

**Regulations Governing Certification of
Minority and Women-Owned Businesses
and Business Enterprises Owned or Operated
by People with Disabilities
For Non-Construction Contracts**



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Mayor**

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**CITY OF CHICAGO
REGULATIONS GOVERNING CERTIFICATION OF
MINORITY AND WOMEN-OWNED BUSINESSES
AND BUSINESS ENTERPRISES OWNED OR OPERATED
BY PEOPLE WITH DISABILITIES FOR NON-CONSTRUCTION CONTRACTS**

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**CITY OF CHICAGO
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MINORITY AND WOMEN-OWNED BUSINESSES
AND BUSINESS ENTERPRISES OWNED OR OPERATED
BY PEOPLE WITH DISABILITIES**

I. PURPOSE AND APPLICABILITY

These regulations are implemented as a result of Chapter [2-92-420](#) et. seq. of the amended Municipal Code (hereinafter “Ordinance”) authorizing a Minority and Women-Owned Business Enterprise Procurement Program and, except as otherwise provided herein, shall be used by the Chief Procurement Officer in all final actions with regard to determining the status of a firm as a "Minority Business Enterprise" (hereinafter referred to as "MBE"), a "Women Business Enterprise" (hereinafter referred to as "WBE"), and a Business Enterprise Owned or Operated by People with Disabilities (BEPD) for City procurement purposes. The Ordinance mandates that the City of Chicago use its purchasing functions to provide and enhance competitive opportunities for minority and women-owned businesses located within the six county region of Cook, DuPage, Kane, Lake, McHenry and Will in the State of Illinois.

Any person who submits any document to the City affirms under penalty of perjury that the information and representations contained therein are true and correct to the best of their knowledge.

II. EFFECTIVE DATE

These revised regulations shall be effective as of January 30, 2014, and shall be applicable to all requests for MBE, WBE and BEPD certification and continued eligibility.

III. POLICY

It is the policy of the City of Chicago, Illinois (hereinafter “City”) that MBEs , WBEs and BEPDs, as those terms are defined in the Municipal Code of the City of Chicago, and in these Regulations, shall have the maximum feasible opportunity to participate fully in all contracts financed in whole or in part with City funds, or funds over which the City has control. A major objective of that policy is the modification and/or elimination, within the confines of applicable law, of City procurement practices and policies which heretofore have denied legitimate businesses owned and controlled by women and racial/ethnic minorities, meaningful opportunities to participate in City awarded contracts. The denial of such opportunities has impeded the social progress and economic development of the City.

The Ordinance implements the City’s policy to employ all lawful means to increase the participation of MBEs and WBEs in City contracts. However, the establishment of Section [2-92-420](#) et. seq. of the Municipal Code authorizing a City-initiated program to provide unique benefits historically denied MBEs and WBEs also requires the promulgation of regulations to permit identification, certification and continued eligibility of businesses legitimately entitled to be beneficiaries of MBE and/or WBE status for City contracting purposes. These regulations are intended to address the City’s objectives in that regard.

Indications are that, as City procurement practices reflect more of the MBE and WBE participation objectives and requirements of the Ordinance, incentives for ineligible persons and businesses to devise schemes and business arrangements to illegally participate in the City's MBE/WBE program will increase. These certification regulations are intended to prevent the infiltration into that program of "front" firms, i.e., those not owned and controlled by minorities or women. However, this certification process is to be viewed as only a single component of an overall MBE/WBE program that shall include post-certification monitoring of firms certified as MBEs and/or WBEs to determine their entitlement to continued certification, and the imposition of appropriate penalties against persons or entities determined to have violated these regulations or provided assistance to those obtaining MBE and/or WBE certification by illegal means. The Small Business Act (15 U.S.C.A. 645(d)) provides that anyone who misrepresents the status of any concern as a small business or a concern owned and controlled by socially and economically disadvantaged individuals to obtain a contract is subject to penalties including fines, imprisonment, suspension, debarment, and program ineligibility.

IV. AUTHORITY AND MBE/WBE CONTRACT REQUIREMENTS

The authority to issue these regulations is derived in part from the Ordinance which mandates in the promulgation of regulations governing certification of MBE, WBE and BEPD applicants, and initiation of investigatory proceedings incident to monitoring such firms' continued entitlement to certification. The Ordinance also directs the Chief Procurement Officer to establish an overall goal of awarding not less than twenty-five percent (25%) and five percent (5%) of the annual dollar value of all City contracts to MBEs and WBEs, respectively.

The certification of Local Businesses owned by one or more members of a Minority Group which are certified by the City as MBE or WBE at the effective date of this Ordinance shall not be affected by the adoption of this Ordinance until certification expires, in accordance with Section [2-92-490\(b\)](#). Each application for certification shall be in writing, and executed under oath by an officer or owner of the applicant, and shall contain such information as may assist the Chief Procurement Officer. Further, as a means of ensuring compliance with that goal, the Ordinance provides generally that City contracts awarded for the provision of goods and/or services, whether awarded by competitive bidding or otherwise, shall contain contractor commitments for the expenditure of not less than twenty-five percent (25%) of the total dollar value of such contracts (including modifications and amendments) with MBEs, and not less than five percent (5%) of the total dollar value of such contracts with WBEs, or the applicable annual percentage as stated in the Ordinance.

Pursuant to Section [2-92-440\(g\)](#) of the Ordinance, the Chief Procurement Officer is directed to award City contracts requiring the expenditure of funds not exceeding \$10,000 to MBEs and WBEs, to the extent practicable. In addition, all City departments have the responsibility for, and shall undertake, all feasible means to solicit and utilize MBEs and WBEs in their contracts. All actions by and decisions of the City with respect to certification, continued eligibility, denial of certification and de-certification of any Applicant as an MBE or WBE shall be made by the Chief Procurement Officer, or in his name by his designee.

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

Certification shall be mandatory for all firms requesting MBE, WBE and/or BEPD status on a City contract, whether as a prime contractor, subcontractor, joint venture partner, Target Market participant or otherwise. Until there has been a final determination regarding an Applicant's certification, participation by such business on City contracts as MBE, WBE and/or BEPD shall not be counted toward the established goals. However, the absence of City MBE/WBE/BEPD certification shall not prohibit any qualified certification applicant from competing for and participating in City contracts as non-MBE/WBE/BEPD participants, except in cases of certification denials based upon misrepresentation or other unlawful conduct.

These regulations are intended to be consistent with the United States Department of Transportation (hereinafter referred to as "DOT") regulations governing DBE certification of businesses participating in DOT-funded contracts. DOT regulations are published in Title 49, Part 23 of the Code of Federal Regulations. In cases of conflict between City of Chicago regulations governing certification of minority and women-owned businesses and DOT regulations to determine DBE eligibility for certification on DOT-funded contracts only, DOT regulations shall prevail. In all other situations, City of Chicago regulations shall prevail.

V. DEFINITIONS

1. "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.
2. "APPLICANT" means any person or firm who submits an application for certification, or No Change Affidavit (including documents or information associated therewith) to the Chief Procurement Officer for determination of eligibility as a MBE or WBE.
3. "BOARD" means the Affirmative Action Advisory Board established in Section [2-92-510](#) of the Ordinance.
4. "BROKER" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory, and provides no commercially useful function other than acting as a conduit between a supplier and a customer.
5. "BUSINESS ENTERPRISE OWNED OR OPERATED BY PEOPLE WITH DISABILITIES" or "B.E.P.D." means an entity, except for those entities that constitute an established business based on the size standards set forth in Section [2-92-420](#) of the Municipal Code, or individual that is certified by the Chief Procurement Officer or a certifying agency in accordance with Section [2-92-495](#) of this Code, as meeting one of the following criteria:
 - (i) A for-profit corporation, partnership, association, business trust, estate, or other legal entity that is either owned (directly, indirectly or beneficially) 51 percent or more by one or more individuals with disabilities and whose management and daily business operations are controlled by one or more individuals with disabilities; or
 - (ii) A nonprofit corporation that employs individuals with disabilities, pays them an hourly wage that is not less than the federal minimum wage and not on a piece work basis, and a) whose management and daily business operations are controlled by one or more individuals

with disabilities, and b) whose corporate purpose includes providing, directly or indirectly, services to individuals with disabilities; or

(iii) An individual with a disability who is contracting with the city as a sole proprietorship or individually.

Note that, for purposes of BEPDs only, these regulations shall also apply to certification in construction related areas of specialty.

