

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



Rahm Emanuel
Mayor

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

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CITY OF CHICAGO

DEPARTMENT OF PROCUREMENT SERVICES
RULES AND REGULATIONS
GOVERNING CERTIFICATION OF MINORITY- AND WOMEN-OWNED
BUSINESS ENTERPRISES, VETERAN-OWNED BUSINESS ENTERPRISES, AND
BUSINESS ENTERPRISES OWNED OR OPERATED BY PEOPLE WITH
DISABILITIES FOR CONSTRUCTION CONTRACTS

I. PURPOSE AND APPLICABILITY

These regulations (“Regulations”) are implemented pursuant to Article VI and Article VIII of Chapter 2-92 and Section 2-92-586 of the amended Municipal Code (collectively the “Ordinances”), authorizing a Minority- and Women-Owned Business Enterprise Procurement Program¹ for construction contracts, a Veteran-Owned Business Enterprise Procurement Program, and a Business Enterprises owned or operated by People with Disabilities bid incentive program (collectively, the “Certification Programs”), and shall be used by the Chief Procurement Officer in all final actions with regard to determining the status of a firm as a Minority-Owned Business Enterprise (“MBE”), a Women-Owned Business Enterprise (“WBE”), a Veteran-Owned Business Enterprise (“VBE”), or a Business Enterprise owned or operated by People with Disabilities (“BEPD”) for City of Chicago (“City”) construction contracts.

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 Regulations shall be effective as of October 24, 2018 and shall be applicable to all requests for Minority-Owned Business Enterprise, Women-Owned Enterprise, Veteran-Owned Business Enterprise, and Business Enterprise owned or operated by People with Disabilities certification and continued eligibility in the area of construction.

III. POLICY STATEMENT

It is the policy of the City that MBEs and WBEs, as those terms are defined in Article VI of Chapter 2-92 and in these Regulations, are provided a level playing field and equal access to all contractors and subcontractors to participate in contracting opportunities financed in whole or in part with City funds, or funds over which the City has control.

¹ The City of Chicago’s Minority- and Women-Owned Business Enterprise Procurement Program was formerly known as the Supplier Diversity Program; any reference to the Supplier Diversity Program should be interpreted to mean the Minority- and Women-Owned Business Enterprise Procurement Program.

It is the policy of the City that VBEs and BEPDs, as those terms are defined in Sections 2-92-920 and 2-92-586 of the MCC and these Regulations, are provided prime contracting and subcontracting opportunities financed in whole or in part with City funds, or funds over which the City has control.

IV. AUTHORITY

The authority to issue these Regulations is found in the Ordinances, which mandate the promulgation of regulations governing certification of MBE and WBE construction applicants and initiation of investigatory proceedings necessary to monitor such firms' continued eligibility for MBE and/or WBE certification; authorize the adoption of rules for the certification of VBEs and the administration and enforcement of the VBE Program; and authorize the adoption, promulgation and enforcement of reasonable rules pertaining to the administration and enforcement of the utilization of BEPDs.

It is the intent of the Ordinances and a requirement of these Regulations that firms claiming status as a Certified Firm for City construction contracting purposes shall be recognized and entitled to continued recognition only following their satisfactory certification by the Chief Procurement Officer in accordance with these Regulations.

V. DEFINITIONS

1. "AFFILIATION" has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly: (1) one concern controls or has the power to control the other; or (2) a third party or parties controls or has the power to control both; or (3) an identity of interests between or among parties exists such that affiliation may be found. In determining whether persons or entities are affiliates, the city shall consider all appropriate factors, including common ownership, common management, and contractual or familial relationships.
2. "APPLICANT" means any person or firm who submits an application for certification, recertification, expansion request, or No Change Affidavit to the Chief Procurement Officer for determination of eligibility or continued eligibility as an MBE, WBE, VBE, or BEPD.
3. "APPLICATION" means an application for certification or recertification (formerly "Schedule A"), an expansion request, or No Change Affidavit.
4. "BID INCENTIVE" means an amount deducted, for bid evaluation purposes only, from the contract base bid in order to calculate the bid price to be used to evaluate the bid on a competitively bid contract.
5. "BOARD" means the Affirmative Action Advisory Board established in Section [2-92-510](#) of the Ordinance.

