

Regulations Governing Certification of Minority and Women-Owned Businesses For Construction Contracts



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Mayor**

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**CITY OF CHICAGO
REGULATIONS GOVERNING CERTIFICATION OF
MINORITY AND WOMEN-OWNED BUSINESSES
FOR CONSTRUCTION CONTRACTS**

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**CITY OF CHICAGO
DEPARTMENT OF PROCUREMENT SERVICES
RULES AND REGULATIONS
GOVERNING CERTIFICATION OF MINORITY- AND WOMEN-OWNED
BUSINESS ENTERPRISES FOR CONSTRUCTION CONTRACTS**

I. PURPOSE AND APPLICABILITY

These regulations are implemented pursuant to Article V of [Chapter 2-92](#) (Sections 2-92-650 through 2-92-720 inclusive) ("Ordinance") of the amended Municipal Code, authorizing a Minority-and Women-Owned Business Enterprise Procurement Program for construction contracts, and shall be used by the Chief Procurement Officer in all final actions with regard to determining the status of a firm as a Minority-Owned Business Enterprise ("MBE") or a Women Business Enterprise ("WBE") for City of Chicago ("City") construction contracts.

II. EFFECTIVE DATE

These regulations shall be effective as of May16, 2012, and shall be applicable to all requests for Minority-Owned Business Enterprise and Women Business-Owned Enterprise certification and continued eligibility in the area of construction.

III. POLICY

It is the policy of the City that MBEs and WBEs, as those terms are defined in the Ordinance and in these Regulations, are provided a level playing field and equal access to all contractors and subcontractors to participate in contracting opportunities financed in whole or in part with City funds, or funds over which the City has control.

IV. AUTHORITY AND MBE/WBE CONTRACT REQUIREMENTS

The authority to issue these regulations is found in the Ordinance that mandates the promulgation of regulations governing certification of MBE and WBE construction applicants, and initiation of investigatory proceedings necessary to monitor such firms' continued eligibility for MBE and/or WBE certification.

It is the intent of the Ordinance and a requirement of these regulations that firms claiming status as an MBE and/or WBE for City construction contracting purposes shall be recognized and entitled to continued recognition only following their satisfactory certification by the Chief Procurement Officer in accordance with these rules and regulations.

V. DEFINITIONS

"AFFILIATE" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common

control with, the person or entity. In determining whether persons or entities are affiliates, the city shall consider all appropriate factors, including common ownership, common management and contractual relationships. Affiliates shall be considered together in determining whether a firm is a Small Business Enterprise.

"APPLICANT" means any person or firm who submits an application for certification, or No Change Affidavit to the Chief Procurement Officer for determination of eligibility as a MBE or WBE.

"BOARD" means the Affirmative Action Advisory Board established in Section [2-92-510](#) of the Ordinance.

"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, or fulfilling responsibilities as a joint venturer.

"CHIEF PROCUREMENT OFFICER" means the Chief Procurement Officer of the Department of Procurement Services or his or her designee.

"CONTRACTOR" means any person or business entity that shall enter into a construction contract with the City, and includes all partners, affiliates and joint venturers of such person or entity.

"ECONOMICALLY DISADVANTAGED" means an individual whose personal net worth is less than \$2,000,000, indexed annually for inflation, such annual adjustment to begin January 2008, based on the Consumer Price Index- Urban Wage Earners and Clerical Workers (Chicago All Items) published by the United States Bureau of Labor Statistics.

"ESTABLISHED BUSINESS" means a business which is not a "small business enterprise."

"JOINT VENTURE" means an association of two or more persons or entities, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibilities to the contract.

"LOCAL BUSINESS" means a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (hereinafter referred to as the "Six-County Region") that has the majority of its regular, full-time work force located within the Six-County Region.

"MAYOR" means the Mayor of the City of Chicago.

MINORITY" means:

- (i) Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:
 - a. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
 - b. Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and
 - c. Asian-Americans, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent;
 - d. American Indians, which includes persons having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment; and
- (ii) individual members of other groups, including but not limited to Arab-Americans, found by the city to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the city.

"MINORITY OWNED BUSINESS or MBE" means a small local business enterprise which is at least 51% owned by one or more economically disadvantaged minority persons, or, in the case of a publicly held corporation, at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged minority persons, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.

"NON-PARTICIPATING ESTABLISHED BUSINESS" means an established business which is eligible to participate in the City's minority- and women- owned business enterprise construction procurement program as set forth in Section 2-92-725 of the Municipal Code of Chicago.

