

ARTICLE 1. SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR TARGET MARKET CONTRACTS

1.1. Policy and Terms

It is the policy of the City of Chicago that Local Businesses certified as Minority Owned Business Enterprises (MBE) and Women Owned Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses and all other Regulations promulgated under the aforementioned sections of the Municipal Code, as well as MBEs and WBEs certified by Cook County, Illinois, will have full and fair opportunities to participate fully in the performance of this contract. Therefore, the Contractor will not discriminate against any person or business on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income and will take affirmative action to ensure that women and minority businesses will have the maximum opportunity to compete for and perform subcontracts for supplies or services.

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all non-construction contracts to certified WBEs.

Pursuant to Section 2-92-460 of the Municipal Code of Chicago, the Chief Procurement Officer has implemented the Target Market Program that seeks to award competitively or on a negotiated bid process to certified MBEs the established goal of 10% of the annual dollar value of all non-construction contracts and to certified WBEs 1% of the annual dollar value of all non-construction contracts.

Pursuant to MCC 2-92-535, the prime contractor may apply to be awarded an additional 0.5 percent credit, up to a maximum of a total of 5 percent additional credit, for every 1 percent of the value of a contract self-performed by MBEs or WBEs, or combination thereof, that have entered into a mentoring agreement with the contractor or subcontractor-to-subcontractor mentoring agreement. This up to 5% may be applied to the Contract Specific Goals, or it may be in addition to the Contract Specific Goals.

1.2. Definitions

"Area of Specialty" means the description of an MBE or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE/WBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory (defined below). Credit toward this Contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

NOTICE: *The City of Chicago does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section 2-92-586.

"Bid" means a bid, proposal, or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification of task order request (issued in accordance with the Master Consulting Agreement) that is issued by the City.

"Bidder" means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract. For the purposes of target market contracts issued pursuant to MCC Section 2-92-460, as described in Section 1.3 below, the Contractor may not subcontract more than fifty percent (50%) of the dollar value of the contract to subcontractors who are not MBEs or WBEs.

"Contractor" means any person or business entity that has entered into a contract with the City as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.

"Direct Participation" means the value of payments made to MBE or WBE firms for work that is performed in their Area of Specialty directly related to the performance of the subject matter of the Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE, and WBE firms.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that the CPO or his or her designee has determined, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Indirect Participation" refers to the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty related to other aspects of the Contractor's business. (Note: no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all government contracts held by that contractor.)

"Mentor-Protégé Agreement" means an agreement between a prime and MBE or WBE subcontractor ("Mentoring Agreement"), or an agreement between a prime's subcontractor and MBE or WBE subcontractor ("Subcontractor-to-Subcontractor Mentoring Agreement"), pursuant to MCC 2-92-535, that is approved by the City of Chicago and complies with all requirements of MCC 2-92-535 and any rules and regulations promulgated by the Chief Procurement Officer.

"Minority Owned Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a minority owned and controlled business by Cook County, Illinois.

"Municipal Code of Chicago" or "MCC" means the Municipal Code of the City of Chicago.

"Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Target Market Joint Venture" means an association of two or more MBEs, WBEs, or both MBEs and WBEs all certified by the City of Chicago or whose recertification is pending, to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge.

"Women Owned Business Enterprise" or **"WBE"** means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a women owned business by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