6. “BROKER” means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.
7. “BUSINESS ENTERPRISE OWNED OR OPERATED BY PEOPLE WITH DISABILITIES” or “BEPD” means (1) a business certified by the State of Illinois as a qualified service-disabled veteran-owned small business pursuant to 30 ILCS 500/45-57; or (2) or an entity, other than an established business, that is: (a) a for-profit corporation, partnership, association, business, trust, estate, or other legal entity that is at least 51% owned (directly, indirectly, or beneficially) by one or more individuals with disabilities who manages and controls the daily business operations and management of the entity, (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, whose management and daily business operations are controlled by one or more individuals with disabilities, and 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.
8. “CERTIFIED FIRM” means a firm that is currently certified by the City of Chicago as a MBE, WBE, VBE, or BEPD.
9. “COMMERCIALY 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.
10. “CHIEF PROCUREMENT OFFICER” means the Chief Procurement Officer of the Department of Procurement Services or his or her designee.
11. “CONSTRUCTION” means the construction, repair or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure. For purposes of certification, a firm is considered to be applying for or certified in a “Construction Code” if it is applying for or certified in area(s) of specialty in the North American Industry Classification System (“NAICS”) Codes Subsector 23 (such as Subsectors 238, 237 or 238).
12. “CONTRACT BASE BID” means the total dollar amount a contractor bids on a contract without factoring any bid incentive to the bid amount.
13. “CONTRACTOR” means any person or business entity that shall enter into a construction contract with the City, and includes all partners, affiliates and joint venturers of such person or entity.

14. “DECERTIFICATION” or “DECERTIFIED” means removal of certification 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.
15. “DISABILITY” means (i) with respect to any individual: (a) a 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, (b) a record of such impairment, or (c) being regarded as having such an impairment; or (ii) with respect to a veteran, a disability incurred in the line of duty in the active military, naval, or air service as described in 38 U.S.C. 101(16) and determined to be a 10 percent or more disability by the United States Department of Veterans Affairs or the United States Department of Defense.
16. “ECONOMICALLY DISADVANTAGED” means an individual whose personal net worth is less than \$2,000,000, indexed annually for inflation, such annual adjustment to begin January 2008, based on the Consumer Price Index- Urban Wage Earners and Clerical Workers (Chicago All Items) published by the United States Bureau of Labor Statistics. As of January 1, 2018, the personal net worth limit for Economically Disadvantaged individual is \$2,276,550.06.
17. “ESTABLISHED BUSINESS” means a business that is not a “Small Business Enterprise” and whose owners of 50 percent or more are persons who are not “Economically Disadvantaged” as that term is defined by these Regulations.
18. “INELIGIBILITY” means not meeting the eligibility requirements of the City’s Certification Programs, or no longer being eligible to participate in the City’s Certification Programs based upon a failure to submit required filings, or a change in status of the firm which does not reflect fraud, dishonesty, or intentional misrepresentation of the firm’s status or other wrongdoing by the Certified Firm.
19. “JOINT VENTURE” means an association of two or more persons or entities, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibilities to the contract.
20. “LOCAL BUSINESS” means a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (hereinafter referred to as the "Six-County Region") that has its principal office (where the business entity directs, controls and coordinates its activities) and the majority of its regular, full-time work force located within the Six-County Region.

21. “MAYOR” means the Mayor of the City of Chicago.
22. “MINORITY” means:
- (i) Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:
 - a. African Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
 - b. Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and
 - c. Asian Americans, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent;
 - d. American Indians, which includes persons having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment; and
 - (ii) individual members of other groups, including, but not limited to, Arab-Americans, found by the city to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the city.
23. “MINORITY-OWNED BUSINESS ENTERPRISE” 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, who independently manage(s) and control(s) the management, policies, major decisions and daily business operations.
24. “NON-PARTICIPATING ESTABLISHED BUSINESS” means an Established Business which is not eligible to participate in the City’s Minority- and Women-Owned Business Enterprise construction procurement program as set forth in Section 2-92-725 of the Ordinance.
25. “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.

26. "PARTICIPATING ESTABLISHED BUSINESS" means an Established Business which is eligible to participate in the City's Minority- and Women-Owned Business Enterprise construction procurement program as set forth in Section 2-92-725 of the Ordinance.
27. "PERSONAL NET WORTH" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other city certified MBE or WBE or the individual's equity in his or her primary place of residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.
28. "SMALL BUSINESS" or "SMALL BUSINESS ENTERPRISE" means a small business as defined by the U.S. Small Business Administration ("SBA"), pursuant to the business size standards found in [13 CFR Part 121](#), relevant to the scope(s) of work the firm seeks to perform on city contracts. A firm is not an eligible small business enterprise in any city fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of [13 CFR Part 121](#). Affiliates shall be considered together in determining whether a firm is a Small Business Enterprise.
29. "VETERAN" means a person who has served in the United States armed forces and was discharged or separated under not dishonorable conditions.
30. "VETERAN-OWNED BUSINESS ENTERPRISE" for the purposes of the bid incentive for eligible joint ventures and veteran-owned small local businesses set forth in Section 2-92-950 of the Municipal Code of Chicago, means an enterprise which: (1) is at least 51 percent owned by one or more veterans, or in the case of a publicly held corporation, at least 51 percent of all classes of the stock of which is owned by one or more veterans, who manage(s) and control(s) the management, policies, major decisions and daily business operations; and (2) has been: (i) certified by the City as a veteran-owned small local business; (ii) certified by Cook County as a veteran business enterprise; (iii) certified by the State of Illinois as a qualified service-disabled veteran-owned small business or a qualified veteran-owned small business pursuant to 30 ILCS 500/45-57; or (iv) verified and approved by the United States Department of Veterans Affairs as a service-disabled veteran-owned small business or a veteran-owned small business.
31. "VETERAN-OWNED SMALL LOCAL BUSINESS" or "VBE" means a Veteran-Owned Business Enterprise which is also a local business and a small business enterprise, and which has been certified by the City as a veteran-owned small local business.
32. "VETERAN-OWNED SUBCONTRACTOR" means a subcontractor that: (i) is a veteran-owned small local business; (ii) holds all appropriate City licenses; and (iii) is subject to applicable City taxes; provided that a veteran-owned subcontractor shall not include the prime contractor.