6. "CERTIFYING AGENCY" means an entity designated by the Chief Procurement Officer under Section [2-92-495](#) of the Municipal Code of Chicago.
7. "CHIEF PROCUREMENT OFFICER" means the Chief Procurement Officer of the Department of Procurement Services or his or her designee.
8. "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. See also Appendix A hereto.
9. "COMPLIANCE INTEGRITY AGREEMENT" means an agreement between the Chief Procurement Officer and an individual or entity that individual or entity will implement certain compliance measures designed to ensure the integrity of the certification program.
10. "CONSTRUCTION" means constructing, repairing or improving any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure and includes North American Industry Classification System (NAICS) codes 236115 through 238990.
11. "CONTRACTOR" means any person or business entity that shall enter into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.
12. "DEPARTMENT" means the Department of Procurement Services.
13. "DISABILITY" means, with respect to an individual:
 - (i) A medically diagnosed severe physical or mental impairment that substantially limits one or more of the major life activities of that individual, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills in terms of employability;
 - (ii) A record of such an impairment; or
 - (iii) Being regarded as having such an impairment.
14. "ESTABLISHED BUSINESS" means a business entity, which by virtue of its size and capacity for competing in the markets in which it operates, does not need to be a full participant in the Program in order to effectuate the purposes of the Program.
15. "FAMILIAL RELATIONSHIP" means any person who is related to the owner of an applicant for certification as spouse or domestic partner or as any of the following, whether by blood or by adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent,

grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

16. "GRADUATION" is the determination whether or not a certified MBE, WBE or BEPD is a non-participating established business.
17. "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") which has the majority of its regular, full-time work force located within the Six-County Region.
18. "KNOWINGLY" means that a person, with respect to information, (1) has actual knowledge of the information; or (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard for the truth or falsity of the information, and no proof of specific intent to defraud is required.
19. "MINORITY" or "MINORITY GROUP" means those individuals or groups who are citizens of the United States (or lawfully admitted permanent residents) who are in any of the following racial/ethnic groups:
 - i. African-American or Black (persons having origins in any of the black racial groups of Africa);
 - ii. Hispanic (persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race);
 - iii. Asian American (persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
 - iv. Other groups, or other individuals, found by the Affirmative Action Advisory Board to be socially and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in Chicago area markets or to do business with the City.

NOTE: Any member of an ethnic group not identified above who is seeking certification in the MBE/WBE program should submit, with the Schedule A application, a formal request to the Affirmative Action Advisory Board for consideration.

20. "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 and which is not an Established Business.
21. "NON-PARTICIPATING ESTABLISHED BUSINESS" means an established business which is not eligible to participate in the City's minority- and women- owned business enterprise procurement program as set forth in Section 2-92-470 of the Municipal Code of Chicago.
22. "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.

23. "PARTICIPATING ESTABLISHED BUSINESS" means an established business which is eligible to participate in the City's minority- and women- owned business enterprise procurement program as set forth in Section 2-92-470 of the Municipal Code of Chicago.
24. "PROFESSIONAL DECLARATION OF ELIGIBILITY" means the submission to the department of a signed, attestation that: (A) is made by the professional or certifying agency identified in a certification application; and (B) accompanies an application filed with the department by such professional or certifying agency; and (C) attests that such application does not contain any false information; and (D) attests that the applicant meets the requirements of the certification program.
25. "PROFESSIONAL" means the Illinois licensed attorney or certified public accountant as applicable, identified as such on a certification application and accompanying documentation.
26. "TARGET MARKET" means a contract designated for competition limited to MBEs or WBEs by either a negotiated or competitive bid process pursuant to Section [2-92-460](#).
27. "WILLFUL ERROR" means an error that an applicant or a professional or certifying agency knowingly made in order to obtain certification or otherwise circumvent these regulations.
28. "WOMEN-OWNED BUSINESS or WBE" means a small local business which has been awarded certification by the City and which is at least 51% owned by one or more women or, in the case of a publicly held corporation, 51% of the stock of which is owned by one or more women, whose management and daily business operations are controlled by one or more women, and which is not an Established Business.

VI. ELIGIBILITY STANDARDS

The eligibility standards herein shall be used in determinations of Applicant eligibility for certification and continued eligibility as an MBE, WBE or BEPD. Applicant eligibility shall be thoroughly investigated and reviewed annually. The investigative techniques that shall be employed by the Chief Procurement Officer in determining the eligibility of Applicants will include some or all of the following, as appropriate: review of the application and supporting documentation; individual interviews of principal management officials and/or owners of Applicants; site visits of Applicant's facilities; and informational solicitations from individuals, organizations and agencies having knowledge of the Applicant, and its management, ownership and proffered areas of specialty or expertise.

Use of additional investigative techniques shall be made in appropriate cases to verify Applicant's Schedule A or No Change Affidavit representations. In appropriate cases, consideration shall be given to publication by the Chief Procurement Officer, in newspapers of general circulation in the locale of the Applicant's alleged place of business, of notice of Applicant's submission of a Schedule A or No Change Affidavit, identities of alleged principal officers and/or owners, alleged ownership status (i.e., MBE or WBE), and principal area(s) of specialty or expertise. False, erroneous or misleading statements by any Applicant regarding its performance on contracts with any person, or involvement in contracting or certification-related irregularities with any private or governmental entity, and non-compliance with reasonable requests of the City for information concerning MBE, WBE or BEPD eligibility, shall be accorded substantial weight in

determining the Applicant's entitlement to certification or continued certification as an MBE, WBE or BEPD.

The certification process established by the City is intended to ensure that only small business firms independently owned and controlled in both substance and form by one or more socially and economically disadvantaged persons are certified. Firms who seek certification must be operational and, except for BEPD firms, in business for a 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.

The review of each application will involve scrutiny of the following evidence:

- A. Documents evidencing ethnicity and gender, e.g., birth certificates, naturalization papers or driver's license;
- B. Documents evidencing ownership of record include Articles of Incorporation, By-laws, Partnership agreements, copies of issued stock certificates, copies of shareholder agreements, minutes of initial and most recent Board of Directors' meetings and corporate income tax returns;
- C. Documentation of ownership that is demonstrated as acquired through real and substantial contributions of expertise, capital or other tangible personal assets;
- D. Documents establishing that the contributions are derived from the assets of the individual(s) include bank receipts, stock certificates, and corporate minutes;
- E. Where expertise is used as the contribution to acquire ownership interest, the applicant should demonstrate expertise in the firm's critical operations.

VII. ELIGIBILITY CRITERIA

- A. An Applicant for MBE certification must be a business entity which is at least 51% owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock is owned by one or more members of one or more minority groups; and whose management and daily business operations are controlled by one or more such individuals.
- B. An Applicant for WBE certification must be a business entity which is at least 51% owned by one or more women, or in the case of a publicly held corporation, 51% of the stock is owned by one or more women; and whose management and daily business operations are controlled by one or more such women.
- C. An Applicant for BEPD certification must be a firm owned or operated by individuals with disabilities that meet one of the following criteria:
 - a. A for-profit corporation, partnership, association, business trust, estate or other legal entity that is either owned (directly, indirectly or beneficially) 51 percent or more by one or more individuals with disabilities and whose management and daily business operations are controlled by one or more individuals with disabilities; or
 - b. A nonprofit corporation that employs individuals with disabilities, pays them an hourly wage that is not less than the federal minimum wage and not on a piece work basis, and (i) whose management and daily business operations are controlled by one or more individuals

with disabilities, and (ii) whose corporate purpose includes providing, directly or indirectly, services to individuals with disabilities; or

- c. An individual with a disability who is contracting with the City as a sole proprietorship or individually.
- D. Determinations of ownership in the Applicant firm by minorities and women shall be made without regard to community property laws of any state. It shall be the responsibility of all Applicants to establish, by clear and convincing evidence, that they are owned and controlled by minorities and/or women. The following criteria apply:
- a. The owner of the applicant firm must demonstrate financial resources to acquire ownership and past experience that verifies demonstrated capability to engage in business in the area for which certification is sought. It is of no consequence that other partners/owners, spouses or employees have these abilities, or resources;
 - b. Control is comprised of two parts: managerial and operational. Must exercise responsibility for the critical areas of the Applicant's daily operations and independent and unilateral business decisions;
 - c. The minority or women owner(s) must demonstrate that he/she independently makes basic decisions in daily operations;
 - d. If a corporation, exercise control of the Board of Directors;
 - e. If a partnership, exercise control of the business enterprise as documented in a partnership agreement;
 - f. If a limited liability company, exercise control of the company, as documented in the articles of organization or the regulations; and
 - g. Possess adequate assets or resources to operate self-sufficiently in areas of finance, bonding, supervision, personnel, equipment, materials, and facilities; and
 - h. Owners must accept risks and profits commensurate with their ownership interests, as well as receive at least 51% of any dividends paid upon liquidation.
- E. 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. Minority and/or women owners shall enjoy all customary incidents of ownership and shall 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:
- a. An ability to transfer stock, title, and possession;
 - b. Verifiable assets for acquisition derived from independently owned holdings without benefit of a transfer of assets or gift from non-minority person(s) by other means;

- c. Documentation should 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.
- F. Securities which represent ownership of the Applicant by minorities or women shall be 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 Applicant, shall be excluded from the determination of whether the Applicant is owned and controlled by minorities or women.
- G. (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 be limited to:

- a. Promises to contribute capital or expertise in the future;
- b. Notes payable from minority or women owners to the Applicant or owners who are not minorities or women;
- c. Participation in Applicant firm by alleged minority or women owners as mere employees; and