"OWNED" means having all the customary incidents of ownership, including the right of disposition, and sharing in all risks and profits commensurate with the degree of ownership interest.

"PARTICIPATING ESTABLISHED BUSINESS" means an established business which is eligible to participate in the City's minority- and women- owned business enterprise construction procurement program as set forth in Section 2-92-725 of the Municipal Code of Chicago.

"PERSONAL NET WORTH" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other city certified MBE or WBE or the individual's equity in his or her primary place of residence. As to assets held jointly with

his or her spouse, an individual's personal net worth includes that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

"SMALL BUSINESS ENTERPRISE" means a small business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in [13 CFR Part 121](#), relevant to the scope(s) of work the firm seeks to perform on city contracts. A firm is not an eligible small business enterprise in any city fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of [13 CFR Part 121](#).

"WOMEN-OWNED BUSINESS or WBE" means a small local business that is at least 51% owned by one or more economically disadvantaged women, or in the case of a publicly held corporation, 51% of all classes of stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

VI. DETERMINATION OF SOCIAL DISADVANTAGE

African-Americans, Hispanics, Asian-Americans, American Indians and women are rebuttably presumed to be socially disadvantaged, and must submit proof of racial or ethnic identify or gender with the application.

Other individuals may seek a determination of social disadvantage by filing the Affidavit of Social Disadvantage. The Applicant has the burden of proving by a preponderance of the evidence that the Applicant meets the criteria for a socially disadvantaged individual. Evidence of individual social disadvantage must include the following elements:

- i. At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged.
- ii. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries.
- iii. Negative impact on entry into or advancement in the business world because of the disadvantage. Any relevant evidence will be considered in assessing this element. In every case, however, education, employment and business history will be considered to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world. In evaluating education, employment and business history, the following factors will be considered:

- a. Education. Such factors as denial of equal access to institutions of higher education, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discourage the individual from pursuing professional or business education;
 - b. Employment. Such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment, retaliatory or discriminatory behavior by an employer, and social patterns or pressures which have channeled the individual into nonprofessional or non-business fields;
 - c. Business history. Such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.
- A. Once the Chief Procurement Officer receives an Affidavit of Social Disadvantage the form will be dated and time stamped. The date and time stamp will conclusively establish the receipt date of such form.
 - B. The Certification Unit will send a written acknowledgement of having received a completed Affidavit of Social Disadvantage to the Applicant and then complete a thorough review. This review may include interviews with the Applicant and review of specific additional information as requested by the staff. Forms containing omissions or deficiencies will be returned to the Applicant, with notice of the nature of the omissions or deficiencies. The date and time stamp on a resubmitted form will conclusively establish the receipt date of the form. Nothing in these regulations will be construed to limit or in any way prohibit the City from requesting and giving due consideration to any information obtained from any source relative to any Applicant's determination.
 - C. After review by the staff, the Chief Procurement Officer will refer the completed Affidavit of Social Disadvantage and any supporting documentation to the Board for review and recommendation.
 - D. During its review, the Affirmative Action Advisory Board may request additional information or interviews from the Applicant. Any request for additional information shall be in writing and will require a response within 30 calendar days unless the Applicant requests additional time. If the Applicant fails to respond within 30 calendar days and does not request an extension of time to respond, the Board will close the file and notify the Applicant that the Applicant is no longer being considered.
 - E. The Affirmative Action Board will make a written recommendation to the Chief Procurement Officer as to whether or not the Applicant is socially disadvantaged.
 - F. The Chief Procurement Officer will make the final determination regarding the Applicant's status as a socially disadvantaged individual based on the criteria established in this Section.

- G. The final decision of the Chief Procurement Officer shall be communicated in writing to the Applicant within 15 calendar days of the date that the final determination. The decision of the Chief Procurement Officer cannot be appealed.

VII. DETERMINATION OF ECONOMIC DISADVANTAGE

An Applicant for certification as a MBE or a WBE must establish by a preponderance of the evidence that it is owned, managed and controlled by an Economically Disadvantaged individual. The Applicant's owner(s) must submit a Personal Net Worth Statement and the owner's three most recent individual federal income tax returns. The owner's personal net worth must not exceed \$2,000,000, indexed annually for inflation, such annual adjustment to begin January 2008, exclusive of the individual's ownership interest in an Applicant or other City certified MBE or WBE or the individual's equity in his or her primary place of residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

VIII. DETERMINATION OF SMALL BUSINESS ENTERPRISE STATUS

An Applicant must be a small business enterprise. An Applicant's annual gross receipts, averaged over five years, cannot exceed the U.S. Small Business Administrations' Size Standards, as promulgated in [13 CFR Part 121](#). For those industries for which SBA has defined an established business based upon the number of persons employed, an entity will be presumed to be established if it employs a number in excess of the applicable number of employees specified by the SBA.