33. “WOMEN-OWNED BUSINESS ENTERPRISE” or “WBE” means a small local business that is at least 51% owned by one or more economically disadvantaged women, or in the case of a publicly held corporation, 51% of all classes of stock of which is owned by one or more economically disadvantaged women, who independently manage(s) and control(s) the management, policies, major decisions and daily business operations.

VI. BURDEN OF PROOF IN THE CERTIFICATION PROCESS

Except as provided otherwise in these Regulations, the Applicant has the burden of demonstrating, by a preponderance of the evidence, that it meets the eligibility requirements for certification set forth in these Regulations.

VII. DETERMINATION OF SOCIAL DISADVANTAGE FOR MBE/WBE CERTIFICATION

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

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

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

with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discourage the individual from pursuing professional or business education;

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

- F. The Chief Procurement Officer will make the final determination regarding the Applicant's status as a socially disadvantaged individual based on the criteria established in this Section.
- G. The final decision of the Chief Procurement Officer shall be communicated in writing to the Applicant within 15 calendar days of the date of the final determination. The decision of the Chief Procurement Officer cannot be appealed.

VIII. DETERMINATION OF ECONOMIC DISADVANTAGE FOR MBE/WBE CERTIFICATION

An Applicant for certification as an MBE or a WBE must establish by a preponderance of the evidence that it is owned, managed and controlled by one or more Economically Disadvantaged individuals. The Applicant's owner(s) must submit a Personal Net Worth Statement and the owner's five most recent individual federal income tax returns. The owner's personal net worth must not exceed \$2,000,000, indexed annually for inflation, such annual adjustment to begin January 2008. As of January 1, 2018, the personal net worth limit for an Economically Disadvantaged individual is \$2,276,550.06.

The personal net worth calculation excludes the individual's ownership interest in an Applicant or other City certified MBE or WBE or the individual's equity in his or her primary place of residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

IX. DETERMINATION OF SMALL BUSINESS ENTERPRISE STATUS

An Applicant must be a Small Business Enterprise. To be a Small Business Enterprise, an Applicant's total annual gross receipts, averaged over the most recent five (5) fiscal years, cannot exceed the U.S. Small Business Administration's ("SBA") Size Standards, as promulgated in [13 CFR Part 121](#).

For Applicants who have been in business for less than five (5) complete fiscal years, the total gross receipts for the period it has been in business divided by the number of weeks in business, multiplied by 52 cannot exceed the SBA Size Standards.

The average annual receipts size of a business concern with affiliates is calculated by adding the five-year average annual receipts of the business concern with the five-year average annual receipts of each affiliate.

X. CERTIFICATION ELIGIBILITY

An Applicant for certification must be operational and in business for profit. The minority, women, and/or veteran owners and/or owners with disabilities (“qualifying owners”) of the firm must possess the resources and the expertise to operate in the firm’s field of work.

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

A. Ownership and Control

Ownership acquisition must be through real and substantial contributions of expertise, capital or other tangible personal assets derived from the assets of the qualifying owners. Where expertise is used as the contribution to acquire ownership, the qualifying owners either collectively or individually must demonstrate expertise in all areas of the firm’s critical operations.

Determinations of ownership in the Applicant firm by minorities, women, veterans, and individuals with disabilities (“qualifying individuals”) shall be made without regard to the community property laws of any state.