- d. Provision by any alleged owner of goods, services, or equipment having an actual or estimated value based upon industry standards substantially less than the value attributed in Applicant's Schedule A or No Change Affidavit.
- H. All MBEs, WBEs, or BEPDs must be viable and independent businesses. "Viability" of the Applicant shall be examined with reference to its capital structure as determined from audited or auditable financial statements, or income projections when the Applicant is a new business. Viability will also be determined by review of the following criteria, although review may not be limited to these areas:
1. 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 principal area(s) of specialty/expertise;
 2. Access to real properties and facilities from which to conduct day-to-day business operations;
 3. Employment of and/or access to employment of persons in sufficient numbers and with expertise essential to satisfactorily contract performance in its proffered area(s) of specialty/expertise;
 4. The Applicant's ownership of and/or access to equipment, goods, supplies, etc., essential to its satisfactory performance in its proffered area(s) of specialty/expertise; and
 5. Good standing with the Secretary of State or other relevant authority of the state in which the Applicant is incorporated or organized.
- I. "Independence" shall be examined with reference to the perceived ability of the Applicant to perform in its area(s) of specialty/expertise without substantial reliance upon finances, resources, expertise, manpower, facilities, or equipment of non-minority or non-women business enterprises. Recognition of the Applicant as a separate and distinct entity by governmental taxing authorities shall not be dispositive of any Applicant's assertions of independence. Independence shall be established by reviewing the following criteria:
1. Date business was established;
 2. Degree to which financial, equipment leasing, business and other relationships with non-minority or non-women owned firms vary from normal industry practice;
 3. Determination of adequacy of expertise without the need to rely upon a non-minority or male individual.
- J. Minority and Women-Owned Businesses 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.

- K. 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 to otherwise meet the viability and/or independence criteria herein:
1. Applicant's status as a party to any long term (i.e., more than three years) contract, lease or lease agreements with non-minority/male persons or firms;
 2. Applicant's status as a party to any contract, lease, or lease agreements on terms at variance with industry standards or prudent business practices;
 3. Interlocking stock ownership of the Applicant and non-minority/male businesses in the same or related industry;
 4. Common directorates/officers between the Applicant and non-minority/male owned businesses;
 5. Applicant's use of employees, equipment, expertise or facilities "shared" with or obtained from non-minority/male-owned businesses;
 6. The receipt by the Applicant's non-minority/male owners of financial benefits (e.g., dividends, loans, salaries, and distributions) from the Applicant which exceed their proportionate ownership interests;
 7. The Applicant's failure, after a reasonable period, to demonstrate an ability to operate as a viable entity without continuing substantial reliance upon equipment, facilities, leasing and/or creditor-debtor relationships with non-minorities/males;
 8. Newly established firms and firms whose ownership and/or control has changed since the date of the advertisement of a specification or the date its applicant has indicated that a bid response will be submitted;
 9. Any previous and/or continuing employer-employee relationship among or 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 independent ownership and management responsibilities and capabilities contemplated by these regulations.
- L. Minority or women owners shall, 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 Applicant's major and essential operations. No formal or informal restrictions of any kind shall 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 agreements, or charter requirements shall 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 to determine conflicts with the ownership and control requirements of these regulations.
- M. For purposes of these regulations, 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 such person in the management of the Applicant's day-to-day activities. In addition, current employment histories of all owners and managers shall be requested, reviewed and verified to determine the administrative and business expertise and involvement by such persons in activities and employment which may contradict any representation of full-time management participation.

- N. Absentee management or ownership by any minority or woman owner who does not assume and exercise an active and substantial role in Applicant's day-to-day management shall be considered in the determination of whether Applicant is owned and controlled by minorities or women.
- O. 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.
- P. All information provided by Applicant on any Schedule A or No Change Affidavit shall demonstrate an Applicant's ability to obligate itself contractually, without prior approval of non-minorities, to a prime contractor, joint venture and/or the City in the performance of a contract, subcontract or legally binding agreement, whichever is applicable, and to perform the majority of that which it is obligated to perform through the use of its own employees and/or equipment.
- Q. Evidence of Applicant's certification as MBE/WBE/BEPD (or Disadvantaged Business Enterprise, as that term is defined in [49 CFR Part 26](#)) by another governmental body or agency shall be a factor, but is not dispositive in the determination of Applicant's eligibility for certification by the City.
- R. An Applicant acting as a broker in any area of specialty is not eligible for certification in that area of specialty because a broker does not perform a commercially useful function. In addition, the performance of a certified firm that is acting as a broker with respect to a particular contract will not be credited toward MBE/WBE/BEPD participation in that contract. For guidance on determining whether a firm performs a commercially useful function, see Appendix A hereto.

VIII. APPLICATION FOR CERTIFICATION AND CONTINUED ELIGIBILITY

- A. All prospective applicants requesting initial certification as an MBE, WBE and/or BEPD shall file with the City's Department of Procurement Services a completed Schedule A - Certification Declaration Affidavit for Minority Business Enterprise (MBE) Women Business Enterprise (WBE) and/or BEPD, or other forms as required by the Department of Procurement Services. MBE, WBE and BEPD certification awarded any Applicant by the City shall be valid for five years from the effective date of the certification and only as to the area(s) of specialty or expertise specified therein. The firm will be decertified if it fails to annually re-validate its certification during the five year period.
- B. Any Firm currently certified as MBE/WBE/BEPD and requesting MBE/WBE/BEPD continued eligibility shall file with the Department of Procurement Services a completed No Change Affidavit 60 days prior to the firms' certification expiration date. All subsequent submittals may be made in the form of a No Change Affidavit provided no changes in ownership, management or

control have occurred and the certification area remains the same. The No Change Affidavit should be filed no later than the end of the tenth calendar month following the effective date of the Applicant's last MBE/WBE/BEPD certification.

- C. Certified MBE/WBE/BEPDs who fail to file the No Change Affidavit before the expiration of their current certification period shall be deemed to have had their certification lapse as of the end of the certification period and will be ineligible to participate as an MBE/WBE/BEPD until further certification is issued by the Chief Procurement Officer. Applicants who have allowed certification to lapse over thirty (30) days must reapply by completing a Schedule A.
- D. All Schedule As or No Change Affidavits (inclusive of pertinent documents) shall be executed 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, or Sole Owner of a Sole Proprietorship, such party must also submit evidence of his/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). As a condition of certification or continued certification, however, the Chief Procurement Officer shall be authorized to request at any time from any Applicant such additional information as may be deemed relevant to any Applicant's status as an MBE/WBE, including an updated Schedule A.
- E. 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/BEPD 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:
 - i) 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;
 - ii) is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
 - iii) 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;
 - iv) 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 (iii);
 - v) 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;
 - vi) 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.
 - vii) 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;
- viii) 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;
 - ix) violated the provisions of Chicago Municipal Code Section [2-92-610](#) (living wage ordinance);
 - x) 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;
 - xi) 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](#);
- F. Applicant must provide 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, to the best of the Applicant's knowledge after reasonable inquiry.
- G. Applicant must provide, to the best of the Applicant's knowledge after reasonable inquiry, 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.
- H. No principal, officer, owner or any person having decision-making authority or any direct or indirect interest in the Applicant may, within one year of the date of such form, have owned a direct or indirect interest in, or been financially affiliated with, any firm to which MBE/WBE/BEPD 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/BEPD certification that was filed with any governmental agency and was signed by such person.
- I. During any periods that an MBE/WBE/BEPD certification is effective, all books and records in the Applicant's and its agent's possession, which may prove or disprove MBE/WBE/BEPD eligibility, shall be open for inspection and examination by the Chief Procurement Officer, or his or her designee, upon reasonable notice.
- J. Schedule A or No Change Affidavit forms filed by any Applicant for MBE/WBE/BEPD certification shall include sufficient written authorizations or shall permit the Chief Procurement Officer to obtain from third persons (e.g., banks, utility companies, business references, and

lessors/lessees) such information as may be deemed relevant to any Applicant's eligibility for MBE/WBE/BEPD certification.

- K. Until certification of an Applicant by the City as an MBE/WBE/BEPD, participation by such Applicant as an MBE/WBE/BEPD in City awarded contracts shall not be counted toward fulfillment of established goals. The absence of certification, however, shall in no way affect any Applicant's right to bid or submit a proposal for any City contract as a non-MBE/WBE/BEPD.
- L. Changes during the pendency of the application in the Applicant's ownership, management, officers or financial relationships which may impact on the Applicant's eligibility as an MBE/WBE/BEPD under these regulations must be communicated by the Applicant in writing to the Chief Procurement Officer within ten (10) days of such change(s). Failure to communicate such changes as required herein shall constitute grounds for the denial for certification of such Applicant, or de-certification.

