

place of business and an analyst will interview the owners and review their résumés and/or work histories. The analyst may interview key personnel of the Applicant firm if necessary. The analyst may also perform a site visit to job sites if there are such sites on which the Applicant firm is working at the time of the eligibility investigation. During the site visit, specific additional information may be requested by the analyst.

- E. Any request for additional information shall be in writing and specify that the Applicant must respond within 15 calendar days upon receipt of the request.

If the Applicant fails to respond within 15 calendar days and does not request an extension of time, a second request for additional information shall be sent to the Applicant allowing an additional 15 calendar days upon receipt of the second request to submit the requested information. If the Applicant does not respond within this time frame or the Applicant's response is incomplete, the staff will close the file and notify the Applicant that the Application is no longer being considered.

- F. Following the receipt of a complete Application, the Contracting Equity Officer shall grant or deny the certification or continued eligibility of the Applicant in a timely manner, but not more than 90 days of receiving all required information from the Applicant.

- G. In the event an Application is denied, the Contracting Equity Officer, shall inform the Applicant of all material facts and conclusions upon which the denial was based. The Applicant shall have fifteen (15) calendar days from the date of the determination to appeal the denial in writing. The Applicant's appeal will be handled in accordance with the procedures set forth in Section XIV, below, except as provided in this paragraph.

- H. An Applicant denied certification cannot reapply for certification for one year from the date of the final determination, unless the Applicant demonstrates that extraordinary circumstances exist regarding its Application, and the Contracting Equity Officer determines, in her sole discretion, that the one year waiting period may be waived.

- I. Changes in a Certified Firm's ownership, management, officers or financial relationships which may impact eligibility under these Regulations must be communicated by the firm in writing within ten (10) business days of such change(s). Failure to communicate such changes as required herein shall constitute grounds for the denial of continued eligibility or decertification of the business.

- J. A No Change Affidavit must be submitted 60 days before the annual renewal date. Failure to file a timely No Change Affidavit may result in the removal of the Certified Firm's certification. Once certification is removed, the firm may reapply after the waiting period set forth in Section XIII.H. by completing a new Application and submitting the application fee, unless the firm demonstrates that extraordinary circumstances prevented it from timely filing the No Change Affidavit, and the Contracting Equity Officer determines, in her sole discretion, that the one year waiting period may be waived.

- K. A final order or finding by a court of competent jurisdiction or administrative tribunal that any Applicant, Certified Firm, or owner, officer or agent thereof has committed a crime in connection with performance on any contract with any private or governmental entity shall constitute grounds to deny certification of the Applicant, or deny continued eligibility of a Certified Firm.
- L. A firm whose Application has been denied three (3) or more times in a five (5) year period may not apply for certification for four (4) years from the date of the most recent denial.

XIII. DECERTIFICATION AND INELIGIBILITY PROCEDURES

Any Certified Firm which is debarred by the City of Chicago, or which is declared ineligible to do business with the City of Chicago pursuant to [Chapter 1-23](#) of the Municipal Code of Chicago, is ineligible for continued certification by the City of Chicago. Such firms are automatically ineligible for certification as of the effective date of the debarment decision, or the determination that they are ineligible to do business with the City pursuant to [Chapter 1-23](#) of the Municipal Code, and the procedures set forth in this Section will not apply.

In the event the Contracting Equity Officer, receives information indicating that a Certified Firm's eligibility for continued certification may be in doubt, the Contracting Equity Officer shall determine, in good faith, whether such information is reliable and should be investigated.

- A. If, after consideration of such information, the Contracting Equity Officer determines that the Certified Firm should be decertified as a Certified Firm based upon fraud, dishonesty, intentional misrepresentation of the firm's status, or other wrongdoing by the Certified Firm, or as a result of a decertification by any other governmental agency, the Contracting Equity Officer shall issue a "Preliminary Notice of Intent to Decertify" to the Applicant. The Preliminary Notice shall inform the Certified Firm of all material facts upon which the decision of the Contracting Equity Officer was based. It shall also afford the Certified Firm fifteen (15) calendar days to submit a written appeal in accordance with the procedure set forth in Section XIV below.
- B. If, after consideration of such information, the Contracting Equity Officer determines that the Certified Firm should be declared no longer eligible to participate in the City's Certification Programs, based upon a change in status of the applicant which does not