1. The Applicant must establish by a preponderance of the evidence that it is owned and controlled by qualifying individuals.² The Applicant must establish that either collectively or individually the qualifying owner(s):
 - i. Possess demonstrated financial resources to acquire ownership and past experience that verifies demonstrated capability to engage in business in the area of specialty for which certification is sought. It is of no consequence that other partners/owners, spouses or employees have these abilities or resources;
 - ii. Exercise responsibility for the critical areas of the Applicant’s daily operations and make independent and unilateral business decisions;

² A nonprofit corporation that is not owned by individuals with disabilities may be eligible for certification as a BEPD if (1) the purpose of the entity includes providing, directly or indirectly, services to individuals, (2) the nonprofit corporation employs individuals with disabilities and pays them an hourly wage that is not less than the federal minimum wage and not on a piece work basis, and (3) the entity’s management and daily business operations are controlled by one or more individuals with disabilities as set forth in Section 2-92-586 of the Municipal Code of Chicago. Furthermore, a for-profit corporation may be eligible for certification as a BEPD if it is directly, indirectly, or beneficially 51% or more owned by individuals with disabilities as set forth in Section 2-92-586.

- iii. Possess adequate assets or resources to operate self-sufficiently in areas of financing, bonding, supervision, personnel, equipment, materials and facilities;
- iv. Accept risks and profits commensurate with their ownership interests, as well as receive at least 51% of any dividends,

The differences in remuneration between the qualifying owner and other participants in the firm may be considered in determining whether to certify the Applicant. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the Applicant firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the Applicant firm. It may be determined that the Applicant firm is controlled by its qualifying owner although that owner's remuneration is lower than that of non-qualifying participants in the firm.

In a case where a non-qualifying individual formerly controlled the firm, and a qualifying individual now controls it, a difference between the remuneration of the former and current controller of the firm can be considered as a factor in determining who controls the firm, particularly when the non-qualifying individual remains involved with the firm and continues to receive greater compensation than the qualifying individual,

- v. If a corporation, exercise control of the board of directors;
- vi. If a partnership, exercise control of the business enterprise as documented in a partnership agreement;
- vii. If a limited liability company, exercise control of the company, as documented in the articles of organization or the regulations and membership in the company and ownership of membership interest;
- viii. A qualifying owner must hold the highest officer position in the company (e.g., chief executive officer or president);
- ix. If a state or local law requires the owner to have a particular license or other credential in order to own and/or control a certain type of firm, then the qualifying individual who owns and controls must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the Applicant firm cannot be denied certification solely on the ground that its owner lacks the license or credential. However, the absence of the license or credential can be considered as one factor in determining whether the qualifying owners actually control the firm.

2. Ownership and control by such qualifying individuals shall be real, continuing and shall go beyond the *pro forma* ownership of the Applicant as reflected in ownership documents. The qualifying owners must enjoy all customary incidents of ownership and share in all risks and profits commensurate with their ownership interests, as demonstrated by a detailed examination of the substance of their business arrangements with others. Ownership is demonstrated by:
 - i. Verifiable assets for acquisition derived from independently owned holdings. A transfer of assets may be considered independently owned holdings only if supported by payment of fair and adequate consideration.
 - ii. Documentation must be found in the business records of the Applicant. The records must clearly show the contribution of such expertise and its value to the Applicant.
 - iii. If the Applicant is a corporation, the ability to transfer stock, title, and possession of securities that represent ownership of the applicant by qualifying individuals and are directly and physically held by them, without limitation by non-qualifying individuals. All securities that constitute ownership of a firm shall be held directly by qualifying individuals. Except as provided in this paragraph (iii), no securities or assets held in trust, or by any guardian for a minor, are considered as held by qualifying individuals in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by qualifying individuals for purposes of determining ownership of the firm, if—
 - (a) The beneficial owner of securities or assets held in trust is a qualifying individual, and the trustee is the same or another such individual; or
 - (b) The beneficial owner of a trust is a qualifying individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same qualifying individual is the sole grantor, beneficiary, and trustee.
 - iv. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
3. Contributions of capital or expertise by qualifying 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 qualifying 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 qualifying owner acquires its ownership interest in the Applicant as a gift from a Relative, subject to the following exceptions. For the purposes of these Regulations, “gift” includes the acquisition of interests in a business or other assets obtained for a nominal sum or an amount below market value

(1) It shall be presumed as not being held by qualifying individual, 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.

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

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

4. Insufficient contributions of capital or expertise shall include, but are not limited to:

- i. Promises to contribute capital or expertise in the future.
- ii. Notes payable from qualifying owners to the Applicant or owners who are not qualifying individuals.
- iii. Participation in the Applicant by qualifying owners as mere employees.
- iv. Provision by any owner of goods, services, or equipment having an actual or estimated value based upon industry standards substantially less than the value attributed in the Application.

5. Qualifying owners must, either collectively or individually, possess the power to direct or cause the direction of management, policies and objectives of the Applicant and to make all substantive day-to-day decisions on the Applicant's major and essential operations. Those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business. No formal or informal restrictions of any kind may exist which limit the customary discretion necessary to actual business control by the qualifying individual. Unless mandated by law, no restrictions in by-law provisions, partnership of limited liability company agreements, or charter requirements may exist which limit qualifying individuals from effective and continuous control of the Applicant or which prevent qualifying individuals, without the cooperation of any owner who is not a qualifying individual, from making any operational business decision for the Applicant. In all cases, any business relationship between Applicant and its qualifying owners and non-qualifying individuals shall be given close scrutiny.