IX. CERTIFICATION ELIGIBILITY

An Applicant for certification must be operational and in business for profit. The minority and women owners of the firm must possess the resources and the expertise to operate in the firm's field of work.

False, erroneous or misleading statements by an Applicant regarding its performance on any contracts, or involvement in contracting or certification-related irregularities with any entity, and non-compliance with reasonable requests of the City for information concerning eligibility shall be accorded substantial weight in determining the applicant's certification, re-certification or de-certification.

Ownership and control

Ownership acquisition must be through real and substantial contributions of expertise, capital or other tangible personal assets derived from the assets of the minority and/or woman owners. Where expertise is used as the contribution to acquire ownership, the

minority and/or woman owners either collectively or individually must demonstrate expertise in all areas of the firm's critical operations.

Determinations of ownership in the Applicant firm by minorities and women shall be made without regard to the community property laws of any state.

- A. The Applicant must establish by a preponderance of the evidence that it is owned and controlled by minorities and/or women. The Applicant must establish that either collectively or individually the minority and/or woman owner(s):
- i. Possess demonstrated financial resources to acquire ownership and past experience that verifies demonstrated capability to engage in business in the area of specialty for which certification is sought. It is of no consequence that other partners/owners, spouses or employees have these abilities or resources;
 - ii. Exercise responsibility for the critical areas of the Applicant's daily operations and make independent and unilateral business decisions;
 - iii. Possess adequate assets or resources to operate self-sufficiently in areas of financing, bonding, supervision, personnel, equipment, materials and facilities;
 - iv. Accept risks and profits commensurate with their ownership interests, as well as receive at least 51% of any dividends;
 - v. If a corporation, exercise control of the board of directors;
 - vi. If a partnership, exercise control of the business enterprise as documented in a partnership agreement;
 - vii. If a limited liability company, exercise control of the company, as documented in the articles of organization or the regulations.
- B. Ownership and control by such minorities and women shall be real, continuing and shall go beyond the *pro forma* ownership of the Applicant as reflected in ownership documents. The minority and/or women owners must enjoy all customary incidents of ownership and share in all risks and profits commensurate with their ownership interests, as demonstrated by a detailed examination of the substance of their business arrangements with others. Ownership is demonstrated by:
- i. Verifiable assets for acquisition derived from independently owned holdings. A transfer of assets may be considered independently owned holdings only if supported by payment of fair and adequate consideration.
 - ii. Documentation must be found in the business records of the Applicant. The records must clearly show the contribution of such expertise and its value to the Applicant.

- iii. If the Applicant is a corporation, the ability to transfer stock, title, and possession of securities that represent ownership of the applicant by minorities and/or women and are directly and physically held by them, without limitation by non-minorities or men. Securities held in trust or by any guardian for a minor or incompetent person or, in the appropriate case, pledged as collateral to secure any principal indebtedness of the applicant, shall be excluded from the determination of whether the Applicant is owned and controlled by minorities and/or women.
- iv. If the Applicant is a limited liability company, membership in the company and ownership of membership interest.

- C. (a) Contributions of capital or expertise by minority or women owners to acquire their ownership interests in the Applicant must be real and substantial, and be in proportion to the interest(s) acquired. Such contributions will not be required if the minority or woman owner can demonstrate that it has received a bona fide inheritance from a deceased Relative to acquire ownership, which inheritance was not made for the purpose of obtaining certification. For purposes of this determination, a Relative shall mean an immediate family member, a sibling, a parent or a grandparent. Contributions of capital or expertise are also not required if the minority or woman owner acquires its ownership interest in the Applicant as a gift from a Relative, subject to the following exceptions:

You must presume as not being held by minority or woman, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift from a Relative who is:

- i. substantially involved in the Applicant firm, or an affiliate of that firm;
- ii. substantially involved in the same or a similar line of business; or
- iii. engaged in an ongoing business relationship with the Applicant firm, or an affiliate of that firm.

To overcome this presumption and permit the gifted interests or assets to be counted, the minority or woman owner must demonstrate, by clear and convincing evidence, that:

- i. the gift or transfer to the minority or woman owner was made for reasons other than obtaining certification; and
- ii. the minority or woman owner actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of the Relative who provided the gift or transfer.

