



VENDOR COMPLIANCE RESOURCE GUIDE



OUR MISSION

The Department of Procurement Services (DPS) is the contracting authority for the procurement of goods and services for the City of Chicago.

We pledge to work together as a team and with our customers to guarantee an open, fair and timely process by establishing, communication and enforcing superior business practices.

Integrity, Public Trust and the Law are our Guiding Principles.



RAHM EMANUEL
MAYOR

JAMIE RHEE
CHIEF PROCUREMENT OFFICER

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

May 2014

Dear Vendor:

I would like to thank you for your interest in doing business with the City of Chicago. As you know, the Department of Procurement Services has made it a priority to ensure that all interested businesses have access to the information, resources and tools they need to compete for City contracts. This is why this Vendor Compliance Resource Guide was developed – to serve as a point of reference that includes information and resources for each stage of the contracting process.

As stewards of taxpayer dollars, it is our responsibility to ensure that vendors are honoring their obligations to Chicago's taxpayers. The City of Chicago maintains a leadership role in the development of consistent contracting procedures and compliance policies – including site visits – to make sure that our vendors are honoring their obligations. The Compliance initiatives being put into place by the City of Chicago are the first in a series of efforts to create universal standards for the City as well as its sister agencies. These efforts will streamline processes for the vendor community.

The City is committed to exploring the best solutions for Chicago's wide-ranging needs, and one of our key objectives is to increase the diversity of the businesses that bid on and earn city contracts. A thriving community bolstered by small, minority- and women-owned business is essential to our world-class city.

We hope that you will use this guide, and choose to become involved in the business of the City of Chicago. Thank you in advance for your time and good works, and for making our city a better place to work, live and raise families.

Sincerely,

Mayor

Programs and Incentives

TARGET MARKET PROGRAM

The Target Market Program was established in accordance with the Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program. The program is designed to promote contracting opportunities for MBE and WBE firms.

Participation in the Target Market Program is limited to MBE, WBE and joint ventures consisting exclusively of MBE/WBE's, or both. The prime contractor on a Target Market Contract may subcontract up to 50 percent of the dollar value of the Target Market Contract to subcontractors who are not MBE or WBE firms.

The Department of Procurement Services (DPS) is responsible for the implementation and administration of this program. In order for a contract to be included in the Target Market Program, there must be at least three (3) MBE and WBE certified firms in the given commodity area.

Contracts identified for inclusion through Target Market Program may be made available for solicitation (prior to advertisement in the case of contracts to be awarded by bid) to qualified MBE and qualified WBE firms respectively.

DPS may include in the Target Market Program contracts which are funded by the state or federal government and may vary the standards of eligibility of the target market program (for example, by allowing the participation of Disadvantage Business Enterprise (DBE)) to the extent necessary to comply with the requirements of the government agency supplying the funding.

- If no satisfactory bid or response is received with respect to a contract which has been designated as part of the Target Market Program, DPS may delete such contract from the Target Market Program, in which case the contract will then be subject to the requirements of Section 2-92-440.
- In order to facilitate the performance of target market contracts by MBE and WBE firms, the Chief Procurement Officer may expedite payments under Target Market Contracts, may reduce retainages under Target Market Contracts where appropriate and may pay the contractor a portion of the value of a Target Market Contract at the time of award as an advance to cover start-up and mobilization costs.

SMALL BUSINESS INITIATIVE CONSTRUCTION PROGRAM

The Small Business Initiative (SBI) is designed to increase the opportunities that small businesses have to do business with the City of Chicago. SBI institutes a program for small local businesses to be exclusive bidders on certain construction projects. In response to feedback from the vendor community, the program has been divided into two tiers, SBI I and SBI II. This tiered system establishes standards that allow greater opportunities for smaller businesses.

To qualify for this construction program, a business must be a small local business enterprise as defined by the program rules. In making a determination whether a business meets that definition, the Chief Procurement Officer will consider, among other factors, whether the business:

- Has been in business for at least one (1) year;
- Will perform the majority of the work on the construction project with its own forces and/or subcontractors who are also small local business enterprises;
- Is independent, and not an affiliate or subsidiary of any other business;
- Has its principal place of business and the majority of its full-time, regular work force located in the Six-County region identified in Section 2-92-670, as evidenced by location of their employment as reported to federal and state taxing authorities;
- For the SBI I program, has gross receipts, averaged over the firm's previous five fiscal years, or number of employees, per pay period averaged over the past twelve months, that do not exceed the size standards set forth in 13 C.F.R. Part 121;
- For the SBI II program, has gross receipts, averaged over the firm's previous five fiscal years, or number of employees, per pay period averaged over the past twelve months, that do not exceed 50% the size standards set forth in 13 C.F.R. Part 121.

SBI is race and gender neutral. Any small business that meets the definition of small local business enterprise is eligible to bid on a SBI construction contract. For the SBI I program, City-Certified minority business enterprises (MBEs) and Women's Business Enterprise (WBEs), by definition in Section 2-92-670, must also be small local business enterprise in order to be certified as MBE or WBE, and therefore, they will be presumed to meet the definition. The Chief Procurement Officer will issue a form of affidavit for non-certified firms to attest that they meet the definition. For the SBI II program, all bidders will be required to submit an affidavit, regardless of certification status. The Chief Procurement Officer reserves the right to conduct investigations to determine the accuracy of the information provided in such affidavits.

Program Tier	Project Cost	Small Business Side Standards
SBI I	<\$3,000,000	SBA size standards per NAICS code
SBI II	<\$2,000,000	½ SBA size standards per NAICS code

Implementation

DPS will identify construction projects in the City's Buying Plan, updated each quarter, which will be offered exclusively to small local business enterprises through this SBI construction program. The projects will be sized appropriately for small businesses and typically will be limited to estimated project construction costs of \$3,000,000 or less for SBI I projects, \$2,000,000 or less for SBI II projects.