6. In order to be viewed as controlling a firm, an Eligible Owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For the purposes of these Regulations, it shall be presumed, unless conclusively established otherwise, that the status of any qualifying individual as an owner/manager of the Applicant shall require full-time participation by the person in the management of the Applicant's day-to-day activities, unless the firm operates on a part-time basis (evenings only and/or weekends) and the individual controls the firm at all times while the firm is operating. Ownership interests of qualifying owners not participating in the Applicant's operations on an active and substantial basis shall be excluded from the determination of whether the Applicant is owned and controlled by qualifying individuals. In addition, employment histories of all owners and managers shall be reviewed and verified to determine the administrative and business expertise and involvement by such persons in activities and employment that may contradict any representation of full-time management participation.

Absentee management or ownership by any qualifying owner who does not assume and exercise an active and substantial role in the Applicant's day-to-day management shall be considered in the determination of whether the Applicant is owned and controlled by qualifying individuals.

7. Owners of the Applicant who are not qualifying individuals 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 qualifying owners, persons actually performing such duties shall be presumed to control those aspects of the Applicant's business. Where business documents vest

an officer of the applicant with the primary responsibility or ability to direct the Applicant's day-to-day management operations, that officer must be a qualifying owner.

8. The intra-family transfer of ownership in an existing firm or on-going business to a qualifying individual except by demise shall be rebuttably presumed invalid for purposes of eligibility for certification.

B. Viability and Independence

1. The Applicant must be an economically viable business. Economic viability shall be determined by its capital structure as established by audited or auditable financial statements, or income projections when the Applicant is a new business. Viability will also be determined by review of at least the following criteria:
 - i. Possession of insurance, bonds and/or licenses (e.g., sewer contractor, plumber, etc.) mandated by applicable governmental agencies to perform the work the Applicant represents as its area(s) of specialty or expertise;
 - ii. Access to real properties and facilities from which to conduct day-to-day business operations;
 - iii. Employment of and/or access to employment of persons in sufficient numbers and with expertise essential to satisfactory contract performance in its area(s) of specialty or expertise;
 - iv. The Applicant's ownership of and/or access to equipment, goods, supplies, etc., essential to its satisfactory performance in its area(s) of specialty or expertise; and
 - v. Good standing with the Secretary of State or other relevant authority of the state in which the Applicant is incorporated or organized.
2. The Applicant must be an independent business. Independence shall be examined with reference to the perceived ability of the Applicant to perform satisfactorily in its area(s) of specialty or expertise without substantial reliance upon finances, resources, expertise, manpower, facilities, or equipment of non-qualifying individuals. Recognition of the Applicant as a separate and distinct entity by governmental taxing authorities shall not be dispositive of the Applicant's assertion of independence. Independence shall be established by reviewing the following criteria:
 - i. The date the business was established.

- ii. The degree to which financial, equipment leasing, business and other relationships with non-qualifying individuals vary from normal industry practice.
- iii. The determination of adequacy of expertise without the need to rely upon a non-qualifying individual.
- iv. 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-qualifying individuals or to otherwise meet the following viability and independence criteria:
 - (a) The Applicant's status as a party to any long term (i.e., more than three year) contract, lease or lease agreements with non-qualifying individuals.
 - (b) The Applicant's status as a party to any contract, lease, or lease agreements on terms at variance with industry standards or prudent business practices.
 - (c) Interlocking stock ownership of the Applicant and businesses owned by non-qualifying individuals in the same or a related industry.
 - (d) Common directors or officers between the Applicant and businesses owned by non-qualifying individuals.
 - (e) The Applicant's use of employees, equipment, expertise or facilities shared with or obtained from businesses owned by non-qualified individuals.
 - (f) The receipt by the Applicant's non-qualified owners of financial benefits (e.g., dividends, loans, salaries, and distributions) from the Applicant that exceed their proportionate ownership interests.
 - (g) Newly established firms and firms whose ownership and/or control have changed since the date of the advertisement of a specification or the date the Applicant has indicated that a bid response will be submitted.
 - (h) Any previous or continuing employer-employee relationship between present qualifying owners and those who are not qualifying individuals to ensure that all qualifying owners actually have the requisite independent ownership and management responsibilities and capabilities.