(b) Insufficient contributions of capital or expertise shall include, but are not limited to:

- i. Promises to contribute capital or expertise in the future.

- ii. Notes payable from minority or women owners to the Applicant or owners who are not minorities or women.
 - iii. Participation in the Applicant by minority or women owners as mere employees.
 - iv. Provision by any owner of goods, services, or equipment having an actual or estimated value based upon industry standards substantially less than the value attributed in the Applicant's Schedule A.
- D. Minority or women owners must, either collectively or individually, possess the power to direct or cause the direction of management, policies and objectives of the Applicant and to make all substantive day-to-day decisions on the Applicant's major and essential operations. Those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business. No formal or informal restrictions of any kind may exist which limit the customary discretion necessary to actual business control by the minorities or women. Unless mandated by law, no restrictions in by-law provisions, partnership of limited liability company agreements, or charter requirements may exist which limit minorities or women from effective and continuous control of the Applicant or which prevent minorities or women, without the cooperation of any owner who is not a minority or woman, from making any operational business decision for the Applicant. In all cases, any business relationship between Applicant and its minority/women owners and non-minorities and men shall be given close scrutiny.
- E. It shall be presumed, unless conclusively established otherwise, that the status of any minority or woman as an owner/manager of the Applicant shall require full-time participation by the person in the management of the Applicant's day-to-day activities. Ownership interests of minority and/or women owners not participating in the Applicant's operations on an active and substantial basis shall be excluded from the determination of whether the Applicant is owned and controlled by minority persons and/or women. In addition, employment histories of all owners and managers shall be reviewed and verified to determine the administrative and business expertise and involvement by such persons in activities and employment that may contradict any representation of full-time management participation.
- Absentee management or ownership by any minority or woman owner who does not assume and exercise an active and substantial role in the Applicant's day-to-day management shall be considered in the determination of whether the Applicant is owned and controlled by minorities or women.
- F. Owners of the Applicant who are not minorities or women shall not be vested with the primary responsibility or ability to direct its day-to-day management operations. In cases where evidence indicates that major management activities (e.g., hiring and firing of management personnel, equipment/supply acquisitions and purchases, negotiating contracts, estimating contract costs and approval, and check signing) of the Applicant are performed by persons other than the minority/women owners, persons actually performing such duties shall be presumed to control those aspects of the Applicant's business. Where business

documents vest an officer of the applicant with the primary responsibility or ability to direct the Applicant's day-to-day management operations, that officer must be a minority and/or woman owner.

- G. The intra-family transfer of ownership in an existing firm or on-going business to a minority and/or woman except by demise shall be rebuttably presumed invalid for purposes of eligibility for certification.

Viability and Independence

The Applicant must be economically viable businesses. Economic viability shall be determined by its capital structure as established by audited or auditable financial statements, or income projections when the Applicant is a new business. Viability will also be determined by review of at least the following criteria:

Possession of insurance, bonds and/or licenses (e.g., sewer contractor, plumber, etc.) mandated by applicable governmental agencies to perform the work the Applicant represents as its area(s) of specialty or expertise;

Access to real properties and facilities from which to conduct day-to-day business operations.

Employment of and/or access to employment of persons in sufficient numbers and with expertise essential to satisfactory contract performance in its area(s) of specialty or expertise; and

The Applicant's ownership of and/or access to equipment, goods, supplies, etc., essential to its satisfactory performance in its area(s) of specialty or expertise.

The Applicant must be an independent business. Independence shall be examined with reference to the perceived ability of the Applicant to perform satisfactorily in its area(s) of specialty or expertise without substantial reliance upon finances, resources, expertise, manpower, facilities, or equipment of non-minorities or men. Recognition of the Applicant as a separate and distinct entity by governmental taxing authorities shall not be dispositive of the Applicant's assertion of independence. Independence shall be established by reviewing the following criteria:

The date the business was established.

The degree to which financial, equipment leasing, business and other relationships with non-minorities or men vary from normal industry practice.

The determination of adequacy of expertise without the need to rely upon a non-minority or man.

In the following and other appropriate cases, the Applicant shall be closely scrutinized to determine its true abilities to operate viably and independently of non-minorities or men or to otherwise meet the following viability and independence criteria:

The Applicant's status as a party to any long term (i.e., more than three year) contract, lease or lease agreements with non-minorities or men.

The Applicant's status as a party to any contract, lease, or lease agreements on terms at variance with industry standards or prudent business practices.

Interlocking stock ownership of the Applicant and non-minority or men-owned businesses in the same or a related industry.