Businesses which have been determined to be small local business enterprises will be required to submit annual affidavits confirming their continued compliance with the eligibility requirements of SBI. These firms will also be subject to an on-going responsibility to inform DPS of any changes in their status in the interim that might affect their compliance with SBI's requirements.

The bid package for SBI construction program procurements will also include reporting forms which will be required to be completed by successful bidders at the conclusion of the contract which will report on job creation related to the performance of the City contract as well as other work force, bottom line and anecdotal evidence of the impact of the SBI construction program on the bidder. Failure to complete and submit reports as required may result in a bidder being declared ineligible for further participation in the SBI construction program.

BID INCENTIVES

LOCAL MANUFACTURER OR BUSINESSES

Bid incentive on City funded contracts with an estimated contract value of \$100,000 for local businesses and bidders providing goods made or assembled in the City of Chicago.

Unless otherwise indicated, the following shall apply to both the manufacturers bid incentive and the business bid-incentive (collectively "bid incentive"). These regulations describe how and when the bid incentive would apply, including the right of the Chief Procurement Officer to decline to apply the bid incentive.

Local Manufacturers Bid Incentive

Unless otherwise prohibited by federal, state, or local law, the Chief Procurement Officer shall allocate the bid incentive to any qualified bidder on a contract for goods having an estimated contract value of \$100,000 or more.

As of March 20, 2013, the date of these regulations, the manufacturers bid incentive, if applicable, will apply as follows:

Total Dollar Value of Locally Manufactured Goods Provided in the Contract	Bid Incentive
25% to 49%	1% of the contract base bid
50% to 74%	1.5% of the contract base bid
75% or greater	2% of the contract base bid

The manufacturers bid incentive is limited in scope and therefore will not apply to every contract for goods between the City of Chicago and a city-based manufacturer. The manufacturers bid incentive does not apply if:

- prohibited by federal, state, or local law;
- the estimated value of the goods is less than \$100,000;
- the bidder has been allocated a local business bid preference on the contract pursuant to Section 2-92-412 of the Chicago Municipal Code.
- the Chief Procurement Officer declines to allocate a bid incentive for any of the six reasons set forth in subsection (b)(2) of Section 2-92-410 of the Chicago Municipal Code.

Local Business Bid Incentive

Unless otherwise prohibited by federal, state, or local law, for a contract having an estimated contract value of \$100,000 or more the Chief Procurement Officer may allocate a bid preference of 2% of the contract base bid to any qualified bidder that is a prime contractor.

The business bid incentive is limited in scope and therefore will not apply to every contract between the City of Chicago and a city-based business. The business bid incentive does not apply if:

- prohibited by federal, state, or local law;
- the estimated value of the contract is less than \$100,000;
- the bidder has been allocated a local manufacturers bid preference on the contract pursuant to Section 2-92-410 of the Chicago Municipal Code.
- an emergency exists;
- the contract is for cooperative purchasing or cooperative construction;
- the Chief Procurement Officer concludes allocation of a bid preference is not in the city's best interest.

The bid incentives provided in Sections 2-92-410 and – 412 are not cumulative. A bidder may only benefit from one of the preferences for any single procurement.

BID INCENTIVE FOR ALTERNATIVELY POWERED VEHICLES

0.5% bid incentive for companies located in the 6 county region when 50% or more of the company's fleet are alternative fuel vehicles.

Unless otherwise prohibited by any federal, state or local law, for any contract having an estimated contract value of \$100,000 or more advertised, or if not advertised awarded, after the effective date of this ordinance, the Chief Procurement Officer shall allocate a bid incentive of 0.5% of the contract base price to a qualified bidder when the qualified bidder is an eligible business.

An eligible business includes businesses located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois and as to which: a majority of the business' fleet is located and used within the Six County Region and a majority of those vehicles located and used within the Six County Region are alternatively powered vehicles. The business' fleet should include 10 or more vehicles that are owned, operated, leased or otherwise controlled by the business.

The term alternative fuel includes but is not limited to natural gas, liquefied petroleum gas, hydrogen, ethanol E85 or electricity.

Alternatively powered vehicle means a vehicle that is:

- fueled by alternative fuel
- commonly referred to as a hybrid vehicle that is capable of being powered by a combination of any fuel and an alternative power source
- fueled by a biodiesel blend; provided that the vehicle is powered by the biodiesel blend for no less than 80% of the gallons consumed during the three months prior to the submission of the bid
- fueled by traditional petroleum-based gasoline or petroleum-based diesel fuel, but powered by an engine substantially more efficiently designed than a standard vehicle of the same age, type and size

EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION CONTRACTS

The McLaughlin Ordinance (Section 390 of Chapter 2-92), establishes Award Criteria Figure as the basis of award for bids on City construction contracts. The Award Criteria Figure represents an adjustment to the bid price on the basis of commitments made by the bidder to employ minorities and women as journey workers, apprentices, and laborers on construction jobs.

For any construction project having an estimated contract value of \$100,000.00 or more, and which is directly supervised by the City of Chicago, the city shall have yearly equal employment opportunity goals for minorities and women for the categories of construction journeyworker, apprentice and construction laborer.

- Journeyworker and apprentice: at least 25 percent by minorities and at least seven percent by women
- Construction laborer: at least 40 percent by minorities and at least ten percent by women

In order to bring about the achievement of these goals, the chief procurement officer shall employ a canvassing formula in the bidding for and in the awarding of all contracts involving construction projects having an estimated contract value of \$100,000.00 or more and which are directly supervised by the City of Chicago. The Canvassing formula is included in every solicitation document.