Following the effective date of these regulations, certification as MBE/WBE/BEPD shall be limited to the status (e.g., MBE, WBE and/or BEPD) requested by the Applicant and which is determined by the Chief Procurement Officer to be most reflective of the Applicant's claimed specialty or expertise. Applicants seeking participation in City contracts in a status or in an area of specialty or expertise different from that for which MBE/WBE/BEPD certification was initially awarded shall request certification in such new status or additional area(s). The request shall contain information sufficient to establish that a change in status or area(s) of specialty or expertise is warranted. Until certification, participation as MBE/WBE/BEPD in any City contract in a different status or additional area shall be denied. The listing used by the City in categorizing areas of specialty or expertise is a part of the application and must be used by the Applicant in submitting an application for certification. 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/>.

It is the responsibility of the applicant to provide the information deemed necessary by the certifying agency to determine eligibility. The burden of proof of eligibility is upon the applicant. The following guidelines will help to clarify the application process:

1. The City's process shall secure all necessary information from applicants through a well-defined application procedure and review process. It is emphasized that certification by the City is not binding on another governmental entity.
2. The applicant is required to provide evidence in support of fulfilling all MBE/WBE/BEPD eligibility standards set forth in the City's MBE/WBE/BEPD Certification Regulations. Also, the files shall contain all appropriate documentation in support of the certification of the firm. The following is a list of those materials which may be requested as a part of the application of Minority and Women Business Enterprises:

Fiscal Control

Financial records (tax returns) for at least three previous years; Copy of loan agreements (past and present);

Evidence of capital contribution to start-up or to acquire ownership; Titles to equipment and/or

vehicles;
Copies of bank signature authorization cards;
Cancelled checks;

Ownership

Copies of partnership agreements;
Work history of the firm;
Resumes of principals;
Evidence of capital contribution to start-up or to acquire ownership; Articles of Incorporation and by-laws;
Copy of Minutes of Board of Directors' and/or stockholders' meeting Copy of stock certificates and/or ledgers;
Interviews with references and on-site visit;
Titles to equipment and/or vehicles;
Income tax returns;

Proof of Ethnicity/Gender/Citizenship

Birth certificate; Naturalization papers;
Passport;
Driver's license

Expertise

Resumes of principals;
Work history of the firm;
Interviews and on-site visit;
Evidence of contract negotiation and execution

Disability (BEPD only)

Schedule G, Disability Declaration Affidavit for Business Enterprise owned by People with Disabilities (BEPD);
Physician's Certification Regarding Disability.

IX. CERTIFICATION AND NO CHANGE AFFIDAVIT PROCEDURES

- A. 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.

- B. With the Chief Procurement Officer's receipt of any Schedule A or No Change Affidavit, whichever is applicable, such form shall be thoroughly reviewed for material omissions of, or deficiencies with respect to information requested to be submitted on the Certification Checklist of forms Schedule A, or No Change Affidavit. Forms containing such omissions or deficiencies shall be returned to the Applicant, along with notice from the Chief Procurement Officer delineating the nature of the omissions or deficiencies. Forms returned because of material omissions or deficiencies shall not be subject to the ninety (90) day decision requirement referred to in Subsection E herein until such forms are resubmitted and determined to be complete by the Chief Procurement Officer. The date and time stamp on a resubmitted completed form shall conclusively establish the receipt date of such form for purpose of the ninety (90) day decision requirement of subsection E herein.
- C. Staff Review. Upon receipt of the completed Schedule A or No Change Affidavit and written acknowledgment of receipt being sent to the Applicant, the application for certification or No Change Affidavit will be reviewed by the Chief Procurement Officer's staff assigned to the Certification Unit. This review may include, among other things, site visits, personal interviews with the Applicant, and review of specific additional information in support of the application as requested by the staff.

Any request for additional information shall be in writing and will specify that the Applicant must respond to the request generally within thirty (30) calendar days. If the Applicant is unable to respond to the request for additional information within the time specified, the Applicant may request that additional time to respond be granted, provided that Applicant consents to a corresponding extension of time of the ninety (90) day decision requirement of subsection E herein. If the Applicant fails to respond to the staffs request for additional information within the thirty (30) calendar day period and does not request an extension of time to respond, the staff will close the file and notify the applicant that the application is no longer being considered.

- D. The Chief Procurement Officer shall issue his/her determination granting the certification or continued eligibility of the Applicant as an MBE, WBE or BEPD, or an initial determination denying such certification or continued eligibility, in a time timely manner following the Chief Procurement Officer's receipt of a complete Schedule A or No Change Affidavit from the Applicant.
- E. An initial determination denying certification or continued eligibility (Preliminary Denial) shall inform the Applicant of all material facts and conclusions upon which the decision of the Chief Procurement Officer was based. It shall also afford the Applicant at least fifteen (15) calendar days from the date of the initial determination within which to present, in writing, such evidence as the Applicant deems appropriate to respond to the initial determination. All Applicant responses to a Preliminary Denial for certification or continued eligibility should contain sufficient facts and/or documentation to clearly establish eligibility. Any alterations to material facts or restructuring of Applicant subsequent to issuance of the initial determination will be considered pro forma only.
- F. All final actions and/or decisions of the Chief Procurement Officer with respect to the denial of certification or continued eligibility of any Applicant or MBE/WBE/BEPD shall be communicated in writing to such Applicant or MBE/WBE/BEPD within thirty (30) business days of the date that a final determination has been made. The decision of the Chief Procurement Officer shall be final and cannot be appealed.

- G. Changes in an MBE/WBE/BEPD's ownership, management, officers or financial relationships which may impact on the MBE/WBE/BEPD's eligibility under these regulations must be communicated by the firm in writing within ten (10) business days of such change(s). Failure to communicate such changes as required herein shall constitute grounds for the denial of continued eligibility or de-certification of the business.

If the Chief Procurement Officer has reason to believe that the information contained on an MBE/WBE/BEPD's Schedule A or No Change Affidavit is inaccurate or incomplete, the Chief Procurement Officer may request the submission of a new form Schedule A or No Change Affidavit from any MBE/WBE/BEPD. Non-compliance with such request shall constitute grounds to deny certification of the Applicant, deny continued eligibility of an MBE/WBE/BEPD or to de-certify such an MBE/WBE/BEPD.

- J. A final order or finding by a court of competent jurisdiction or administrative tribunal that any Applicant, MBE/WBE/BEPD, or owner, officer or agent thereof, had 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 an MBE/WBE/BEPD.
- K. Nothing in these regulations shall 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 eligibility for certification as MBE/WBE/BEPD.
- L. On applications for continued eligibility, the Chief Procurement Officer shall consider all relevant factors in determining the Applicant's eligibility for continued eligibility, including, but not limited to, the Applicant's involvement in contracting and/or bidding irregularities with any private or governmental entity; non-compliance with reasonable requests by the City for information concerning MBE/WBE/BEPD eligibility or performance on any City contract; and submission of false, erroneous or misleading information to any private or governmental entity regarding Applicant's business activities.
- M. In the event a request for certification or continued eligibility of a business entity has been denied three (3) or more times in a five-year (5) period the Chief Procurement Officer may not consider an application from such business entity or its successors for a period of four (4) years from the date of the most recent denial.
- N. Any decision by the Chief Procurement Officer with respect to denial of continued eligibility shall not affect the MBE/WBE/BEPD certification status of any contractor on any City contract where the MBE/WBE/BEPD's performance was commenced prior to the effective date of final denial.

X. PROFESSIONAL DECLARATION OF ELIGIBILITY

The Professional Declaration of Eligibility Program is administered by the Department of Procurement Services. This program provides an additional certification option for eligible firms by allowing qualified attorneys, certified public accountants, and certifying agencies to attest that the applicant firm meets the requirements of the certification program and that the application package does not contain any false information. This program also allows professionals and certifying agencies to attest that the applicant for expansion of specialty areas meets the requirements of the certification program.

The Professional Declaration of Eligibility Program is only available for applicants for certification as a Minority Business Enterprise (MBE) or Woman Business Enterprise (WBE). The Program is not available for applicants for certification as a Business Enterprise Owned or Operated by People with Disabilities (BEPD), Disadvantaged Business Enterprise (DBE) or Airport Concession Disadvantaged Business Enterprise (ACDBE).