Common directors or officers between the Applicant and non-minority or men-owned businesses.

The Applicant's use of employees, equipment, expertise or facilities shared with or obtained from non-minority or men-owned businesses.

The receipt by the Applicant's non-minority or men owners of financial benefits (e.g., dividends, loans, salaries, and distributions) from the Applicant that exceed their proportionate ownership interests.

Newly established firms and firms whose ownership and/or control have changed since the date of the advertisement of a specification or the date the Applicant has indicated that a bid response will be submitted.

Any previous or continuing employer-employee relationship between present minority and/or women owners and those who are not minorities or women to ensure that all minority/women owners actually have the requisite independent ownership and management responsibilities and capabilities.

All information provided by the Applicant shall demonstrate the Applicant's ability to obligate itself contractually, without prior approval of non-minorities or men, to a prime contractor, joint venture and/or the City in the performance of a contract, subcontract or legally binding agreement, and to perform the through the use of its own employees and/or equipment.

The Applicant may be certified in more than one area of specialty or expertise, as long as the eligibility criteria are met. Applicants desiring to be certified in additional areas of competence may submit an expansion request in writing in accordance with Section VII. Until certification is awarded, participation on a contract in an uncertified area shall not count toward fulfillment of MBE/WBE contract goals.

X. APPLICATION FOR CERTIFICATION

The Applicant for initial certification shall file with the Chief Procurement Officer a completed Schedule A. MBE/WBE certification with the City shall be valid for five years from the effective date of the certification and only as to the area of specialty or expertise specified therein. The firm will be de-certified if it fails to annually re-validate its certification during the five year period.

The following materials must be provided as part of the certification application:

Documents establishing ethnicity and gender, e.g., birth certificates, passports, naturalization papers, resident alien card or tribal enrollment cards;

Documents establishing ownership of record, including articles of incorporation, by-laws, partnership agreements, limited liability company agreements, issued stock certificates, shareholder agreements, minutes of initial and most recent Board of Directors' meetings, and corporate income tax returns;

Documents establishing that ownership was acquired through real and substantial contributions of expertise, capital or other tangible personal assets;

Documents establishing that the contributions are derived from the assets of the individual(s), including bank receipts, stock certificates, and corporate minutes;

Documents establishing the Applicant's personal net worth, including but not limited to, Personal Net Worth Statement, bank account statements, pension fund statements, mortgages, 401(k) account statements, tax returns (personal and corporate), and investment statements;

Documents establishing the gross receipts of the Applicant's firm for the last 5 years, or in the case of a newly formed business, a balance sheet and/or business plan and current and previous five years individual tax returns of the owners; Once a firm has been decertified its dollars shall not be counted towards the MBE or WBE contract goals.

Documents establishing access to real properties to conduct business (e.g. real estate deeds, rental lease agreements and mortgage agreements);

Resumes of owners, managers, partners and other key personnel;

Titles to or leases for major equipment and/or vehicles;

Past and current loan agreements of applicant or between any owners;

Evidence of contracts with clients or suppliers;

References; and

Licenses (if applicable).

All Schedule A's shall be executed notarized by the owner or duly authorized officer of the Applicant. If such forms are signed by any party other than the president and secretary of a corporation, the general partner(s) of a partnership, the members of a limited liability company, or the owner of a sole proprietorship, such party must also submit evidence of his or her authority to execute the form(s). Material factual representations in such form(s) shall be based upon the personal knowledge of the person executing the form(s).

Completion of the Schedule A shall authorize the Chief Procurement Officer to obtain from third persons (e.g., banks, utility companies, business references, and lessors/lessees) information relevant to any Applicant-s eligibility for certification.

Until certified, an Applicant shall not be counted toward fulfillment of contract goals on City construction contracts. The absence of certification, however, shall in no way affect any Applicant's right to bid or submit a proposal for any City construction contract.

Changes during the pendency of the application in the Applicant's ownership, management, officers or financial relationships where relevant to eligibility must be communicated by the Applicant in writing to the Chief Procurement Officer within 10 calendar days of such change(s). Failure to communicate such changes shall constitute grounds for denial of certification.

Certification shall be limited to the area(s) of specialty or expertise determined by the Chief Procurement Officer to be most reflective of the Applicant's demonstrated specialty or expertise. The City of Chicago utilizes the North American Industry Classification System (NAICS) to determine areas of specialty, which can be found at <http://www.census.gov/eos/www/naics/>. An Applicant may be certified in more than one area of expertise, so long as the eligibility criteria are met. A certified firm seeking certification in a different area of specialty or expertise must submit a written request establishing that a change is warranted. Until certification, participation as an MBE/WBE in any City construction contract in a different area shall not be counted toward fulfillment of contract goals. The City's categories of specialty or expertise must be used by the Applicant in completing the application.