These goals shall also apply to construction projects subsidized in part with federal revenues pursuant to congressionally created grant programs which are intended to encourage economic revitalization including improved opportunities for the poor, minorities, and unemployed within the municipality to which the grant was given (including, without limitation, Community Development Block Grants, Urban Development Action Grants and Economic Development Administration Grants), and shall be monitored by the supervising department.

The City may assess liquidated damages against a contractor for failure to meet its bid commitment.

BID CREDITS FOR FUTURE BIDS

MENTOR/PROTÉGÉ PROGRAM

Established contractors willing to enter into a mentor/protégé relationship can be awarded up to 5% additional utilization credit.

A prime contractor may earn up to five additional percentage points of participation credit towards the MBE/WBE goals on a contract by entering into a mentoring agreement with an MBE or WBE firm on that contract. The mentoring program must be approved by the Chief Procurement Officer and must be designed to assist the protégé firm to become self-sustaining, competitive and profitable in its line of work.

Capacity Development for M/WBEs

The mentoring program must be designed to develop the capacity of the specified MBE and/or WBE firm(s) in becoming self-sufficient, competitive and profitable business enterprises. The plan must stipulate the number of the mentor's employees and protégé's employees that will commit to spend during the term of the Project in training and consultation in substantive business areas including, without limitation: project controls, contract terms and conditions, invoice preparation, quality plan development, preparing and preserving project documentation, project safety, cash flow management, risk management as well as project specific mentoring.

Mentoring Sessions Schedule

The proposed mentoring program must include a schedule for the mentoring sessions, including the time and location where such sessions will be held. (A guideline is that for large projects, no fewer than two of the mentor's employees and no fewer than two of the protégé's employees must commit to spend no less than eight (8) hours per week during the term of the Project, however, for smaller projects, the parties should propose a reasonable allotment of time commensurate with the project size).

The CPO, or his/her designee, shall be permitted to attend any or all such mentoring sessions. The contractor shall be responsible for advising the CPO, or his/her designee, of any changes to the schedule for the mentoring program. The mentor and protégé should also be required to notify the CPO of any changes to the schedule that arise. The City also encourages participants to include a plan detailing how the Mentor plans to include the Protégé on non-governmental projects as well as governmental projects during the term of the agreement.

Written agreement

The mentor and protégé firms must enter a written agreement setting forth an assessment of the protégé's needs and describing the assistance the mentor commits to provide to address those needs (e.g., management and/or technical assistance, loans and/or equity investments, cooperation on joint venture projects, or subcontracts under prime contracts being performed by the mentor). The agreement must also provide that the mentor will provide such assistance to the protégé firm for at least one year, or the term of the contract if the project is for less than a year duration, and preferably for the term of the contract.

Quarterly Affidavit

The mentor and the protégé shall each submit an affidavit regarding the mentoring program on a quarterly basis, with additional copies sent to the Chief Procurement Officer. The respective affidavits shall be executed by authorized principals of the mentor and protégé, and shall state with specificity (including, without limitation, names, dates, hours and subject matter) the elements of the mentoring program that the mentor and protégé participated in during the applicable quarter.

DIVERSITY CREDIT PROGRAM

Private sector firms obtain up to 5% utilization credit on a City contract for work performed by a certified firm on a prime's private sector contracts.

The Diversity Credit Program is designed to increase the participation of W/WBEs in private sector (i.e., not funded by a governmental entity) contracts by making such participation eligible for credit toward MBE\WBE goals on City contracts.

Eligibility for Credits

Credits will be awarded by the City's Affirmative Action Advisory Board in accordance with the following criteria:

- One dollar of credit will be issued for every three dollars earned by the MBEs and WBEs on the private sector contract. Credits will be awarded only to the vendor or vendors responsible for directly utilizing the MBE or WBE. If there is more than one such vendor (e.g., the private sector contract was undertaken by a joint venture of two or more vendors), credits will be awarded ratably to avoid duplication.
- In order to qualify for the credit, the MBEs or WBEs for which the credit is being sought must be certified as such by the City at the time they are utilized on the private sector contract.
- Credits will be awarded only for utilization of MBEs and WBEs on private sector contracts which: (i) do not have affirmative action goals mandated by law or contract; or (ii) in the case of non-construction contracts only, do have such goals, and the goals have been exceeded by the vendor, but only to the extent that the goals have been exceeded.
- Credit shall be awarded only where the vendor can demonstrate that MBEs and WBEs performed a direct, commercially useful function on the private sector contract, working within the area of specialty of the MBE or WBE as certified by the City. Indirect participation, or participation by the MBE or WBE as a second-tier or lower tier subcontractor, is not eligible for credit.
- Credit will be granted only for work performed by MBEs and WBEs on private sector contracts after the date the DPS posts the forms for this Program on its website.
- Credits will expire one year after award by the Board.

Use of Credits

A vendor which has been awarded Program credits by the Board may indicate with its bid on a City Contract on forms to be provided by DPS that it intends to use those Program credits toward MBE\WBE participation goals on the City Contract, subject to the following:

- The MBEs or WBEs on which the credit is based must still be certified as such by the City at the time of the bid opening for the City Contract.
- The maximum amount of credit available on any given City Contract is five percent (5%) of the dollar value of that City Contract.
- Credits may only be used once.

APPRENTICE UTILIZATION BID PREFERENCE

The City of Chicago offers a bid preference of up to 1% on City-funded construction contracts to contractors who have previously utilized union apprentices enrolled in, or that have graduated from, a construction technology training program administered by the City Colleges of Chicago on City-funded construction contracts.