reflect fraud, dishonesty, intentional misrepresentation of the firm's status, or other wrongdoing by the applicant, the Contracting Equity Officer shall issue a "Preliminary Notice of Ineligibility for Continued Certification" (both this notice and the Preliminary Notice of Intent to Decertify are hereinafter referred to as a "Preliminary Notice") to the Certified Firm. The Preliminary Notice shall inform the Certified Firm of all material facts upon which the decision of the Contracting Equity Officer was based. It shall also afford the Certified Firm fifteen (15) calendar days to file a written appeal in accordance with the procedure set forth in Section XIV below.

- C. Failure of a Certified Firm to submit a written appeal within the required fifteen (15) days of receipt of a Preliminary Notice shall cause the Contracting Equity Officer to accept the facts upon which the Preliminary Notice was based as admitted and to issue a "Notice of Decertification," or a "Notice of Ineligibility for Continued Certification," as appropriate, to the Certified Firm.
- D. Following the decertification or ineligibility of any Certified Firm, the name of such firm shall be removed from the directory of Certified Firms maintained by the Contracting Equity Officer.
- E. Once a firm has been decertified or is determined to be no longer eligible to participate in the Certification Program(s), the dollar value of its work shall not be counted towards the contract goals and/or counted towards the percentage of work for which a bid incentive is taken into consideration in awarding a contract.

However, if a prime contractor has executed a subcontract with the ineligible firm before the firm has been notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its contract goals for the firm's work and the firm may continue to be counted towards the percentage of eligible subcontractors for which a bid incentive was taken into consideration. The portion of the ineligible firm's performance of the contract remaining after the issuance of the Notice of Ineligibility may count towards the contract goal, but not towards the City's overall goals.

If the ineligible firm's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, its participation on that contract toward overall and contract goals may continue to be counted.

- F. Any decision by the Contracting Equity Officer to issue a Notice of Ineligibility for Continued Certification shall not affect the certification status of any contractor on any City contract where the Certified Firm's performance was commenced prior to the effective date of the Notice of Ineligibility for Continued Certification. Any decision by the Contracting Equity Officer with respect to decertification of an Applicant shall mean that, as of the date of decertification, the certification status of the Applicant shall not continue on any City contract where the Certified Firm's performance was commenced prior to the effective date of the decertification.

G. The City may decertify a Certified Firm, or find a Certified Firm to be ineligible for continued certification, if the Contracting Equity Officer, determines after review of the paper submissions or upon receipt of a recommendation from the Board that any of the following are true:

- a. the Certified Firm no longer satisfies the applicable certification requirements;
- b. the Certified Firm, or an owner, officer or agent thereof, has made fraudulent misrepresentations to the City regarding utilization of Certified Firms or colluded with another making such misrepresentation in the preceding three years;
- c. the Certified Firm is no longer eligible for City contracts;
- d. the Certified Firm, or any owner, officer or agent thereof, in the preceding three years has committed a crime in connection with the execution or performance of any contract or a crime involving moral turpitude; or
- e. the Certified Firm has been decertified by any other governmental agency.

H. Decertification or ineligibility of a firm for continued certification will affect the firm's re-entry into the program in accordance with the following schedule:

- i. Ineligible firms will not be eligible to seek re-instatement of certification status for at least one year from the date of the "Final Notice of Ineligibility for Continued Certification," unless the Applicant demonstrates that extraordinary circumstances exist regarding its eligibility, and the Contracting Equity Officer determines, in her sole discretion, that the one year waiting period may be waived.
- ii. Firms decertified due to any false, deceptive, or fraudulent material statement, contracting irregularities, improper conduct in connection with the performance of a contract, and/or criminal activity will be ineligible to seek re-instatement of its certification status for at least three years from the date of the "Final Notice of Decertification."
- iii. Firms decertified as a result of debarment, or as a result of ineligibility to do business with the City pursuant to [Chapter 1-23](#) of the Municipal Code of Chicago, will not be eligible to seek re-instatement of Certification status until such time as the debarment, or determination of ineligibility pursuant to [Chapter 1-23](#), is no longer in force.