All Applicants submitting a Schedule A, or No Change Affidavit, or Continued MBE/WBE/BEPD Eligibility Affidavit, shall affirm, as a pre-condition to consideration for MBE/WBE certification that neither the Applicant nor any principal, officer, owner, or any other person having decision making authority in the Applicant, nor any affiliates of the Applicant:

- a. is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency;
- b. is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- c. have, within a five-year period preceding the date of their application, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- d. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (c);

- e. has, within a five-year period preceding the date of the Application, had one or more public transactions (federal, state or local) terminated for cause or default;
- f. has, within a five-year period preceding the date of the Application, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of state or local government.
- g. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity, or made an admission of such conduct that is a matter of record, but for which no prosecution was initiated;
- h. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise, or made an admission of such conduct that is a matter of record, but for which no prosecution was initiated;
- i. violated the provisions of Chicago Municipal Code Section 2-92-610 (living wage ordinance);
- j. has been barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating; or
- k. is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

All Applicants submitting a Schedule A, or No Change Affidavit, or Continued MBE/WBE/BEPD Eligibility Affidavit, shall also affirm, as a pre-condition to consideration for MBE/WBE certification, as follows:

To the best of the Applicant's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the date of this application, an employee, or elected or appointed official, of the City of Chicago (if none, Indicate with "N/A" or "none"):

To the best of the Applicant's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Applicant has given or caused to be given, at any time during the 12-month period preceding the date of this application, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$20 per recipient (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

No principal, officer, owner or any person having decision-making authority or any direct or indirect interest in the Applicant has, within one year of the date of such form, owned a direct or indirect interest in, or been financially affiliated with, any firm to which MBE/WBE certification has been denied or withdrawn by any governmental entity where such denial or withdrawal was based, in whole or in part, upon false information contained in application for MBE/WBE certification that was filed with any governmental agency and was signed by such person; and

During any periods that an MBE/WBE certification is effective, all books and records in the Applicant's and its agent's possession, which may prove or disprove MBE/WBE eligibility, shall be open for inspection and examination by the Chief Procurement Officer, or his or her designee, upon reasonable notice.

XI. CERTIFICATION AND RECERTIFICATION PROCEDURES

Upon receipt by the Chief Procurement Officer of any Schedule A or No Change Affidavit, the form shall be dated and time stamped. The date and time stamp shall conclusively establish the receipt date of such form.

The receipt of any Schedule A or No Change Affidavit shall be thoroughly reviewed for material omissions or deficiencies. Forms containing omissions or deficiencies shall be returned to the Applicant, with notice of the nature of the omissions or deficiencies, and shall not be subject to the 90-day decision requirement until completed forms are received. The date and time stamp on a resubmitted completed form shall conclusively establish the receipt date for the 90-day decision requirement.

The completed Schedule A or No Change Affidavit shall be reviewed by the Certification Unit. This review may include, among other things, site visits, personal interviews with the Applicant, and specific additional information as requested by the City.

Any request for additional information shall be in writing and specify that the Applicant must respond within 15 calendar days. The Applicant may request additional time to respond if it consents to a corresponding extension of the 90-day decision requirement.

If the Applicant fails to respond within 15 calendar days and does not request an extension of time, the staff will close the file and notify the Applicant that the application is no longer being considered.

The Chief Procurement Officer shall grant or deny the certification or continued eligibility of the Applicant in a timely manner, but not less than 90 following receipt of a complete Schedule A or No Change Affidavit

In the event an application is denied, the Chief Procurement Officer shall inform the Applicant of all material facts and conclusions upon which the denial was based. The Applicant shall have 15 calendar days from the date of the determination to appeal the denial in writing. The appeal shall present sufficient facts and documentation to establish eligibility. Only *pro forma* restructuring of the Applicant or other non-substantive changes to Applicant's circumstances are permitted subsequent to issuance of the denial.

The Chief Procurement Officer's final decision shall be communicated to the applicant in writing within 30 calendar days of receipt of the appeal. The final decision of the Chief Procurement Officer will not be subject to further review.

An Applicant denied certification cannot reapply for certification for one year from the date of the final determination.

If no changes in ownership, management or control have occurred and the specialty area remains the same, a No Change affidavit must be submitted within 60 days of the annual revalidation date. Failure to file a timely No change Affidavit shall result in the firm's de-certification.