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

XI. APPLICATION FOR CERTIFICATION

- A. The Applicant for initial certification shall file with the Chief Procurement Officer a completed online Application.
- B. The following materials, as applicable, must be electronically attached to the online Application as part of the certification application:
 - i. Documents establishing ethnicity and gender, e.g., birth certificates, passports, naturalization papers, resident alien card, tribal enrollment cards, or the Chicago Municipal ID card (may also be referred to as the "Chicago ID Card", the "Chicago ID", "CityKey", or "Municipal ID"), if applicable;
 - ii. Documents establishing ownership of record, including articles of incorporation, by-laws, partnership agreements, limited liability company agreements, issued stock certificates, shareholder agreements, minutes of initial and most recent Board of Directors' meetings, and corporate income tax returns;
 - iii. Documents establishing that ownership was acquired through real and substantial contributions of expertise, capital or other tangible personal assets;
 - iv. Documents establishing that the contributions are derived from the assets of the individual(s), including bank receipts, stock certificates, and corporate minutes;
 - v. Documents establishing the Applicant's personal net worth, including, but not limited to, Personal Net Worth Statement, bank account statements, pension fund statements, mortgages, 401(k) account statements, tax returns (personal and corporate), and investment statements;
 - vi. Documents establishing the gross receipts of the Applicant's firm for the last 5 years, or in the case of a newly formed business, an opening balance sheet and/or business plan and current and previous five years individual tax returns of the owners;
 - vii. Documents establishing access to real properties to conduct business (e.g. real estate deeds, rental lease agreements and mortgage agreements);
 - viii. Resumes of owners, managers, partners and other key personnel;
 - ix. Titles to or leases for major equipment and/or vehicles;

- x. Past and current loan agreements of applicant or between any owners;
 - xi. Evidence of contracts with clients or suppliers;
 - xii. References;
 - xiii. Licenses or permits (if applicable)
 - A general contractor's license is required for general contractors.
 - A City of Chicago trade license is required for trades, including, but not limited to, mason contractors, electricians, plumbing contractors, crane operators, and elevator mechanics.
 - A public vehicle license and/or a public chauffeur license is required for transportation companies.
 - A City of Chicago business license is required for businesses operating retail, food establishments, manufacturing facilities, personal services or home businesses, among other things in the City of Chicago.
 - Lawyers, architects, engineers, accountants, interior designers, roofing contractors, and private detectives are among some of the many professions that are regulated by the State of Illinois and require a professional license.
 - Pesticide license by Cook County for pest control companies,
 - Hazardous Waste Permit is required for storage, treatment or disposal of hazardous waste.
 - Illinois Special Waste Hauling Permit is required for transporters of hazardous waste;
 - xiv. Documents certifying service in and discharge or separation from US armed forces under not dishonorable conditions (if applicable);
 - xv. Documents establishing the employment of individuals with disabilities and the payment of an hourly wage not less than the federal minimum wage, and not on a piece work basis (if applicable); and
 - xvi. Documents establishing a nonprofit's purpose involves directly or indirectly providing services to individuals with disabilities (if applicable).
- C. All Sworn Affidavits to the Application shall be executed by the owner or duly authorized officer of the Applicant and notarized. If such forms are signed by any party other than the president and secretary of a corporation, the general partner(s) of a partnership, the members of a limited liability company, or the owner of a sole proprietorship, such party must also submit evidence of his or her authority to execute the form(s). Material factual representations in such form(s) shall be based upon the personal knowledge of the person executing the form(s).

- D. Completion and submission of the online Application shall authorize the Chief Procurement Officer to obtain from third persons (e.g., banks, utility companies, business references, and lessors/lessees) information relevant to any Applicant's eligibility for certification.
- E. Until certified, unless the firm is certified by Cook County as an MBE and/or WBE, an Applicant shall not be counted toward fulfillment of contract goals on City construction contracts nor may its work be counted towards the percentage of work for which a bid incentive is taken into consideration in the award of a contract. The absence of certification, however, shall in no way affect any Applicant's right to bid or submit a proposal for any City construction contract.
- F. Changes in an Applicant's or Certified Firm's ownership, management, officers or financial relationships which may impact the eligibility of the Applicant or Certified Firm must be communicated by the Applicant or Certified in writing to the Chief Procurement Officer within 10 business days of such change(s). Failure to communicate such changes shall constitute grounds for denial of certification or decertification.
- G. Certification shall be limited to the area(s) of specialty or expertise determined by the Chief Procurement Officer to be most reflective of the Applicant's demonstrated specialty or expertise. The City of Chicago utilizes the North American Industry Classification System (NAICS) to determine areas of specialty, which can be found at <http://www.census.gov/eos/www/naics/>. An Applicant may be certified in more than one area of expertise, so long as the eligibility criteria are met.