XIV. APPEALS

- A. Unless otherwise provided by these Regulations, a firm may appeal a decision by the City regarding its application for certification, decertification, or eligibility by sending a letter to the Contracting Equity Officer, within 15 days of receipt of a Preliminary Notice. The appeal must include a full and specific statement as to why the decision is erroneous, what significant fact(s) the Contracting Equity Officer failed to consider, and/or what provisions of these Regulations the Contracting Equity Officer did not apply. No new documents or facts may be submitted with the appeal. The Contracting Equity Officer may, in her sole discretion, request supplemental documentation from the firm. The Contracting Equity Officer has the sole discretion to accept an appeal filed later than 15 days after receipt of the Preliminary Notice if the Contracting Equity Officer determines that there was good cause for the late filing of the appeal or in the interest of justice.
- B. The Contracting Equity Officer will make a decision solely based on the entire Certification File and the firm's response to the Preliminary Notice and any supplemental document or information requested by the Contracting Equity Officer (collectively, the "Administrative Record"). The Contracting Equity Officer may but is not required to conduct an informal hearing in the event the Contracting Equity Officer determines that a hearing is necessary in order to make a determination. The Contracting Equity Officer's decision will be based on the status and circumstances of the firm as of the date of the decision being appealed.
- C. The Contracting Equity Officer may supplement the Administrative Record by adding relevant information made available to her by the Inspector General, Federal, state, or local law enforcement authorities, officials of funding and/or certification agencies, or an interested firm or private party. If supplemental information is considered, the Contracting Equity Officer will provide the appealing firm with a copy of such information upon request by the appealing firm, unless the Contracting Equity Officer is prohibited to do so by the providing party or law or regulation.
- D. The Contracting Equity Officer will affirm the decision unless she determines, based on the entire Administrative Record, that the decision was unsupported by the preponderance of the evidence or inconsistent with these Regulations.
- E. If the Contracting Equity Officer determines that the decision was unsupported by the preponderance of the evidence or inconsistent with the Regulations, the Contracting Equity Officer will reverse the decision.
- F. The Contracting Equity Officer is not required to reverse the decision if she determines that a procedural error did not result in fundamental unfairness to the appealing firm or substantially prejudice the opportunity of the appealing firm to present its case.
- G. If it appears that the Administrative Record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the appeal, the Contracting Equity Officer may toll the appeal and allow the firm to re-apply for Certification without the one year waiting period set forth in Section XIII.H., above.

- H. The Contracting Equity Officer will make a decision within 60 days after receiving the appeal unless the Contracting Equity Officer, determines that additional time is needed to make a decision, and provides written notice to the appealing firm. All final actions and/or decisions of the Contracting Equity Officer with respect to the decertification of a Certified Firm or ineligibility of a firm shall be communicated in writing to the Certified Firm or Applicant. The communication shall inform the firm of all material facts upon which such action and/or decision was based. Based on the Contracting Equity Officer's decision, either a "Notice of Rescission" of the Preliminary Notice or a "Final Denial of Certification", a "Final Notice of Decertification" or "Final Notice of Ineligibility for Continued Certification," as appropriate, will be sent to the Certified Firm or Applicant.
- I. All appeal decisions by the Contracting Equity Officer are final and binding, and are not subject to requests for reconsideration.

XV. REFERRAL TO CORPORATION COUNSEL

If at any time following appropriate investigation, the Contracting Equity Officer, has reason to believe that any person or firm has knowingly and willfully provided incorrect information related to, or made false statements in a relation to these Regulations, such matter shall be immediately referred to the Corporation Counsel. Such referral, however, shall be construed as a complement to, and not a limitation upon, the rights afforded the Contracting Equity Officer.

XVI. REFERRAL TO INSPECTOR GENERAL

If, at any time the City has reason to believe that any Applicant, Certified Firm or any firm has committed a crime involving bribery, theft, collusion, anti-competitive activity, or made false statements in connection with any City contract, proposed City contract or bidding irregularities, the Contracting Equity Officer shall immediately notify the City of Chicago Office of the Inspector General. Upon completion of the investigation, should the Inspector General determine that the allegations are founded, the Contracting Equity Officer may take any action deemed appropriate.