A final order or finding by a court of competent jurisdiction or administrative tribunal that any Applicant, MBE/WBE, 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 MBE/WBE.

On applications for continued eligibility, the Chief Procurement Officer shall consider all relevant factors including, but not limited to, the firm's involvement in contracting or bidding irregularities with any private or governmental entity; non-compliance with reasonable requests by the City for information concerning MBE/WBE eligibility or performance on any City contract; and submission of false, erroneous or misleading information to any private or governmental entity regarding the firm's business activities.

A firm whose application for certification or continued eligibility has been denied three or more times in a 5-year period may not apply for certification for four years from the date of the most recent denial.

XII. DE-CERTIFICATION 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. The below

procedures are not required for such firms, which 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.

In the event the City's Chief Procurement Officer receives information indicating that a certified firm's eligibility for continued certification may be in doubt, the Chief Procurement Officer shall determine, in good faith, whether such information is reliable and should be investigated.

- A. If, after consideration of such information, the Chief Procurement Officer determines that the certified firm should be de-certified as MBE/WBE 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 Chief Procurement 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 Chief Procurement Officer was based. It shall also afford the certified firm at least fifteen (15) calendar days within which to present written evidence to establish that the determination of the Chief Procurement Officer was erroneous.
- B. If, after consideration of such information, the Chief Procurement Officer determines that the certified firm should be declared no longer eligible to participate in the City's MBE/WBE 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 Chief Procurement 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 Chief Procurement Officer was based. It shall also afford the certified firm at least fifteen (15) calendar days within which to present written evidence to establish that the determination of the Chief Procurement Officer was erroneous.
- C. All MBE/WBE responses to a Preliminary Notice should contain sufficient facts to clearly establish that the material facts and/or conclusions upon which the Preliminary Notice was based were erroneous. The MBE/WBE's response shall be under oath, notarized and signed by all persons having personal knowledge of the facts contained therein. Pro forma changes to comply with these regulations will be closely scrutinized. Upon request, properly authenticated original documents in support of the MBE/WBE's response shall be provided to the Chief Procurement Officer. Failure of the MBE/WBE to submit such written evidence within the required fifteen (15) days shall cause the Chief Procurement 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 Applicant.
- D. The Chief Procurement Officer shall review the responsive statement and make a determination that either a "Notice of Rescission" of the Preliminary Notice or a "Notice of Decertification" or "Notice of Ineligibility for Continued Certification," as appropriate, be sent to the MBE/WBE.

- E. All final actions and/or decisions of the Chief Procurement Officer with respect to the decertification of an MBE/WBE shall be communicated in writing to the MBE/WBE. The communication shall inform the MBE/WBE of all material facts upon which such action and/or decision was based.
- F. Following the decertification or ineligibility of any MBE/WBE, the name of such MBE/WBE shall be removed from the Master Directory of Certified Minority Business Enterprises and Women Business Enterprises maintained by the Chief Procurement Officer.
- G. Any decision by the Chief Procurement Officer to issue a Notice of Ineligibility for Continued Certification shall not affect the MBE/WBE certification status of any contractor on any City contract where the MBE/WBE's performance was commenced prior to the effective date of the Notice of Ineligibility for Continued Certification. Any decision by the Chief Procurement Officer with respect to de-certification of an Applicant shall mean that, as of the date of decertification, the MBE/WBE certification status of the Applicant shall not continue on any City contract where the MBE/WBE's performance was commenced prior to the effective date of the de-certification.

The City may decertify an MBE/WBE, or find an MBE/WBE to be ineligible for continued certification, if the Chief Procurement Officer determines after review of the paper submissions and upon receipt of a recommendation from the Board that any of the following are true:

- a. the MBE/WBE no longer satisfies the applicable certification requirements;
- b. the MBE/WBE, or an owner, officer or agent thereof, has made fraudulent misrepresentations to the City regarding utilization of MBE's or WBE's or colluded with another making such misrepresentation in the preceding three years;
- c. the MBE/WBE is no longer eligible for City contracts;
- d. the MBE/WBE, 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 MBE/WBE has been decertified by any other governmental agency.

De-certification or ineligibility of a firm's MBE and/or WBE status will affect the firm's re-entry into the program in accordance with the following schedule:

Ineligible firms will not be eligible to seek re-instatement of MBE or WBE status for at least one year from the date of the ineligibility notice.

Firms de-certified 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 MBE and/or WBE status for at least three years from the date of the de-certification notice.