The amount of earned credit is proportional to the hours of union apprentice labor hours utilized. If a contractor utilizes union apprentices enrolled in, or that have graduated from a construction technology training program administered by the City Colleges of Chicago to complete 5% to 10% of the on-site labor hours for a City construction project, DPS will issue that contractor an Earned Credit Certificate which may be used for a 0.5% preference on a bid for a future City funded construction project. If the contractor utilizes those union apprentices to complete 11% to 15% of the on-site labor house, DPS will issue that contractor an Earned Credit Certificate for a 1% bid preference on a future bid for a City-funded construction contract.

An apprentice include any person who is: (1) sponsored into an apprenticeship training program by a contractor that is authorized by a union to sponsor apprentices; and (2) enrolled in, or has graduated from, a construction technology training program administered by the City Colleges of Chicago. The union's apprenticeship training program must be registered with the United States Department of Labor, or approved or recognized by the State of Illinois.

For any construction project advertised having an estimated contract value of \$100,000.00 or more, and where not otherwise prohibited by federal, state or local law, the Chief Procurement Officer shall allocate to any qualified bidder the following bid incentive for utilization of apprentices in performance of the total labor hours performed under contract.

Total Labor Hours Performed By Apprentices	Bid Incentive
5 to 10%	1/2% of the contract base bid
11 to 15%	1% of the contract base bid

As part of the contract close-out procedure, if the Chief Procurement Officer determines that the contractor has successfully met his or her apprentice utilization goals, the Chief Procurement Officer shall issue an earned credit certificate that evidences the amount of earned credits allocated to the contractor. The contractor may apply the earned credits as the bid incentive for any future construction project contract bid of equal or greater dollar value.

The earned credit certificate is valid for three years from the date of issuance and shall not be applied towards any future contract bid after the expiration of that period.

The contractor may apply the earned credit certificate on multiple future construction project contract bids during the three year period in which the certificate is valid, but may only receive one bid incentive for bid evaluation purposes on one construction project contract award

PRE-Award Requirements: What to Know When Preparing to Bid

PROPER COMPLIANCE PLAN SUBMITTAL

A bid or proposal may be rejected as non-responsive if the bidder fails to submit one or more of the following with its bid or proposal demonstrating its good faith efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- A. An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals (Schedule D); and/or
- B. Documentation of Good Faith Efforts; and/or
- C. A request for reduction or waiver of the Contract Specific Goals

NOTE – The MBE/WBE Special Conditions incorporated into a specification document will clearly outline the type of documentation required when submitting a proper compliance plan.

MBE and WBE contract commitment can be met by any one or more of the following: the contractor's status as an MBE or WBE; by joint venturing with one or more certified MBEs or WBEs that will perform work on the project; by subcontracting a portion of the work to one or more MBEs or WBEs; by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs.

SCHEDULES

When submitting a bid to the City of Chicago, the following Schedules and requirements govern the bidder's or contractor's MBE/WBE proposal:

Schedule B: MBE/WBE Affidavit of Joint Venture – The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MNE or WBE firm. Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE# joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBEs or WBEs responsibilities and risks are proportionate to its ownership percentage.

Schedule C: MBE/WBE Letter of Intent to Perform as a Subcontractor, Supplier, or Second Tier Subcontractor - The bidder must submit the appropriate Schedule C with the bid for each MBE and WBE included on the Schedule D (Compliance Plan Regarding MBE and WBE Participation). Suppliers and/or Distributors must submit the Schedule C for Suppliers, first tier subcontractors must submit a Schedule C for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C for second tier Subcontractors. Each Schedule C must accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C 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 has been submitted with the bid, an executed original Schedule C must be submitted by the bidder for each MBE and WBE included on the Schedule D within five (5) business days after the date of the bid opening. The Schedules C's must be filled out by each MBE or WBE firm and NOT the bidder. All terms and conditions for MBE and WBE participation on the contract must be negotiated and agreed to between the bidder or contractor and the MBE or WBE prior to the submission of the Compliance Plan. An MBE or WBE firm should never sign and submit to the bidder a blank Schedule C. The City encourages subcontractors to utilize the electronic fillable format Schedule C, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>.

Schedule D: Compliance Plan Regarding MBE and WBE Participation - The bidder must submit a Schedule D with the bid. The City encourages bidders to utilize the electronic fillable format Schedule Ds, which is available at the Department of Procurement Services website, <http://cityofchicago.org/forms>. An approved Compliance Plan is required before a contract may commence. The Compliance Plan must commit to the utilization of each listed MBE and WBE firm(s). The bidder is responsible

for calculating the dollar equivalent of the MBE and WBE Contract Specific Goals as percentages of the total base bid. All Compliance Plan commitments must conform to the Schedule Cs.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedule Cs and Schedule D.

Letters of Certification - A copy of each proposed MBE's and WBE's Letter of Certification from the City of Chicago or Cook County, Illinois, must be submitted with the bid. The letter of certification must include a statement of the MBE's or WBE's area(s) of specialty. The MBE's or WBE's scope of work as detailed in the Schedule C must conform to its area(s) of specialty. Where a MBE or WBE is proposed to perform work not covered by its Letter of Certification, the MBE or WBE must request the addition of a new area at least 30 calendar days prior to the bid opening.