XVII. DISCLOSURE TO OTHER GOVERNMENTAL ENTITIES

Upon reasonable request from any governmental entity during the course of any legitimate and lawful inquiry, the Contracting Equity Officer may disclose the contents of any Application, or such other information as may be relevant to any Applicant's eligibility for certification.

XVIII. NON-DISCLOSURE OF CERTIFICATION INFORMATION

Unless otherwise mandated by law, no City employee acquiring knowledge or vested with any responsibilities with respect to certifications shall disclose to any person, other than the Chief Procurement Officer, Contracting Equity Officer, Corporation Counsel, Inspector General or other persons duly authorized to receive certification information, the content of any Application or document filed in support thereof, nor shall such employee disclose to, or discuss with any unauthorized person, information regarding deliberations by the Contracting Equity Officer with respect to certification, continued eligibility and/or decertification of any Applicant. Non-compliance with this section shall subject the employee to applicable City disciplinary action.

XIX. ESTABLISHED BUSINESS DETERMINATION

- A. These Regulation establish guidelines under which the presumption that an entity certified or seeking to be certified as a Certified Firm is an Established Business may be rebutted. This Section of the Regulations governs only the certification of MBEs, WBEs, and VBEs, while certification of DBEs is governed by applicable federal law. A certified entity may be determined to be an Established Business as it relates to all or some of its codes.

The Contracting Equity Officer, is responsible for determining each entity's eligibility for certification or continued eligibility as a Certified Firm. As a portion of that examination, the Contracting Equity Officer, must decide whether an entity is an Established Business. Pursuant to Section 2-92-670 of the Code, and the factual findings made by the City, an entity is presumed to be an Established Business if (1) the business entity and its affiliates are no longer a Small Business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 CFR Part 121 (times one and one half), relevant to the scope(s) of work the firm seeks to perform on City contracts, or (2) if the entity's owners of 50 percent or more are persons who are not Economically Disadvantaged. A firm is not an eligible Small Business in any City fiscal year in which its gross receipts, averaged over the firm's previous seven (7) fiscal years, exceed the size standards of 13 CFR Part 121 (times one and one half) or if the personal net worth of the entity's owners of 50 percent or more exceeds the personal net worth limits set forth in these Regulations.

- B. In those cases in which an Applicant or Certified Firm and its affiliates are presumed, pursuant to the test described above, to constitute an Established Business the Contracting Equity Officer may notify the firm of the investigation into its status as an Established Business and shall allow the firm 15 calendar days to submit any evidence it has to rebut the presumption that the applicant is an Established Business. The Applicant or Certified Firm also may provide evidence that the industry standard is incorrect or an improper industry standard is being applied to the entity.

- C. Except as stated in paragraph (vi), below, if the Contracting Equity Officer, determines that an Applicant or Certified Firm is an Established Business in the NAICS code in which it is, or seeks to be, certified, the firm cannot be certified as a Certified Firm. The Contracting Equity Officer's decision shall be final with no provision for appeal. The Applicant or Certified Firm will be notified of the decision that it is an Established Business and cannot be certified.
 - i The determination that a firm cannot receive continued eligibility because it is an Established Business shall become effective on the date specified in the notification letter of the Contracting Equity Officer's decision (the "Effective Date"). Until the Effective Date of the Contracting Equity Officer's decision that an entity is an Established Business, the entity shall be considered certified.

 - i A MBE and/or WBE firm which cannot receive continued eligibility because it is an established firm will be considered a Participating Established Business as of the Effective Date. A Participating Established Business may participate in the City's MBE/WBE procurement program as follows:
 - (1) For a one-year period after the business entity has become an Established Business, 75% of such business's participation in a City contract shall count for the MBE or WBE participation requirement in accordance with Section 2-92-725 of the Municipal Code of Chicago;
 - (2) For a one-year period starting on the one-year anniversary of the date the business entity became an Established Business, 50% of such business's participation in a City contract shall count for the MBE or WBE participation requirement in accordance with Section 2-92-725 of the Municipal Code of Chicago;
 - (3) For a one-year period starting on the two-year anniversary of the date the business entity became an Established Business, 25% of such business's participation in a City contract shall count for the MBE or WBE participation requirement in accordance with Section 2-92-725 of the Municipal Code of Chicago.