1.3. Eligibility

- A. Contracts included in the Target Market Program can be either MBE Target Market Contracts, WBE Target Market Contracts or designated as open to all certified MBE and WBE firms. Only MBE and MBE Joint Ventures are eligible to bid on or participate in MBE Target Market Contracts, while only WBE and WBE Joint Ventures are eligible to bid on or participate in WBE Target Market Contracts. On solicitations open to both MBEs and WBEs joint ventures are allowed between both MBEs and WBEs.
- B. Contracts included in the Target Market Program have been identified by the Chief Procurement Officer as having at least three MBEs or three WBEs, as the case may be, that indicated their interest in participating in the contracts' designated commodity area(s) by successfully being certified by the City's Contract Compliance Administrator. The Chief Procurement Officer shall select contracts for the Target Market Program which include a variety of goods and services which the City frequently contracts.
- C. The Contractor may not subcontract more than fifty percent (50%) of the dollar value of the contract to subcontractors who are not MBEs or WBEs. The purchase of goods by a vendor from a manufacturer or supplier for sale to the City in a contract consisting solely of the sale of goods shall not be deemed subcontracting. However, in appropriate cases the Chief Procurement Officer may initiate discussions with a contractor subcontracting with non-certified firms in order to maximize the overall participation of MBEs and WBEs at all contracting levels.
- D. MBE or WBE firms will be allowed to participate in this Target Market Contract only in their Areas of Specialty as certified, or if recertification was submitted prior to certification expiration has been applied for, and is pending on the date of bid opening. Certification must be substantiated by current certification letters of all MBE and WBE firms participating in the contract being a part of the bid/proposal response.
- E. The Chief Procurement Officer may make participation in the Target Market Program dependent upon submission to stricter compliance audits than are generally applicable to participants in the MBE/WBE program. Where necessary or useful, the Chief Procurement Officer may require or encourage MBEs and WBEs to participate in training programs offered by the Department of Planning and Economic Development or other City departments or agencies as a condition of participation in the Target Market Program.
- F. The Chief Procurement Officer shall be authorized to review whether any MBE or WBE actively involved in the Target Market Program should be precluded from participation in the Target Market Program in the following year to prevent the domination of the Target Market Program by a small number of MBEs or WBEs. The decision of the Chief Procurement Officer to exclude a vendor from the Target Market Program is final and non-appealable. The Chief Procurement Officer shall review the participation of any vendor in the Target Market Program which has been awarded as the prime vendor in a calendar year either; (i) five (5) or more Target Market Contracts; or (ii) Target Market Contracts with a total estimated value in excess of one million dollars (\$1,000,000); provided, however, that each contract used in the above computation has an estimated value in excess of ten thousand dollars (\$10,000). The factors which will be considered by the Chief Procurement Officer include:
 - i. the total number and estimated value of both Target Market and other City contracts awarded to the contractor;

- ii. the total number and estimated value of both Target Market and other City contracts awarded to the contractor in a specific specialty area;
- iii. the percentage of the number of both Target Market and other City contracts awarded to the contractor in a specific commodity area;
- iv. the percentage of the total estimated value of both Target Market and other City Contracts awarded to the contractor in a specific commodity area;
- v. the extent to which the Vendor is dominating the Target Market Program to the undue detriment of other contractors or the City; and
- vi. any other factors deemed relevant by the Chief Procurement Officer.

1.4. Procedure to Determine Bid Compliance

Only compliance plans utilizing MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements will be counted toward the Contract Specific Goals.

1.4.1. Schedule D-2

Bidders must submit, together with the bid, a completed Schedule D-2 committing them to the utilization of each listed firm. The City encourages bidders to utilize the electronic fillable format Schedule D-2, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. All commitments made by the bidder's Schedule D-2 must conform to those presented in the submitted Schedule C-2(s).

1.4.2. Schedule C-2

The bidder must submit the appropriate Schedule C-2 with its bid for each MBE and WBE subcontractor included on the Schedule D-2. The City encourages subcontractors to utilize the electronic fillable format Schedule C-2, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. Each Schedule C-2 must be executed by each MBE and WBE and accurately detail the work to be performed by the MBE or WBE subcontractor and the agreed upon rates/prices. Each Schedule C-2 must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C-2 has been submitted with the bid, an executed original Schedule C-2 must be submitted by the bidder for each MBE and WBE included on the Schedule D-2 within five (5) business days after the date of the bid opening.

In the event the bidder fails to submit any Schedule C-2s with its bid/proposal, the City will presume that no subcontractors are performing services related to the contract absent evidence to the contrary.

1.4.3. Letters of Certification

A copy of each proposed MBE/WBE firm's current Letter of Certification from the City of Chicago or Cook County, Illinois, must be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago and Cook County include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-2, must conform to their stated Area of Specialty. Letters of Certification for firms that the City or Cook County has found ineligible or has decertified will not be accepted.

1.4.4. Target Market Joint Venture Agreements

If the bidder is a Target Market Joint Venture, the bidder must provide a copy of the Joint Venture agreement and a Schedule B-2. In order to demonstrate the MBE/WBE partner's share in the ownership and control of the joint venture, the joint venture agreement must include specific details, related to: (1) contributions of capital and equipment; (2) work responsibilities or other activities to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory, and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g. check signing authority).