Schedule H: Documentation of Good Faith Efforts ("GFE") (Construction Projects only) – If a bidder determines that it is unable to meet the Contract Specific Goals, it must document its good faith efforts to do so, including the submission of Attachment C, Log of Contacts. If the bidder's Compliance Plan demonstrates that it has not met the Contract Specific Goals in full or in part, the bidder must submit its Schedule H no later than three business days after notification by the Chief Procurement Officer of its status as the apparent lowest bidder. Failure to submit a complete Schedule H will cause the bid to be rejected as non-responsive. The GFE documentation must include but is not necessarily limited to:

1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
2. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
 - i. Names, addresses, emails and telephone numbers of firms solicited;
 - ii. Date and time of contact;
 - iii. Person contacted;
 - iv. Method of contact (letter, telephone call, facsimile, electronic mail, etc.).
3. Evidence of contact, including:
 - i. Project identification and location;
 - ii. Classification/commodity of work items for which quotations were sought;
 - iii. Date, item, and location for acceptance of subcontractor bids;
 - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why agreements were not reached.
 - v. Bids received from all subcontractors.
4. Documentation of bidder or contractor contacts with at least one of the minority and women assistance associations.

Agreements between a bidder or contractor and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed MBE or WBE. Failure to cooperate may render the bid non-responsive.

DEMONSTRATION of GOOD FAITH EFFORTS (Construction Projects only)

In evaluating the Schedule H to determine whether the bidder or contractor has made good faith efforts, the performance of other bidders or contractors in meeting the goals may be considered. The Chief Procurement Officer shall consider, at a minimum, the bidder's efforts to:

1. Solicit through reasonable and available means at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of MBEs and WBEs certified in the anticipated scopes of subcontracting of the contract, as documented by the Schedule H. The bidder or contractor must solicit MBEs and WBEs within seven (7) days prior to the date bids are due. The bidder or contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
2. Advertise the contract opportunities in media and other venues oriented toward MBEs and WBEs.
3. Provide interested MBEs or WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
4. Negotiate in good faith with interested MBEs or WBEs that have submitted bids. That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a bidder's failure to meet the Contract Specific Goals, as long as such costs are reasonable.
5. Not reject MBEs or WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's or WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the Contract Specific Goals.
6. Make a portion of the work available to MBE or WBE subcontractors and suppliers and selecting those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the Contract Specific Goals.
7. Make good faith efforts, despite the ability or desire of a bidder or contractor to perform the work of a contract with its own organization. A bidder or contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the Contract Specific Goals have been met.
8. Select portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation, even when the bidder or contractor might otherwise prefer to perform these work items with its own forces.
9. Make efforts to assist interested MBEs or WBEs in obtaining bonding, lines of credit, or insurance as required by the City or bidder or contractor.
10. Make efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services; and
11. Effectively use the services of the City; minority or women community organizations; minority or women assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.

REGULATIONS GOVERNING REDUCTIONS TO OR WAIVER OF MBE/WBE GOALS (Non-Construction)

The following Regulations set forth the standards to be used in determining whether or not a reduction or waivers of the MBE/WBE commitment goals of a particular contract are appropriate. If a bidder determines that it is unable to meet the MBE and/or WBE goal percentage on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for grant of relief from the MBE/WBE percentages submitted on the bidder's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

All bidders will be considered responsive to the terms and conditions of these Regulations if, at the time of bid, it submits a waiver request and all supporting documentation that adequately addresses the conditions for waiver of MBE/WBE goals, including proof of notification to assist agencies except:

- 1) Bidders responding to Request for Proposals (RFPs) who have been identified as a sort listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and
- 2) Bidders responding to Request for Information and or Qualifications (RFI/RFQs) deemed by the Chief Procurement Officer or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations.

Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his or her discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder; or re-advertising the bid/proposal. All bidders must submit all required documents at the time of bid opening to expedite the contract award.

A. Direct/Indirect Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

1. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct or indirect work identified or related to the advertised bid/proposal. Documentation must include but is not necessarily limited to:
 - a. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to MBEs and WBEs;
 - b. A listing of all MBEs and WBEs contacted for the bid solicitation that includes:
 - i. Name, address, email and telephone number of MBE/WBE firms solicited;
 - ii. Date and time of contact;
 - iii. Person contacted;
 - iv. Method of contact (letter, telephone call, facsimile, email, etc.).
 - c. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
 - i. Project identification and location;
 - ii. Classification/commodity of work items for which quotations were sought;
 - iii. Date, item, and location for acceptance of subcontractor bids;
 - iv. Detailed statements summarizing direct negotiations with appropriate MBEs and WBEs for specific portions of the work and indicating why negotiations were not successful;
 - v. Affirmation that Good Faith Efforts have been demonstrated by: choosing subcontracting opportunities likely to achieve MBE/WBE goals; not imposing any limiting conditions which were not mandatory for all

subcontractors; providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date.

OR

2. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:

- a. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
- b. A listing of all potential subcontractors contacted for a quotation on that work item;
- c. Prices quoted for the subcontract in question by all such potential subcontractors for that work item.

3. Other documentation that demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:

- a. The City's estimate for the work under a specific subcontract;
- b. The bidder's own estimate for the work under the subcontract;
- c. An average of the bona fide prices quoted for the subcontract;
- d. Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

B. Assist Agency Participation

Every waiver and/or reduction request must include evidence that the bidder/contractor has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community shown in Attachment A. This notice must be given at least five (5) business days in advance of the initial bid due date.

The notice requirement of this Section will be satisfied if a bidder contacts at least one of the associations on Attachment A when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required for any bid/proposal submitted to be deemed responsive on the date of bid opening. If deemed appropriate, the Contract Compliance Officer may contact the assist agency for verification of notification.

C. Impracticability

1. If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.

2. The requirements set forth in these Regulations shall not apply where the Chief Procurement Officer determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices, or standards not previously known by the Chief Procurement Officer, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

Post Award Requirements

MODIFICATIONS/CHANGE ORDERS

The MBE and WBE Contract Specific Goals established at the time of contract bid shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to the MBE/WBE Special Conditions requiring the contractor to (sub) contract with MBEs and WBEs to meet the Contract Specific Goals.