- A. The department reserves the right to suspend operation of the Professional Declaration of Eligibility Program as the Chief Procurement Officer deems necessary or appropriate, and to amend, repeal or otherwise modify the rules contained herein. Provided, however, that no such suspension, amendment, repeal or modification shall affect any certification application under review by the department at the time such suspension, amendment, repeal or modification occurs.
- B. Nothing in these rules shall be construed to prevent a firm from submitting a certification application to the department for review through the department's standard certification process.
- C. Firms not eligible for the Professional Declaration of Eligibility Program include, but are not limited to, the following:
 - (1) Applicants for DBE, ACDBE and BEPD certification;
 - (2) MBE or WBE applicants seeking certification in construction, as defined herein, or as a supplier or distributor, as defined by the City of Chicago Policy Regarding MBE, WBE, and BEPD Certification as a Supplier, Distributor, and/or Broker;
 - (3) Any firm that has been denied by the City of Chicago for certification in the previous three years;
 - (4) Any firm that has withdrawn a certification application with the City of Chicago within the previous three years; and
 - (5) Any firm that has graduated from the City of Chicago's certification program within the previous three years.
- D. If there is a dispute over whether a firm is eligible for certification under these rules, a final determination of eligibility shall be made by the Chief Procurement Officer.
- E. No professional or certifying agency shall be eligible to participate in the Professional Declaration of Eligibility Program unless all of the following requirements are met:
 - (1) The professional is properly licensed by the State of Illinois and has been so licensed for at least three years; and
 - (2) The professional or certifying agency remains eligible to participate in the Professional Declaration of Eligibility program.
- F. For each application, the professional or certifying agency is required to submit to the department, on a form provided by the Department of Procurement Services, a signed and dated Professional Declaration of Eligibility Statement in which the professional or certifying agency shall be required to attest to the city and to the person hiring or otherwise retaining the professional of record for such application that:
 - (1) the professional is, as applicable, a licensed attorney or certified public accountant in the State of Illinois; has held such license for at least three years; and is in good standing with the applicable licensing board; and
 - (2) the professional or certifying agency does not have a familial relationship with the

- owner of the firm applying for certification; and
- (3) the professional or certifying agency does not have a ownership interest in the firm applying for certification; and
- (4) the professional has not been convicted or found liable of: (1) knowingly making a false statement of material fact on or in connection with any City application, or (2) knowingly submitting in support of any City application any document containing false or fraudulent information, or (3) knowingly affixing a false signature to any City application; and
- (5) the professional or certifying agency has not been debarred or otherwise found to be ineligible to do business with the City pursuant to Section [2-92-320](#) or Section [1-23-020](#) of the Municipal Code;
- (6) the professional or certifying agency understands the City of Chicago certification rules and regulations; and
- (7) the professional or certifying agency conducted a site visit of the applicant firm's facility(s) to determine eligibility for as an MBE or WBE; and
- (8) the attached application: (1) is complete; and (2) is, as of the date of submission, in accordance with the requirements of the Chicago MBE/WBE program ordinance and regulations and all other applicable laws; and
- (9) the applicant firm is eligible for certification as an MBE and/or WBE, or the applicant firm is eligible for certification in the expanded specialty area;
- (10) to the best of their knowledge, all information and assertions made by the professional or certifying agency in the application and documents submitted in support of such application are true and correct; and
- (11) if the professional or certifying agency becomes aware of any false or inaccurate statement in the certification application, or any document submitted in support of such application, at any time and regardless of whether such false or inaccurate statement was made by such professional of record or by his agent or employee, the professional or certifying agency will immediately take all measures necessary to notify the Department of Procurement Services of such false or inaccurate statement; and
- (12) the professional or certifying agency understands that the Chief Procurement Officer will rely upon the truth and accuracy of the attestations contained in the Professional Declaration of Eligibility Statement as the basis for issuing a certification under the City's Professional Declaration of Eligibility program; and
- (13) the professional or certifying agency understands that the application is being approved for a certification subject to audit and/or field inspection by the City and is subject to decertification by the Chief Procurement Officer.

- G. Nothing in this rule shall be construed to prohibit the Chief Procurement Officer from requiring the professional or certifying agency to make additional attestations in the Professional Declaration of Eligibility Statement.
- H. No application shall be submitted by a professional or certifying agency to the department for Professional Declaration of Eligibility unless the applicant: (A) meets all of the requirements as of MBE or WBE certification; and (B) submits its application along with all completed documentation which demonstrates the applicant's compliance with these regulations.
- I. Upon completing a review of the Professional Declaration of Eligibility, the Department of Procurement Services will notify the applicant whether the requested certification will be issued under the Professional Declaration of Eligibility Program.

- J. All Professional Declaration of Eligibility applications are subject to audit by the Department of Procurement Services to determine whether the firm is in compliance with the requirements of the these regulations.
- K. Penalties:
Following an audit by the Department of Procurement Services, the following penalties shall apply:
1. Non-willful technical errors, as determined by the Chief Procurement Officer, made by the professional or certifying agency which did not result in the proposed decertification of the applicant firm:
 - a) First error: The Department of Procurement Services will issue a Notice to the professional or certifying agency informing him/her of the error and the need for the professional or certifying agency to review these regulations.
 - b) Second error: The Department of Procurement Services issue a notice to the professional or certifying agency informing him/her of the error and the requirement to attend mandatory compliance sessions on the requirements of these regulations.
 - c) Third error: The Department of Procurement Services will issue a notice to the professional or certifying agency informing him/her of the error and that the professional or certifying agency is no longer eligible to participate in the Professional Declaration of Eligibility Program.
 2. Non-willful errors, as determined by the Chief Procurement Officer, made by the professional or certifying agency which resulted in the proposed decertification of the applicant firm:
 - a) First error: The Department of Procurement Services will issue a Notice to the professional or certifying agency informing him/her of the error and the requirement that the professional or certifying agency adopt a Compliance Integrity Agreement;
 - b) Second error: The Department of Procurement Services will issue a notice to the professional or certifying agency informing him/her of the error and that the professional or certifying agency is no longer eligible to participate in the Professional Declaration of Eligibility Program.
 3. Willful errors, as determined by the Chief Procurement Officer, made by the professional or certifying agency without regard to the appropriateness of the certification:
 - a) First error: The Department of Procurement Services will issue a notice to the professional or certifying agency informing him/her of the willful error and that the professional or certifying agency is no longer eligible to participate in the Professional Declaration of Eligibility Program.
 - b) Information regarding the willful errors shall be sent to the professional's respective licensing board for possible disciplinary action. In addition, the Department of Procurement Services shall refer the professional or certifying agency to the Office of the Inspector General for investigation and to the Department of Law for prosecution under the City's False Statements ordinance.
- L. In the event that two or more professionals employed by a firm are deemed ineligible to participate in the Professional Declaration of Eligibility Program, the Chief Procurement Officer may deem the firm that employs(ed) the professionals also ineligible to participate.

- M. Nothing in this Section X shall prevent the City from imposing any available penalties to an applicant firm and/or certified MBE/WBE for violations of the Municipal Code or these regulations.

XI. 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.

Upon receipt of information believed by the Chief Procurement Officer, in good faith, to be reliable and which indicates any certified firm's eligibility for continued certification as MBE/WBE/BEPD may be in doubt, such information shall be reviewed for reconsideration of the certified firm's certification eligibility.

- A. If, after consideration of such information, the Chief Procurement Officer determines that the certified firm should be de-certified as MBE/WBE/BEPD 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/BEPD 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/BEPD 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/BEPD'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/BEPD's response shall be provided to the Chief Procurement Officer. Failure of the MBE/WBE/BEPD 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 responsive statement for a final 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/BEPD.
- E. All final actions and/or decisions of the Chief Procurement Officer with respect to the decertification of an MBE/WBE/BEPD shall be communicated in writing to the MBE/WBE/BEPD. The communication shall inform the MBE/WBE/BEPD of all material facts upon which such action and/or decision was based.
- F. Following the decertification or ineligibility of any MBE/WBE/BEPD, the name of such MBE/WBE/BEPD 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/BEPD certification status of any contractor on any City contract where the MBE/WBE/BEPD'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/BEPD certification status of the Applicant shall not continue on any City contract where the MBE/WBE/BEPD's performance was commenced prior to the effective date of the de-certification.

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

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

De-certification or ineligibility of a firm's MBE, WBE and/or BEPD 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, WBE or BEPD 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, WBE and/or BEPD 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, WBE or BEPD status until such time as the debarment, or determination of ineligibility pursuant to Chapter 1-23, is no longer in force.

XII. CERTIFICATION DIRECTORY

The Chief Procurement Officer shall issue an updated "Directory of Certified Minority and Women-Owned Business Enterprises". The Directory shall identify, at a minimum, all certified MBE/WBE/BEPDs by name, business address, principal contact person, certification status (e.g., MBE, WBE, or BEPD), area(s) of specialty and/or expertise and date of certification/continued eligibility. The Directory shall be updated at least annually and shall be available to all interested persons. The Chief Procurement Officer shall maintain a Master Directory which shall be updated on a current, ongoing basis to include any informational changes made to the Directory during the intervening months.

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 Schedule A or No Change Affidavit 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 Chief Procurement Officer has reason to believe that any Applicant or MBE/WBE/BEPD 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 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/BEPD.

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/BEPD 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/BEPD certification information, the content of any MBE/WBE/BEPD 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 Officer with respect to MBE/WBE/BEPD certification, continued eligibility and/or decertification of any Applicant. Non-compliance with this section shall subject the employee to applicable City disciplinary sanctions.

XVII. DEPOSITORY OF RECORDS

Records of all applications for certification as MBE/WBE shall be maintained by the Chief Procurement Officer.

XVIII. ESTABLISHED BUSINESS PRESUMPTION

The Ordinance established a presumption as to what constitutes an “established business.” Specifically, Section [2-92-420\(o\)](#) of the Code defines an established business as a business entity, which by virtue of its size and capacity for competing in the markets in which it operates, does not need to be a full participant in the Program in order to effectuate the purposes of the Program. This regulation establishes guidelines under which the presumption that an entity seeking status as an MBE, WBE or BEPD is an established business may be rebutted. This regulation governs only the certification of MBEs, WBEs and BEPDs, while certification of DBEs will be governed by applicable federal law.