Applicants desiring to be certified in additional areas of competence may submit an expansion request on line by requesting to add or update a commodity code or by incorporating an expansion request in a Recertification Application or No Change Affidavit submission. An expansion request must be in writing and accompanied by supporting documents. The review of an expansion request may include, among other things, site visits, personal interviews with the Applicant, and specific additional information as requested by the City. Until certification is awarded, participation on a contract in an uncertified area shall not count toward fulfillment of contract goals. An Applicant denied certification in an additional code through an expansion request cannot reapply for addition of that same code for one year from the date of the final determination, unless the Applicant demonstrates that extraordinary circumstances exist regarding its expansion request, and the Chief Procurement Officer determines, in her sole discretion, that the one year waiting period may be waived.

- H. All Applicants submitting an Application shall affirm, as a pre-condition to consideration for 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; or
 - 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.
- I. All Applicants submitting an Application shall also affirm, as a pre-condition to consideration for certification, as follows:
- i. To the best of the Applicant’s knowledge after reasonable inquiry, 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;
 - ii. 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 the 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;
 - iii. No principal, officer, owner or any person having decision-making authority or any direct or indirect interest in the Applicant has, within one year of the date of such form, owned a direct or indirect interest in, or been financially affiliated with, any firm to which 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 certification that was filed with any governmental agency and was signed by such person; and
 - iv. During any periods that a certification is effective, all books and records in the Applicant's and its agent's possession, which may prove or disprove eligibility, shall be open for inspection and examination by the Chief Procurement Officer, or his or her designee, upon reasonable notice.
- J. The following policies apply to Suppliers, Distributors and Brokers pursuant to the Department of Procurement Services Supplier/Distributor/Broker Policy (Attachment 3) to the Application. See Attachment 3 for the additional documentation required in support of the Applicant firm’s status as a Supplier or Distributor.

- i. **Supplier Policy:** To be certified as a supplier, the Applicant firm must be a regular dealer which is a firm that owns, operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. Additionally, the Applicant firm must be a business that engages as its principal business and under its own name in the purchase and sale or lease of the products in question. An Applicant firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business, if the firm owns and operates distribution equipment for the products. Any supplementing of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- ii. **Distributor Policy:** Firms not operating as a regular dealer or as a Broker may be considered a Distributor for the purposes of certification, provided that it submits all required documentation establishing its status as a distributor.
- iii. **Broker Policy:** Firms that do not submit the required documentation establishing that they are a Supplier or a Distributor will be considered a Broker and are not eligible for certification.

XII. CERTIFICATION AND RECERTIFICATION PROCEDURES

- A. Certifications awarded to 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 by filing annual No Change Affidavits during the five year period, or if it fails to file a Recertification Application within 60 days before the expiration of the five year period.
- B. Upon receipt by the Chief Procurement Officer of any Application, the Application shall be dated and time stamped. The date and time stamp shall conclusively establish the receipt date.

Each Application shall be thoroughly reviewed for material omissions or deficiencies. An Application containing omissions or deficiencies shall be returned to the Applicant, with notice of the nature of the omissions or deficiencies, and shall not be subject to the 90-day decision requirement until a completed Application is received. The date and time stamp on a resubmitted completed Application shall conclusively establish the receipt date for the 90-day decision requirement.

- C. The completed Application shall be reviewed by the Certification Unit.
- D. Site visits will be conducted for all Applicant firms submitting an Application in Construction Codes. The site visit will be performed at the Applicant firm's principal

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

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

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

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

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

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

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

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

- K. A final order or finding by a court of competent jurisdiction or administrative tribunal that any Applicant, Certified Firm, or owner, officer or agent thereof has committed a crime in connection with performance on any contract with any private or governmental entity shall constitute grounds to deny certification of the Applicant, or deny continued eligibility of a Certified Firm.
- L. For Recertification Applications, the Chief Procurement Officer shall consider all relevant factors including, but not limited to, the firm's involvement in contracting or bidding irregularities with any private or governmental entity; non-compliance with reasonable requests by the City for information concerning eligibility or performance on any City contract; and submission of false, erroneous or misleading information to any private or governmental entity regarding the firm's business activities.
- M. A firm whose Application has been denied three (3) or more times in a five (5) year period may not apply for certification for four (4) years from the date of the most recent denial.

XIII. DECERTIFICATION AND INELIGIBILITY PROCEDURES

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

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

- A. If, after consideration of such information, the Chief Procurement Officer determines that the Certified Firm should be decertified as a Certified Firm based upon fraud, dishonesty, intentional misrepresentation of the firm's status, or other wrongdoing by the Certified Firm, or as a result of a decertification by any other governmental agency, the 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 fifteen (15) calendar days to submit a written appeal in accordance with the procedure set forth in Section XIV below.
- B. If, after consideration of such information, the Chief Procurement Officer determines that the Certified Firm should be declared no longer eligible to participate in the City's Certification Programs, based upon a change in status of the applicant which does not

reflect fraud, dishonesty, intentional misrepresentation of the firm's status, or other wrongdoing by the applicant, the 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 fifteen (15) calendar days to file a written appeal in accordance with the procedure set forth in Section XIV below.