The contractor must assist the Construction Manager or user Department in preparing its “proposed contract modification” by evaluating the subject matter of the modification and determining whether there are opportunities available for MBEs or WBEs to participate in, and at what rates.

The contractor must also produce a statement listing the MBEs/WBEs that will be utilized on any contract modification. The statement must include the dollar value of commitment for each firm that will be utilized. If no MBE/WBE participation is available, an explanation of good faith efforts to obtain participation must be included.

The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of MBEs or WBEs already involved in the Contract.

COUNTING MBE and WBE PARTICIPATION

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

If the MBE or WBE itself performs the work itself, one hundred percent (100%) of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub) contract with its own forces. Zero percent (0%) of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals.

If the MBE or WBE is a manufacturer, one hundred percent (100%) of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the MBE or WBE firm.

If the MBE or WBE is a distributor or supplier, sixty percent (60%) of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.

If the MBE or WBE is a broker, zero percent (0%) of expenditures paid to brokers will be counted toward the Contract Specific Goals. As defined in the MBE/WBE Special Conditions, brokers provide no commercially useful function.

If the MBE or WBE is a member of the joint venture, a joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals. Or, if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in the Schedule B. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs; however, work subcontracted out to non-certified firms may not be counted.

If the MBE or WBE subcontracts out any of its work, one hundred percent (100%) of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.

Zero percent (0%) of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except for the cost of supplies purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces).

The fees or commissions charged for providing a bona fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, may be counted toward the Contract Specific Goals, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, may be counted toward the Contract Specific Goals provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, may be counted toward the Contract Specific Goals provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Only the value of the dollars paid to the MBE or WBE firm for work that it performs in its Area of Specialty in which it is certified, counts toward the Contract Specific Goals.

SUBCONTRACTOR AGREEMENTS

No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each MBE and WBE listed on the contractor's Schedule D. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services, Contract Compliance Division.

CHANGES TO A COMPLIANCE PLAN

No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of the MBE/WBE Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:

- Unavailability after receipt of reasonable notice to proceed;
- Failure of performance;
- Financial incapacity;
- Refusal by the subcontractor to honor the bid or proposal price or scope;
- Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- The subcontractor's withdrawal of its bid or proposal; or
- De-certification of the subcontractor as a MBE or WBE. (Graduation from the MBE/WBE program does not constitute de-certification).
- Termination of a Mentor Protégé Agreement.

If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

1. The contractor must notify the Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
2. The City will approve or deny a request for substitution or other change within 15 business days of when all documentation has been successfully submitted in order for a determination to be made.
3. Where the contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of good faith efforts, must meet the requirements in sections V and VI of the MBE/WBE Special Conditions. If the MBE or WBE Contract Specific Goal cannot be reached and good faith efforts have been made, as determined by the Chief Procurement Officer, the contractor may substitute with a non-MBE or non-WBE.
4. If the contractor plans to hire a subcontractor for any scope of work that was not previously disclosed on the Schedule D, the contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.
5. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the contractor receipt of City approval for the substitution or other change.

The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

REPORTING

During the term of the contract, the contractor and its non-certified subcontractors must submit partial and final waivers of lien from MBE and WBE subcontractors that show the accurate cumulative dollar amount of subcontractor payments made to date. Upon acceptance of the Final Quantities from the City of Chicago, FINAL certified waivers of lien from the MBE and WBE subcontractors must be attached to the contractor's acceptance letter and forwarded to the Department of Procurement Services, Attention: Contract Compliance Division.

The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. 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, an email and/or fax audit notification(s) will be sent out to the contractor with instructions to report payments that have been made in the prior month to each MBE and WBE. 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.

Once the contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE 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.

All subcontract agreements between the contractor and its' MBE/WBE firms or any first tier non-certified firm 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: <http://chicago.mwdbe.com>.

The Chief Procurement Officer, or any party designated by the Chief Procurement Officer, shall have access to the contractor books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor 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.

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 final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

NON-COMPLIANCE

In the event of Non-Compliance, and without limitation, the following shall constitute a material breach of the contract between the City and the contractor and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract at law or in equity: (1) failure to demonstrate good faith efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.

Payments due to the contractor may be withheld until corrective action is taken.

Pursuant to 2-92-740, remedies or sanctions may include disqualification from contracting or subcontracting on additional City contracts for up to three years, and the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to 2-92-740 of the Municipal Code of the City of Chicago, within 15 business days of the final determination.

If the City determines that the contractor has not made good faith efforts to fulfill its Compliance Plan, the affected MBE or WBE may recover damages from the contractor.

Disputes between the contractor and the MBE or WBE shall be resolved by binding arbitration before the American Arbitration Association (AAA), with reasonable expenses, including attorney's fees and arbitrator's fees, being recoverable by a prevailing MBE or WBE. Participation in such arbitration is a material provision of the Construction Contract. This provision is intended for the benefit of any MBE or WBE affected by the contractor failure to fulfill its Compliance Plan and grants such entity specific third party beneficiary rights. These rights 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 or WBE. Failure by the contractor to participate in any such arbitration is a material breach of the Construction Contract.

A MBE or WBE seeking arbitration will serve written notice to the contractor and file a demand for arbitration with the AAA in Chicago, IL. The dispute shall be arbitrated in accordance with the Commercial Arbitration Rules of the AAA. All arbitration fees are to be paid pro rata by the parties.