The Chief Procurement Officer is responsible for determining each entity’s eligibility for certification or continued eligibility as an MBE, WBE or BEPD. As a portion of that examination, the Chief Procurement Officer must decide whether an entity is an established business. Pursuant to Section [2-92-420 \(o\)](#) of the Code, and the factual findings made by the City at this time in support thereof, an entity is presumed to be an established business if the business entity and its affiliates have had annual receipts in excess of \$27,500,000.00 million dollars over the previous three fiscal years, in calendar year 2000. The City changes this size standard presumption annually to reflect inflation in the six-county region. The most current gross receipts limit for established businesses can be found at www.cityofchicago.org/procurement.

These standards accurately reflect business conditions in the six-county region, and will be used to establish the presumption of what constitutes an established business to the extent applicable, while the dollar size standard will be used for the presumption of what constitutes an established business in all other circumstances.

XIX. 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 15 calendar days to submit any evidence it has to rebut the presumption that the applicant is an established business.

XX. 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, WBE or BEPD. 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 business is considered to be a Participating established business, and it 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 participation requirement set forth in subsections (a) and (d) of Section 2-92-440 of the Municipal Code of Chicago, as applicable;
- (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 participation requirement set forth in subsections (a) and (d) of Section 2-92-440 of the Municipal Code of Chicago, as applicable;
- (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 participation requirement set forth in subsections (a) and (d) of Section 2-92-440 of the Municipal Code of Chicago, as applicable.

(d) As of the Effective Date, an established business is not eligible to participate in the City's Target Market Program.

(e) 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 procurement program starting on that three-year anniversary date.

(f) An established business may apply for re-certification at such time as it has information to show a significant change in its ownership, management, contractual relations, size, or in other functions bearing on its status as an established business.

XXI. RE-APPLICATION

Firms that have been denied certification may re-apply for certification with the City after a period of one year from the date of the final denial letter.

XXII. SUSPENSION

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

- A. Immediate suspension may occur when (i) there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the MBE/WBE/BEPD firm to remain certified, or (ii) when the MBE/WBE/BEPD fails to notify the Department of Procurement Services in writing of any material change in circumstances as required by section IX.G or fails to timely file a No Change Affidavit under section VIII.G.
- B. When a firm is suspended pursuant to part A of this section, the MBE/WBE/BEPD shall be immediately notified of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the MBE/WBE/BEPD.
- C. Suspension is a temporary status of ineligibility pending a proceeding to determine whether the MBE/WBE/BEPD is eligible to participate in the program and consequently should be removed. The suspension takes effect when the MBE/WBE/BEPD receives, or is deemed to have received, the Notice of Suspension.
- D. While suspended, the MBE/WBE/BEPD may not be considered to meet a contract goal on a new contract. The MBE/WBE/BEPD may continue to perform under an existing contract executed before the MBE/WBE/BEPD received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the MBE/WBE/BEPD is performing a commercially useful function under the existing contract.
- E. Following receipt of the Notice of Suspension, if the MBE/WBE/BEPD believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the MBE/WBE/BEPD believes that its eligibility should be reinstated, it must provide to the Department of Procurement Services information demonstrating that the firm is eligible notwithstanding its changed circumstances within 30 days of receiving the Notice of Suspension. Upon receipt of this information, the Department of Procurement Services will either lift the suspension and reinstate the firm's certification or commence a decertification or ineligibility action under section XI. If the Department of Procurement Services commences a decertification or ineligibility proceeding, the suspension remains in effect during the proceeding.

APPENDIX A

Determining Whether a Commercially Useful Function is Being Performed

A prime contractor receives credit toward an MBE, WBE, and/or BEPD goal (contract and overall) only when a Minority-owned Business Enterprise, Woman-owned Business Enterprise, and/or Business Enterprise owned or operated by People with Disabilities, as applicable (each hereinafter referred to generally as an “M/WBE”), working on a contract performs a commercially useful function, or “CUF.” M/WBEs generally perform work on a contract either as a contractor, a supplier/regular dealer, a distributor, or a manufacturer. While each of these categories is evaluated differently when determining whether the M/WBE has performed a CUF, there is one guiding principle that must be followed. An M/WBE firm performs a CUF when it is ***responsible 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.***

The question certification/compliance officers often face is, “What are the management, supervision, and performance actions of an M/WBE firm that satisfactorily meet this requirement?” Evaluating these areas will form the basis to render a determination that an M/WBE has in fact performed a CUF. The contract is the one key reference point for any certification/compliance officer (and prime contractor) and it is essential for this evaluation process. The contract has an effective description of the work to be performed by an M/WBE and is a legally recognized document.

A CUF analysis includes:

- Evaluation of the amount of work subcontracted, i.e., whether it is consistent with normal industry practices;
- Whether the amount the firm is paid under the contract is commensurate with the work that is actually being performed to be credited towards the goal;
- When the M/WBE furnishes materials, the M/WBE must be responsible for negotiating the price, for determining the quality and quantity of the material, ordering the material, and paying for it. As a contractor, an M/WBE firm would typically be hired to both furnish the material and install it with its own labor force;
- Whether the M/WBE’s 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 M/WBE participation. In essence, was the role merely a contrived arrangement for the purpose of meeting the M/WBE contract goal?

The examination of similar transactions determines whether an M/WBE is such an extra participant – particularly those performed by non-M/WBEs. An M/WBE must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The firm’s role must not be a superfluous step added in an attempt to obtain credit towards the goal.

Normal Industry Practice

One of the most important elements to consider in any analysis of whether the M/WBE is performing a CUF is determining whether its role on the project is consistent with “normal industry practice.” This requires a determination of whether the M/WBE is performing the work or services in the manner normally performed by all contractors—M/WBEs and non-M/WBEs. However, even if an M/WBE is performing pursuant to normal industry practices, if those practices, in fact, erode the ability of the M/WBE to control its work and remain independent, the practice may affect how much can be credited toward the M/WBE goal and may raise questions about the M/WBE’s eligibility. One general rule of thumb that can be considered is whether an M/WBE would be performing in the same manner if there was no MBE/WBE/BEPD program.

Monitoring

In keeping with normal contract requirements, it is the primary responsibility of the prime contractor to ensure that the M/WBE is performing a CUF. The Department of Procurement Services will conduct thorough audits, including site visits by dedicated field agents, to ensure that the prime contractor has effectively met this responsibility.

M/WBE Performance – CUF

Firms certified in the MBE/WBE/BEPD program typically perform in four categories: prime or subcontractor, supplier/regular dealer, and manufacturer. The following is an overview of each category, typical CUF questions, and a list of documents to review.

While M/WBEs are occasionally awarded prime contracts, M/WBEs primarily work as subcontractors for the prime. Subcontractors typically perform specific contract items and provide their own labor and materials. To determine whether an M/WBE subcontractor is performing a CUF, five (5) distinct operations must be considered: management, workforce, equipment, materials, and performance.

These areas must be evaluated to make a CUF determination, and situations will be reviewed on a case by case basis. Some of the CUF questions cited below may also be quite adaptable to the other types of work categories.

MANAGEMENT

The M/WBE must manage the work that has been contracted to its firm. Management includes, but is not limited to:

- Scheduling work operations;
- Ordering equipment and materials;
- Preparing and submitting certified payrolls;
- Hiring and firing employees.

The M/WBE owner must supervise daily operations, either personally, or with a full time, skilled and knowledgeable superintendent employed by and paid wages by the M/WBE. The superintendent must be present on the job site and under the M/WBE owner's direct supervision. The M/WBE owner must make all operational and managerial decisions for the firm. Mere performance of administrative duties is not considered supervision of daily operations.

Red Flags

Red flags are questionable practices which may warrant further review. The red flags for management operations may include, but are not limited to:

- The M/WBE owner or superintendent provides little or no supervision of the work;
- The M/WBE's superintendent is not a regular employee of the firm or supervision is performed by personnel associated with the prime contractor, or another business;
- Key staff and personnel are not under the control of the M/WBE;
- The M/WBE's owner is not aware of the status of the work or the performance of the business;
- Inquiries by City representatives are answered by the prime contractor.

Typical CUF questions could include:

- Is there a written legal document executed by the M/WBE to perform a distinct element of work?
- Who does the on-site M/WBE representative report to?
- Has this individual ever shown up on any other contractor's payroll?
- Has the M/WBE owner been present on the jobsite?

Typical documentation to evaluate:

- Written contract
- Daily inspection reports and project diaries
- Payrolls

WORKFORCE

In order to be considered an independent business, an M/WBE must keep a regular workforce. M/WBEs cannot "share" employees with non-M/WBE contractors, particularly the prime contractor. The M/WBE shall perform its work with employees normally employed by and under the M/WBE's control. All work must be performed with a workforce the M/WBE controls. The M/WBE, in all instances, must have direct supervision over all of its employees.