 - iii A Participating Established Business will remain on the City of Chicago's directory of Certified Firms and is required to notify the City of any

change in its ownership, control, management, officers or financial relationships which may impact on the firm's eligibility under these Regulations in writing within ten (10) business days of such change(s). Failure to communicate such change as required herein shall constitute grounds for the denial of continued participation in the City's MBE/WBE certification program and may be ineligible to apply for re-certification for at least three years from the three-year anniversary of the Effective Date.

- iv. A Participating Established Business has an affirmative duty to inform any prime contractors who solicit the Participating Established Business as a subcontractor that only a percentage of its business's participation in a City contract shall count for the MBE or WBE participation requirement.
- v. An Established Business is considered to be a Non-Participating Established Business starting on the three-year anniversary of the Effective Date, and shall not be eligible to participate in the City's MBE and WBE construction procurement program starting on that three-year anniversary date.
- vi. An Established Business may apply for re-certification at such time as it has information to show a significant change in its ownership, management, contractual relations, size, or in other functions bearing on its status as an Established Business.

XX. SUSPENSION

The certification of a Certified Firm shall be immediately suspended when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

- A. Immediate suspension may occur when (i) there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the Certified Firm to remain certified, or (ii) when the Certified Firm fails to notify the Department of Procurement Services in writing of any material change in circumstances as required by section XI or fails to timely file a No Change Affidavit under section XII.
- B. When a firm is suspended pursuant to part A of this section, the Certified Firm shall be immediately notified of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the Certified Firm.
- C. Suspension is a temporary status of ineligibility pending a proceeding to determine whether the Certified Firm is eligible to participate in the program and consequently should be removed. The suspension takes effect when the Certified Firm receives, or is deemed to have received, the Notice of Suspension.
- D. While suspended, the Certified Firm may not be considered to meet a contract goal on a new contract. The Certified Firm may continue to perform under an existing contract

executed before it received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as it is performing a commercially useful function under the existing contract.

- E. Following receipt of the Notice of Suspension, if the Certified Firm believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the Certified Firm believes that its eligibility should be reinstated, it must provide to the Contracting Equity Officer information demonstrating that the firm is eligible notwithstanding its changed circumstances within 30 days of receiving the Notice of Suspension. Upon receipt of this information, the Department of Procurement Services will either lift the suspension and reinstate the firm's certification or commence a decertification or ineligibility action under section XIII. If the Department of Procurement Services commences a decertification or ineligibility proceeding, the suspension remains in effect during the proceeding.

XXI. DEPOSITORY OF RECORDS

Records of all Applications for certification as a Certified Firm shall be maintained by the Contracting Equity Officer. All certification Application files are maintained electronically. The applicant must submit all certification documents electronically. Requests for an exception to this requirement may be granted at the discretion of the City. By electronically submitting a certification Application, the Applicant agrees to have such materials, including supporting documentation, stored electronically on the City's secure system.

XXII. COMPLIANCE WITH CONTRACT GOALS

On all contracts with MBE and WBE participation goals, the MBE and WBE goals are separate. Certified MBEs or WBEs may only be listed on a bidders' compliance plan as either an MBE or a WBE, but not both, to demonstrate compliance with the contract goals.

XXIII. DISCRETION OF THE CONTRACTING EQUITY OFFICER

The Contracting Equity Officer, has the discretion to rescind and/or reconsider any determination made by the Contracting Equity Officer under these Regulations if the Contracting Equity Officer discovers new information that leads her to believe that the Regulations were incorrectly applied or that a determination was erroneously made and that such incorrect application of the Regulations or erroneous decision is inconsistent with the intent of the Certification Programs. In such event, the Contracting Equity Officer, may rescind a determination for reconsideration and may take any such other actions as necessary to ensure fairness and the integrity of these Regulations.