The MBE or WBE must copy the City on the Demand for Arbitration within 10 business days after filing with the AAA. The MBE or WBE must copy the City on the arbitrator's decision within 10 business days of receipt of the decision. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

CERTIFIED PAYROLLS

In addition to MBE/WBE reporting, the contractor will be required to submit weekly certified payrolls in order to comply with Equal Employment Opportunity (EEO), Chicago Residency Ordinance (CRO), and the Project Area Resident Workers Hours (PARWH) Ordinance. The contractor and all subcontractors working on the the contractor construction job site, must prepare and submit certified payrolls electronically to the City of Chicago via the Certified Payroll Reporting System (CPRS) that is available via the web. Certified payrolls are to be reported for the payment period every week until all work is completed. Certified payrolls are required to assure EEO, CRO, and PARWH compliance as well as wage compliance. Once a contract is awarded, you must supply to the Department of Procurement Services, Certification/Compliance Division, the name (first and last), email address, phone and fax number of the individual responsible for entering and managing the subcontractors certified payroll records. The project will be loaded into the CPRS system and an email notification will be provided to the contact person providing them with a user name and password. In the event a contractor exists in the CPRS system, the email notification will contact the individual that has been set up as the prime compliance contact person. The url address for the CPRS system is <https://prod.lcptracker.net>

SITE VISITS

Compliance staff will make frequent announced and unannounced site visits to monitor the contractor's' compliance plan. It is expected that both the contractor's employees and its' subcontractors will cooperate fully in this monitoring process.

COMMERCIAL USEFUL FUNCTION

The City of Chicago Department of Procurement Services counts MBE/WBE/DBE expenditures toward MBE/WBE/DBE goals only if the MBE/WBE/DBE is performing a "commercially useful function ("CUF")."

What constitutes a "commercially useful function?" Generally, the City follows the requirements set forth in the federal regulations at 49 CFR § 26.55.

A certified firm must carry out its contract responsibilities by actually performing, managing, and supervising the work involved.

To determine MBE/WBE/DBE CUF compliance, the following essential questions must be answered:

- Who supervises and carries out the work?
- Who pays the MBE/WBE/DBE's employees?
- Who owns the equipment used by the MBE/WBE/DBE?

Described below are the responsibilities of the MBE/WBE/DBE firms:

1. MANAGEMENT

MBE/WBE/DBE Management is counted towards the contract goal when the MBE/WBE/DBE:

- Schedules the work operations
- Receives quotes and order equipment and materials
- Prepares and submits certified payrolls
- Hires and fires employees
- Makes all operational and managerial decisions
- Supervises daily operations, either personally or with a full time, skilled, and knowledgeable superintendent who is under the MBE/WBE/DBE owner's direct supervision

2. EQUIPMENT

MBE/WBE/DBE Equipment is counted towards the contract goal when the MBE/WBE/DBE:

- Has a valid lease for equipment consistent with industry practices and at competitive rates

- Party to a lease agreement that is on a long-term basis
- May lease equipment on an ad hoc basis from another contractor, excluding the prime contractor or subsidiary or affiliate of the prime
- Operation of the equipment is under the full control of the DBE
- Provides the operator for the equipment and is responsible for all payroll and labor compliance requirements

3. WORKFORCE

MBE/WBE/DBE Workforce is counted towards the contract goal when the MBE/WBE/DBE:

- Keeps a regular workforce
- Is not “sharing” employees with non-MBE/WBE/DBE contractors, particularly the prime contractor or a subsidiary or affiliate
- Is responsible for all payroll and labor compliance requirements for all employees within the control of the company

4. MATERIALS

MBE/WBE/DBE Materials is counted towards the contract goal when the MBE/WBE/DBE:

- Negotiates the cost, arranges delivery, takes ownership and pays for the materials and supplies for the project
- Prepares the estimate, determines the quantity of material, and is responsible for the quality of the materials

5. PERFORMANCE

MBE/WBE/DBE Performance is counted towards the contract goal when the MBE/WBE/DBE:

- Responsible for the performance, management, and supervision of a distinct element of the work, in accordance with normal business practice.
- Assumes financial risk appropriate for the amount of work to be performed.

COMMERCIALLY USEFUL FUNCTION PER CITY AND FEDERAL REGULATIONS

Per City of Chicago Ordinance – 2-92-670

(d) “Commercially Useful Function” means a 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 venture.

Per Federal Regulations 49 CFR 26.55

(1) A DBE performs a “Commercially Useful Function” when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a “Commercially Useful Function” if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a “Commercially Useful Function.”

Resources

Website & Social Media

The City of Chicago is committed to the highest level of transparency to its citizens and the vendor community. A wealth of information is available on the DPS website: www.cityofchicago.org/dps



What you can find on the DPS Website:

Quarterly Buying Plan – 18 month forecast of hundreds of contracting opportunities for all 27 user departments that DPS services. Includes information about the anticipated advertisement date, term length, funding source, sub-contracting opportunities



Rules, Regulations and Ordinances – A listing of the mandates set by federal, state and local government. Includes information about rules governing bid incentives and compliance matters.

Awarded Contracts – Citywide Vendor, Contract and Payment Search page that allows users to view thousands of entries, including all awarded contracts, bid tabulations, competitive low bid pricing information for both winning and losing bids, and subcontractors.

MBE/WBE Directory – Online directory the City's 2700 certified firms. Searchable by vendor name, certification, or area of expertise.

MBE/WBE Forum – online chat room for prime and subcontractors to exchange information about potential partnership opportunities

Salvage Auctions - Online auctions for the sale of assets which include surplus equipment, vehicles, furniture and office equipment.

DPS Alerts – Registration for email alert system that will notify interest parties in all DPS news and bid opportunities

Events & Outreach – Online calendar of the workshops and events hosted by DPS. Users are able to view and register for classes, and add to their calendar.

