panel of at least three persons familiar with the project to evaluate all responses. All responses, as determined by weighted score, that meet or exceed the minimum score will be invited to issue a bid on the project via the contact information contained in the response.

(c) Bid process.

Persons or entities invited to bid on a project will be provided with a date and time at least three weeks from the date the invitations were announced to provide a bid for the project. The time and date will be the same for all invited bidders and will serve as the opening date. After opening, the bids will be evaluated and awarded in the same manner as non-two-tiered bids as set forth in this Chapter.

SECTION 13. That this Ordinance is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that it is necessary for the immediate preservation of the public peace, health, safety, and property, and to provide transparency and accountability for taxpayer funds.

Vote on emergency clause: yeas 11, nays 0.

Passed: May 30, 2023, as an emergency measure: yeas 11, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

May 30, 2023
Wade Kapszukiewicz
Mayor