Firms de-certified 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 MBE or WBE status until such time as the debarment, or determination of ineligibility pursuant to [Chapter 1-23](#), is no longer in force.

XIII. REFERRAL TO CORPORATION COUNSEL

If at any time following appropriate investigation, the Chief Procurement 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 Chief Procurement Officer.

XIV. REFERRAL TO INSPECTOR GENERAL

If, at any time the City has reason to believe that any Applicant, MBE/WBE 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 Chief Procurement Officer shall immediately notify the office of the Inspector General, City of Chicago. Upon completion of the investigation, should the Inspector General determine that the allegations are founded, the Chief Procurement Officer may take any action deemed appropriate.

XV. DISCLOSURE TO OTHER GOVERNMENTAL ENTITIES

Upon reasonable request from any governmental entity during the course of any legitimate and lawful inquiry, the Chief Procurement Officer may disclose the contents of any Schedule A or No Change Affidavit or such other information as may be relevant to any Applicant's eligibility for certification as an MBE/WBE.

XVI. NON-DISCLOSURE OF CERTIFICATION INFORMATION

Unless otherwise mandated by law, no City employee acquiring knowledge or vested with any responsibilities with respect to MBE/WBE certifications shall disclose to any person, other than the Chief Procurement Officer, Corporation Counsel, Inspector General or other persons duly authorized to receive MBE/WBE certification information, the content of any MBE/WBE application or document filed in support thereof.

Nor shall such employee disclose to, or discuss with any unauthorized person, information regarding deliberations by the Chief Procurement with respect to MBE/WBE certification, continued eligibility and/or de-certification of any Applicant. Non-compliance with this section shall subject the employee to applicable City disciplinary sanctions.

XVII. ESTABLISHED BUSINESS DETERMINATION

This regulation establishes guidelines under which the presumption that an entity seeking status as an MBE, WBE is an established business may be rebutted. This regulation governs only the certification of MBEs, and WBEs, while certification of DBEs will be governed by applicable federal law.

The Chief Procurement Officer is responsible for determining each entities' eligibility for certification or continued eligibility as an MBE, or WBE. As a portion of that examination, the Chief Procurement Officer must decide whether an entity is an established business. Pursuant to Section [2-92-670\(t\)](#) of the Code, and the factual findings made by the City, an entity is presumed to be an established business if 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 C.F.R. Part 121, relevant to the scope(s) of work the firm seeks to perform on City contracts. A firm is not an eligible small business in any City fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 C.F.R. Part 121.

XVIII. REBUTTING THE ESTABLISHED BUSINESS PRESUMPTION

In those cases in which an Applicant and its affiliates are presumed, pursuant to the test described above, to constitute an established business the Chief Procurement Officer may notify the firm of the investigation into its status as an established business and shall allow the firm 90 days to submit any evidence it has to rebut the presumption that the applicant is an established business. The applicant also may provide evidence that the industry standard is incorrect or an improper industry standard is being applied to the entity.

XIX. IMPACT OF CHIEF PROCUREMENT OFFICER'S DETERMINATION AS TO WHETHER OR NOT AN ENTITY IS AN ESTABLISHED BUSINESS

(a) Except as stated in paragraph (e), below, if the Chief Procurement Officer determines that an Applicant is an established business, the firm cannot be certified or recertified as an MBE, or WBE. The Chief Procurement Officer's decision shall be final with no provision for appeal. The applicant will be notified of the decision that it is an established business and cannot be certified or recertified. If the entity is making an application for certification, rather than continued eligibility, the decision shall be effective as of the date of the letter.

(b) The determination that a firm cannot receive continued eligibility, because it is established, shall become effective on the date specified in the notification letter of the Chief Procurement Officer's decision (the "Effective Date"); provided, however, that the Effective Date shall be no later than one year after the date of the notification. Until the Effective Date of the Chief Procurement Officer's decision that an entity is an established business, the entity shall be treated as certified.

(c) As of the Effective Date, an established firm is considered to be a Participating established business, and 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, only 75% of such business's participation in a City contract shall count for the MBE or WBE, as applicable, participation requirement set forth in subsections (a) and (d) of 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, only 50% of such business's participation in a City contract shall count for the MBE or WBE, as applicable, participation requirement set forth in subsections (a) and (d) of 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, only 25% of such business's participation in a City contract shall count for the MBE or WBE, as applicable, participation requirement set forth in subsections (a) and (d) of Section 2-92-725 of the Municipal Code of Chicago.

(d) 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.

(e) Any 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.