Social Media

Chicago Department of Procurement Services is posting daily about all bid opportunities and addenda, details for upcoming classes and events, and information on how to do business with the City of Chicago.



www.facebook.com/ChicagoDPS



@ChicagoDPS

FREE WORKSHOPS

DPS offers 15 free workshops presented quarterly or monthly, to educate citizens and business owners about the fundamentals of procurement and the latest developments in procurement, certification and compliance.

To view the workshop calendar and register, go to www.cityofchicago.org/dpsevents

TRANSPARENCY

Meet the Department of Procurement Services

Do you have questions about how to become a successful bidder on City of Chicago contracting opportunities? Do you have questions about contract and bid specification language? Come and ask your questions to the City's Procurement Staff. You will be able to speak directly to procurement staff that is eager to assist you in learning about the City's Procurement process.

How to Navigate the DPS Website

This workshop will take you through all of the resources that are found on the DPS website. Come and see how the M/WBE forum works, how to do a search for MBE/WBE firms, how to search for awarded contracts and the bid take out lists, and much more.

PROCUREMENT

Doing Business with the City of Chicago

This workshop is designed to outline the role and responsibility of the Department of Procurement Services in the City's purchasing process.

Contracting 101: How to Respond to a Request for Proposal (RFP)

This workshop is designed to teach business owners how to respond to a City of Chicago RFP. Learn what evaluators look for in a RFP and how to avoid common mistakes.

City of Chicago Procurement Fundamentals

This workshop teaches vendors about the laws, policies, rules and regulations which govern the procurement process. Attendees will be afforded an opportunity to discuss how these various elements impact the bidding process.

DPS Incentive Overview: Getting the most from your bids

This workshop will discuss all of the ordinances that have been established regarding contracting with the City of Chicago, and offer an opportunity for individuals to ask questions.

Come learn about how DPS incentives and ordinances can help you do business with the City of Chicago. Learn about the Diversity Credit Program, Small Business Initiative, and Chicago First Local Business Bidding Preference, and many more.

Introduction to City Bonding Requirements

Learn valuable information about City required bid, payment and performance bonds. Professionals will be on hand to discuss the legal basis for the City bonds, the nuts and bolts of compliance and circumstances under which the City might make claims on a bond.

The JOC Information Session

A Job Order Contract (JOC) is another delivery method for the City of Chicago to procure construction services. JOC is a firm, fixed price, competitive bid with indefinite quantity, delivery method designed to produce a large number of multi-traded, repair and rehabilitation projects, as well as, minor new construction projects quickly.

CERTIFICATION & COMPLIANCE

How to Become Certified

This workshop will provide an overview of the five certification programs currently offered by the City of Chicago: Minority Owned Business Enterprise (MBE), Women Owned Business Enterprise (WBE), Business Enterprises Owned and/or Operated by Persons with Disabilities (BEPD), Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE). Receive information regarding the application process and how to avoid the most common mistakes applicants encounter when submitting their applications.

The Online Schedule A Application – MBE/WBE/BEPD

This workshop will give hands on experience filling out the MBE/WBE/BEPD Schedule A application. During this training you will learn where to find the online application, what documents will be needed, and how to upload the documents. Be prepared to work on your application.

The ABC's of DBE and ACDBE Certification

This workshop provides an overview of the City's DBE and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs. Topics include the application process and benefits of certification as part of the Illinois Unified Certification process with the City of Chicago, Illinois Department of Transportation, Chicago Transit Authority, Metra, and Pace.

Professional Declaration of Eligibility (PDE) Information Sessions

Recommended for Attorneys and Accountants: The Professional Declaration of Eligibility is an innovative way of allowing qualified attorney's and CPAs to review, verify and attest that an applicant meets the requirements to become certified with the City of Chicago for MBE or WBE. This workshop will outline who qualifies to use the PDE program.

Your Business Is Certified: Now What?

This workshop will provide newly certified MBE/WBE/DBE and BEPD firms valuable information on how to compete for City contracts in addition to providing information on resources available to firms.

Compliance Documentation 101

This workshop will provide vendors with an overview of the City's M/WBE, Equal Employment Opportunity and Chicago Residency Ordinance contracting requirements. Learn helpful tips on how to complete bid submittal compliance documentation and also gain insight on laws, rules and regulations governing compliance.

WEBINARS

Vendors are able to participate in online webinars, which are held multiple times per week, including evening and weekend sessions. Classes include: Online Certification Application and Contract Compliance Reporting.

DEFINITIONS

“Area of Specialty” means the description of a MBE’s or WBE’s activity that has been determined by the Chief Procurement Officer to be most reflective of the firm’s claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of the firm’s Area of Specialty. Credit toward the Contract Specific Goals shall be limited to the participation of firms performing within their Area of Specialty. The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within its Area of Specialty. It is the responsibility of the bidder or contractor to determine the capability and capacity of MBEs and WBEs to perform the work proposed.

“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.

“Construction Contract” means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer or agency of the City, other than the City Council, and whose cost is to be paid from City funds.

“Contract Specific Goals” means the subcontracting goals for MBE and WBE participation established for a particular contract.

“Contractor” means any person or business entity that has entered into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

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

“Directory” means the Directory of Minority Business MBEs and WBEs maintained and published by the Chief Procurement Officer. The Directory identifies firms that have been certified as MBEs and WBEs, and includes the date of their last certifications and the areas of specialty in which they have been certified. Bidders and contractors are responsible for verifying the current certification status of all proposed MBEs and WBEs.

“Good Faith Efforts” means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that, 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.

“Joint venture” means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills 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 are commensurate with its ownership interest.

“Minority 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.

“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 the 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.

“Women 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.