The M/WBE must be responsible for payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor are not allowed.

The M/WBE must not subcontract a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved.

Red Flags

Some questionable workforce practices which may warrant further review include, but are not limited to:

- Supervision of M/WBE employees by another contractor;
- Actual work is performed by personnel normally employed by the prime contractor or another business;
- Employees are paid by the prime contractor.

Typical CUF questions could include:

- Who prepares the M/WBE's certified payroll?
- Have any of the M/WBE's employees ever shown up on any other contractor's payroll?
- Who does the M/WBE on-site representative contact for hiring, firing or to modify the contract due to site condition changes or change orders?
- Asking M/WBE employees on the jobsite who they report to and who signs their checks.

Typical Documents to evaluate:

- Written contract
- Daily inspection reports and project diaries
- Certified payrolls
- Copies of cancelled checks

EQUIPMENT

AN M/WBE may lease specialized equipment from a contractor, excluding the prime, if it is consistent with normal industry practices and at rates competitive for the area. The lease must specify the terms of the agreement. The lease must be for a short period of time and involve a specialized piece of equipment to be used at the job site. The lease may include an operator for the equipment who remains on the lessor's payroll if this is a generally acceptable practice within the industry. The operation of the equipment must be subject to the full control of the M/WBE. The M/WBE is expected to provide the operator for non-specialized equipment and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required.

Red Flags

Some questionable equipment practices which may warrant further review include, but are not limited to:

- Equipment used by the M/WBE belongs to the prime contractor or another contractor with no formal lease agreement;
- The equipment signs and markings cover another owner's identity, usually through the use of magnetic signs;

Typical CUF questions could include:

- List the major self-propelled (engine) equipment used by the M/WBE. Determine if the equipment belongs to the M/WBE. Is it owned or leased?

- If leased, is there an agreement identifying the terms and parties? Is it signed by the M/WBE owner?
- Does the equipment have the M/WBE's markings or emblems?
- Is the equipment under the direct supervision of the M/WBE?
- Is the operator of the leased equipment the M/WBE's employee?
- If the equipment is leased, is the payment for the equipment deducted from the work performed?

Typical Documents to evaluate:

- Written contract
- Daily inspection reports and project diaries
- Leases

MATERIALS

For an M/WBE contractor (furnish and install) to receive credit for supplying materials, the M/WBE must perform the following four functions: (1) negotiate price; (2) determine quality and quantity; (3) order the materials; and (4) pay for the material itself. If the M/WBE does not perform all of these functions, it has not performed a CUF with respect to obtaining the materials, and the cost of the materials may not be counted toward the M/WBE goal. Invoices for the material should show the payor as the M/WBE.

While the regulations require consideration of normal industry practices, this does not overrule the requirement that the M/WBE perform the four functions enumerated above. For example, even if standard industry practices in certain areas of the country allow no subcontractor to perform all four functions enumerated above (e.g. manufacturers will only negotiate with a prime, thereby eliminating the M/WBE's ability to negotiate the price), the "furnish" portion of the transaction does not lend itself to the performance of a CUF by the M/WBE, and credit cannot be given for the acquisition or cost of the materials.

Red Flags

Some questionable material supply practices which may warrant further review include, but are not limited to:

- Materials for the M/WBE are ordered, or paid for, by the prime contractor;
- Two party checks or joint checks are sent by the prime to the supplier or manufacturer, instead of sent by the M/WBE;
- Materials or supplies necessary for the M/WBE's performance are delivered to, billed to, or paid by another business;
- Materials are delivered to the jobsite by a party separate from the M/WBE;
- Payment for materials is deducted by the prime contractor from payments to the M/WBE for work performed;
- AN M/WBE prime contractor only purchases materials while performing little or no work.

Typical CUF questions could include:

- Is there a written contract executed by the M/WBE to perform a distinct element of work? Is the work to be performed by an M/WBE a “furnish and install” item of work?
- Who makes arrangements for delivery of materials?
- Who are the material invoices made out to?
- Who scheduled delivery of materials?
- In whose name are materials shipped?
- Who actually delivered the materials?
- If two party checks are used, who are the parties identified as payable to?

Typical Documentation to evaluate:

- Written contract
- Delivery tickets
- Invoices
- Daily inspection reports and project diaries

PERFORMANCE

The M/WBE must be responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice (except where such practices are inconsistent with the MBE/WBE/BEPD regulations).

Red Flags

Some questionable performance practices which may warrant further review include, but are not limited to:

- Work is being done jointly by the M/WBE and another contractor;
- The work to be performed by the M/WBE is outside of the M/WBE's known experience or capability;
- Any portion of the work designated to be performed by an M/WBE subcontractor is performed by the prime contractor or any other firm;
- The M/WBE is working without a subcontract;
- An M/WBE prime contractor subcontracts more than 50% of the contract value;
- The agreement between the prime contractor and M/WBE artificially inflates the M/WBE participation;
- An agreement that erodes the ownership, control or independence of the M/WBE subcontractor;
- An M/WBE works for only one prime contractor, or a large portion of the firm's contracts are with one contractor;
- The volume of work is beyond the capacity of the M/WBE.

Typical CUF questions could include:

- Does the M/WBE on-site representative effectively manage the job site without any interference from the prime contractor?
- Does the M/WBE appear to have control over methods of work on its contract items?

- Is the M/WBE actually scheduling work activities, material deliveries and other related actions required for execution of the work?
- Has any other contractor performed any amount of work specified in the M/WBE's contract?

Typical Documents to evaluate:

- Written contract
- Daily inspection reports or project diaries 8

M/WBE SUPPLIERS/REGULAR DEALERS

In order for a firm to operate as a supplier/regular dealer, it must perform a CUF, and must also comply with other requirements applicable to suppliers/regular dealers. It must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a supplier/regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business, except as noted below.

It is important to make a distinction between a supplier/regular dealer and a firm that supplies a product on an *ad hoc* basis in relation to a particular contract or contractor. A supplier/regular dealer has a regular trade with a variety of customers. One of the key considerations of being a regular, established dealer is the presence of an inventory of materials and/or supplies. A supplier/regular dealer assumes the actual and contractual responsibility for the provision of the material and/or supplies.

A firm may be a supplier/regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of suppliers/regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.

If an M/WBE meets the requirements of a supplier/regular dealer, 60% of the cost of the materials, if reasonable, may count toward the contract goal. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not suppliers/regular dealers.

Typical CUF questions could include:

- Does the supplier/regular dealer have an established storage facility and inventory?
- Does the supplier/regular dealer have a business that sells to the public on a routine basis in the product being supplied?
- Does the business stock the product for use on the project as a normal stock item?
- Who is delivering and unloading the material?

- Is distribution equipment owned or leased long term by the M/WBE being used in delivering the product?

Typical Documentation to evaluate:

- Purchase Orders
- Invoices
- Delivery Tickets

A supplier must be able to provide the following documentation:

- A current lease for the warehouse, store or other establishment in which inventory is kept.
- A complete inventory list that includes items representing the category in which it is certified and the approximate value of the inventory.
- An explanation as to how the inventory was acquired (i.e. from a wholesaler or manufacturer).
- Copies of invoices to support that the firm is operating as a supplier in the applicable specialty area(s).
- Annual market forecasts for the amount of product in the applicable specialty area(s) that the vendor plans to sell and their proposed customers.
- Product activity reports of sales made in the previous year for the applicable specialty area(s).

M/WBE DISTRIBUTORS

Firms not operating as a supplier/regular dealer (or as a broker as defined in accordance with Section 2-92-420 of the Municipal Code of Chicago) may be considered a distributor. In order for a firm to operate as a distributor, it must perform a CUF, and must also comply with other requirements applicable to distributors. See “Typical Documentation to evaluate,” below.

It is important to make a distinction between a distributor and a broker. A distributor sells products pursuant to an agreement with a manufacturer under which the distributor provides clearly identified products to its customers. A manufacturer may contract with one or more distributors to sell its products (i.e., a distributorship may or may not be exclusive), but the general public cannot purchase the products directly from the manufacturer. 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 substantial service other than acting as a conduit between his or her supplier and his or her customer is a broker. Pursuant to § 2-92-480 of the Municipal Code of Chicago, **no participation credit will be given where M/WBEs perform the duties of a broker.**

If an M/WBE meets the requirements of a distributor, 60% of the cost of the products, if reasonable, may count toward the contract goal. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not distributors.

Typical CUF questions could include:

- Who is delivering and unloading the material?
- Is distribution equipment owned or leased long term by the M/WBE being used in delivering the product?
- Does the M/WBE have a distribution agreement?