1.5. Reporting Requirements During The Term Of The Contract

- A. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBE and WBE subcontractors listed on its Schedule D-2 form. These written agreements will be made available to the Chief Procurement Officer upon request.
- B. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City of Chicago to the Contractor for services performed, on the first day of each month and every month thereafter, email and or fax notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
- C. Once the prime Contractor has reported payments made to each subcontractor, including zero dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
- D. All subcontract agreements between the Contractor and MBE/WBE subcontractors or any first tier non-certified subcontractor and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://chicago.mwdbe.com>

- E. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the Contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the City for any purpose.
- F. The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after project closeout. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

1.6. Advances and Expedited Payments

- A. A vendor bidding on a Target Market Contract may request in its bid/proposal that it receive a portion of the estimated contract value at the time of award as an advance to cover start-up and mobilization costs, which the Chief Procurement Officer may deny, or grant in whole or in part. The Chief Procurement Officer will not accept requests made after bid/proposal opening. The Chief Procurement Officer may grant advances not exceeding the lesser of: (i) ten percent (10%) of the estimated contract value; or (ii) two hundred thousand dollars (\$200,000).
- B. Advances will be liquidated, and hence the City will receive a credit for these advances against payments due under the contract, commencing at the time of the first payment to the Contractor after the payment of the advance. The City shall be entitled to be repaid in full no later than such time as the City pays fifty percent (50%) or more of the estimated contract value to the Contractor, or at the midpoint of the initial contract term.
- C. In the event a vendor does not perform as required by the contract and thus is not entitled to all, or part of, any contract advances or expedited payments it has received, the City shall be entitled to take appropriate actions to recover these excessive payments, including, but not limited to, liquidation against vouchers for commodities/services rendered for other awarded contracts or

future bid deposits, restitution sought from the performance bond, a determination that the contractor is non-responsive, or decertification. These remedies are in addition to all remedies otherwise available to the City pursuant to the contract, at law, or at equity.

- D. Due to the nature of term agreements (annual contracts with depends upon requirements contract values), there is no guarantee of the contract against which the advance can be measured or liquidated. Therefore, advances will be granted for term agreements based upon reasonable estimates at the discretion of the Chief Procurement Officer.

1.7. Compliance

- A. The Contract Compliance Administrator shall be entitled to examine on five business days notice, the Contractor's books and records including without limitation payroll records, tax returns and records, and books of account, to determine whether the Contractor is in compliance with the requirements of the Target Market Program and the status of any MBE or WBE performing any portion of the contract. Such rights are in addition to any other audit inspection rights contained in the contract.
- B. It is a material breach of the contract if the vendor, a joint venturer, or subcontractor is disqualified as a MBE or WBE, such status was a factor in contract award, and the status was misrepresented by the contractor or any joint venturer. Such a breach shall entitle the City to declare a default, terminate the contract and exercise those remedies provided for in the contract, at law, or in equity.
- C. In the event that the vendor is determined not to have been involved in any misrepresentation of the status of an MBE or WBE, the Contractor shall discharge the disqualified MBE or WBE and, if possible, identify and engage a qualified MBE or WBE as its replacement. Continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. Payments due under the contract may be withheld until corrective action is taken.

1.8. Arbitration

- A. In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D-2, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide that any disputed between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE/WBE.
- B. An MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitative process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
- C. All arbitration fees are to be paid pro rata by the parties; provided, however, that the arbitrator is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing MBE/WBE.

- D. The MBE/WBE must send the City a copy of the Demand for Arbitration within ten calendar days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

1.9. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

1.10. Resource Agencies

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration Program
500 W. Madison Street, Suite 1250
Chicago, Illinois 60661
Attn: General Services
(312)353-4528

S.B.A. - Bond Guarantee Program
Surety Bond
500 West Madison, Suite 1250
Chicago, Illinois 60661
Attention: Carole Harris
(312) 353-4003

S.B.A. - Procurement Assistance
500 West Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert P. Murphy, Area Regional Administrator
(312) 353-7381

Project information and general MBE/WBE Program information:

City of Chicago
Department of Procurement Services
Contract Administration Division
City Hall - Room 806
Chicago, Illinois 60602
Attention: Buyer Name
Buyer Phone#

The Directory of Certified Disadvantaged, Minority and Women Business Enterprises is available in the Bid and Bond Room, Department of Procurement Services, City Hall, Room 103, Chicago, Illinois 60602, Monday through Friday between the hours of 8:40 am to 10:45 am and 12:00 pm to 3:30 pm.