Typical Documentation to evaluate:

- Purchase Orders
- Invoices
- Delivery Tickets

A distributor must be able to provide the following documentation:

- Current (no older than one year old) annual distributor or manufacturer's agreements that clearly identify the products that the certified vendor can provide that correspond with the certification categories.
- A description of the manufacturer's qualifications for its exclusive distributors and/or manufacturer's representatives on the manufacturer's letterhead.
- Indication on the manufacturer's letterhead that the product cannot be secured by the general public. The letter must also include the defined region for the agreement, the number of distributors within the region and whether or not the agreement is exclusive with the certified vendor.
- Copies of documentation that support a sample product distribution flow (for a customer other than the City of Chicago) for each specialty area, which includes, but is not limited to:
 - a. The invoice supporting the sale of the product to the customer.
 - b. The invoice supporting the receipt of the product from the manufacturer by the vendor seeking initial or continued certification.
 - c. Proof of payment from the customer.
 - d. Proof of actual delivery using a common carrier that was paid for by the vendor seeking initial or continued certification to support that the product was drop shipped or delivered "just in time."
 - e. Annual market forecasts for the amount of product the vendor plans to sell annually and the proposed customers.
 - f. Product activity reports of sales made in the last year to the firm's top five customers.

M/WBE MANUFACTURERS

A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Examples of such items could be a concrete ready mix plant, a crushing operation, or a steel or concrete fabricating plant.

Typical CUF questions could include:

- Is the business's primary function to manufacture products?
- Does the business stock the product altered for this project as a normal stock item?
- Is the quality of the materials controlled by the M/WBE?
- Does the M/WBE purchase the raw material used in its plant?

Typical Documents to evaluate:

- Purchase orders
- Bill of lading
- Shipping tickets

Sanctions for Compliance and Enforcement

The prime contractor is ultimately responsible for ensuring that an M/WBE performs a CUF. Failure of an M/WBE to perform a commercially useful function will result in the City taking specific definitive actions to enforce the CUF requirement of the contract. Some of the actions the City could take include, but are not limited to, the following:

- Deny or limit credit towards the contract goal;
- Require the prime to make good faith efforts to replace the M/WBE to meet the goal on remaining work;
- Assess liquidated damages;
- Terminate the contract.

Some questions that could be part of an evaluation procedure:

- If a CUF was not performed by the M/WBE, what action was taken to correct the deficiency?
- Did the action taken correct the deficiency?

List of Typical Documentation to Collect:

- Executed contracts
- Material/ supply agreements
- Invoices of materials/supplies
- Equipment titles of ownership
- Equipment lease/rental agreements
- Hauling tickets
- Delivery tickets
- Canceled checks
- Project inspection/diaries

- ❑ Payroll records

When an M/WBE is presumed not to be performing a CUF, the M/WBE may present evidence to rebut this presumption. Decisions regarding CUF determinations are subject to review by the City.

CUF & Certification

Certification and commercially useful function are separate and distinct issues. Certification decisions address the nature of a firm's ownership and structure while CUF primarily concerns the role a firm has played in a particular transaction. Even if the certification process has identified the M/WBE's ability to perform as a contractor, supplier/regular dealer, distributor, or manufacturer, it is important to review and determine what and how an M/WBE actually performs during the performance of the contract.

An M/WBE's repeated failure to perform a CUF may raise questions regarding the firm's control, as it relates to independence, and perhaps ownership. If there is evidence of a pattern of failing to perform a CUF that raises serious issues with the firm's ability to control the work and its independence from the non-M/WBE firm, the City may decertify the firm.

In cases of deliberate attempts to circumvent the intent of the MBE/WBE/BEPD program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the M/WBE. If fraud is suspected, the City will notify the Office of the Inspector General.

COMMERCIALLY USEFUL FUNCTION CHECKLIST

Project Name and Number: _____

Prime Contractor: _____

M/WBE Firm's Name: _____

Type of Operation

- Contractor
- Supplier/regular dealer
- Distributor
- Manufacturer

Date Contract/Subcontract/Agreement Approved: _____

Start Date(s) of M/WBE's Work: _____ Date M/WBE to Complete Work: _____

Date of review: _____

Describe the type of work observed: _____

Check off each item used in conducting this review. The documents checked need not be attached to the review report, but should be filed with the report for easy reference if needed. If the answer is no to any of the following questions, provide an explanation in the general notes at the end of the report.

1. Management:

a. Is there a legal contract executed by the M/WBE to perform a distinct element of work?

- Yes No

b. Name of the on-site representative: _____

c. On-site representative reports to: _____

d. Has the on-site representative been identified as an employee of the M/WBE?

- Yes No

e. Has this individual ever appeared on any other contractor's payroll?

- Yes No

f. Does the M/WBE on-site representative effectively manage the job without interference from any other non-M/WBE contractor?

- Yes No

g. Who does the M/WBE on-site representative contact for hiring, firing, or to modify the contract? _____

h. Has the M/WBE owner been present on the jobsite?

- Yes No

i. Does the M/WBE appear to have control over methods of work on its contract items?

- Yes No

j. Is the M/WBE maintaining its own payroll?

- Yes No

k. Who prepares the M/WBEs certified payroll? _____

l. Is the M/WBE actually scheduling work activities, material deliveries and other related actions required for prosecution of the work?

- Yes No

m. Did the M/WBE subcontract any items or portions of the work to any other firm?

- Yes No

If yes, what % was subcontracted? _____%

Name of the firm _____

2. Equipment:

a. List the major self-propelled (engine) equipment used by the M/WBE: _____

b. Does the equipment have the M/WBE's markings or emblems?

- Yes No

If another firm's markings are discernible, note the name: _____

c. Is the M/WBE's equipment?

- Owned Leased from _____

d. If leased, is there a formal agreement identifying the terms and parties?

- Yes No

e. Is the equipment under the direct supervision of the M/WBE?

- Yes No

f. Is the operator of the leased equipment the M/WBE's employee?

- Yes No

If not the M/WBE's, whose employee is he/she? _____

g. If the equipment is leased, is the payment for the equipment deducted from the work performed?

- Yes No

3. Workforce:

a. List the name of M/WBE's crew as observed during the operation described above:

b. Has any of this crew ever shown up on any other contractors' payroll?

- Yes No

c. Does the M/WBE's workforce know who they work for?

- Yes No

4. Materials:

a. Is the M/WBE contracted to furnish and install a contract item?

Yes No

b. Is the quality and quantity of the materials controlled by the M/WBE?

Yes No

c. If two party checks used, who are the parties identified as payable to:

d. Who makes arrangements for delivery of materials? _____

e. Material Invoices made out to: _____

f. Who scheduled delivery of materials? _____

g. In whose name area materials shipped? _____

h. Does the prime contractor direct whom the M/WBE is to obtain the material from and at what price?

Yes No

5. Performance:

a. Does the M/WBE appear to have control over methods of work on its contract items?

Yes No

b. Has any other contractor performed any amount of work specified in the M/WBE contract?

Yes No

c. Are M/WBE employees shown on the certified payroll?

Yes No

6. Suppliers/regular dealers:

a. Does the supplier/regular dealer have an established storage facility and inventory?

Yes No

b. Does the dealer have a business that sells the product being supplied to the public on a routine basis?

Yes No

c. Does the business stock the product being supplied as a normal stock item?

Yes No

d. Is the quantity and quality of the materials controlled by the M/WBE?

Yes No

e. In whose name are the materials shipped? _____

f. Who is delivering and unloading the material? _____

g. Is the distribution equipment used in delivering the product the M/WBE's?

Yes No

If so, is it: Owned Leased

h. If leased, is it a long term lease and not a lease developed specifically for the project?

Yes No

7. Distributors:

a. Does the distributor have current (no older than one year old) annual distributor or manufacturer's agreements that clearly identify the products that the certified vendor can provide that correspond with the certification categories?

Yes No

b. Does the distributor have a copy of the description of the manufacturer's qualifications for its exclusive distributors and/or manufacturer's representatives on the manufacturer's letterhead?

Yes No

c. Does the distributor have documentation on the manufacturer's letterhead that the product cannot be secured by the general public, which also includes the defined region for the agreement, the number of distributors within the region and whether or not the agreement is exclusive with the certified vendor?

Yes No

d. Does the distributor have Copies of documentation that support a sample product distribution flow (for a customer other than the City of Chicago) for each specialty area, which includes, but is not limited to:

- The invoice supporting the sale of the product to the customer;
- The invoice supporting the receipt of the product from the manufacturer by the vendor seeking initial or continued certification;
- Proof of payment from the customer;
- Proof of actual delivery using a common carrier that was paid for by the vendor seeking initial or continued certification to support that the product was drop shipped or delivered "just in time;"
- Annual market forecasts for the amount of product the vendor plans to sell annually and the proposed customers;
- Product activity reports of sales made in the last year to the firm's top five customers?

Yes No

e. In whose name are the materials shipped? _____

f. Who is delivering and unloading the material? _____

g. Is the distribution equipment used in delivering the product the M/WBE's?

Yes No

If so, is it: Owned Leased

h. If leased, is it a long term lease and not a lease developed specifically for the project?

Yes No

8. Manufacturers:

a. Is the business's primary function to manufacture products?

Yes No

b. Does the business stock the product manufactured or altered for this project as a normal stock item?

Yes No

c. Is the quality of the materials controlled by the M/WBE?

Yes No

General Notes:

Version updates:

10/9/2014: Added new section XXII. Suspension.