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

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

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

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

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

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

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

XIV. APPEALS

- A. Unless otherwise provided by these Regulations, a firm may appeal a decision by the City regarding its application for certification, decertification, or eligibility by sending a letter to the Chief Procurement Officer within 15 days of receipt of a Preliminary Notice. The

appeal must include a full and specific statement as to why the decision is erroneous, what significant fact(s) the Chief Procurement Officer failed to consider, and/or what provisions of these Regulations the Chief Procurement Officer did not apply. No new documents or facts may be submitted with the appeal. The Chief Procurement Officer may, in her sole discretion, request supplemental documentation from the firm. The Chief Procurement Officer has the sole discretion to accept an appeal filed later than 15 days after receipt of the Preliminary Notice if the Chief Procurement Officer determines that there was good cause for the late filing of the appeal or in the interest of justice.

- B. The Chief Procurement Officer will make a decision solely based on the entire Certification File and the firm's response to the Preliminary Notice and any supplemental document or information requested by the Chief Procurement Officer (collectively, the "Administrative Record"). The Chief Procurement Officer may but is not required to conduct an informal hearing in the event the Chief Procurement Officer determines that a hearing is necessary in order to make a determination. The Chief Procurement Officer's decision will be based on the status and circumstances of the firm as of the date of the decision being appealed.
- C. The Chief Procurement Officer may supplement the Administrative Record by adding relevant information made available to her by the Inspector General, Federal, state, or local law enforcement authorities, officials of funding and/or certification agencies, or an interested firm or private party. If supplemental information is considered, the Chief Procurement Officer will provide the appealing firm with a copy of such information upon request by the appealing firm, unless the Chief Procurement Officer is prohibited to do so by the providing party or law or regulation.
- D. The Chief Procurement Officer will affirm the decision unless she determines, based on the entire Administrative Record, that the decision was unsupported by the preponderance of the evidence or inconsistent with these Regulations.
- E. If the Chief Procurement Officer determines that the decision was unsupported by the preponderance of the evidence or inconsistent with the Regulations, the Chief Procurement Officer will reverse the decision.
- F. The Chief Procurement Officer is not required to reverse the decision if she determines that a procedural error did not result in fundamental unfairness to the appealing firm or substantially prejudice the opportunity of the appealing firm to present its case.
- G. If it appears that the Administrative Record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the appeal, the Chief Procurement Officer may toll the appeal and allow the firm to re-apply for Certification without the one year waiting period set forth in Section XIII.H., above.
- H. The Chief Procurement Officer will make a decision within 180 days after receiving the appeal unless the Chief Procurement Officer determines that additional time is needed to make a decision, and provides written notice to the appealing firm. All final actions

and/or decisions of the Chief Procurement Officer with respect to the decertification of a Certified Firm or ineligibility of a firm shall be communicated in writing to the Certified Firm or Applicant. The communication shall inform the firm of all material facts upon which such action and/or decision was based. Based on the Chief Procurement Officer's decision, either a "Notice of Rescission" of the Preliminary Notice or a "Final Denial of Certification", a "Final Notice of Decertification" or "Final Notice of Ineligibility for Continued Certification," as appropriate, will be sent to the Certified Firm or Applicant.

- I. All appeal decisions by the Chief Procurement Officer are final and binding, and are not subject to requests for reconsideration.

XV. REFERRAL TO CORPORATION COUNSEL

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

XVI. REFERRAL TO INSPECTOR GENERAL

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

XVII. DISCLOSURE TO OTHER GOVERNMENTAL ENTITIES

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

XVIII. NON-DISCLOSURE OF CERTIFICATION INFORMATION

Unless otherwise mandated by law, no City employee acquiring knowledge or vested with any responsibilities with respect to certifications shall disclose to any person, other than the Chief Procurement Officer, Corporation Counsel, Inspector General or other persons duly authorized to receive certification information, the content of any Application or document filed in support thereof, nor shall such employee disclose to, or

discuss with any unauthorized person, information regarding deliberations by the Chief Procurement with respect to certification, continued eligibility and/or decertification of any Applicant. Non-compliance with this section shall subject the employee to applicable City disciplinary action.

XIX. ESTABLISHED BUSINESS DETERMINATION

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

The Chief Procurement Officer is responsible for determining each entity's eligibility for certification or continued eligibility as Certified Firm. As a portion of that examination, the Chief Procurement Officer must decide whether an entity is an Established Business. Pursuant to Section 2-92-670 of the Code, and the factual findings made by the City, an entity is presumed to be an Established Business if (1) the business entity and its affiliates are no longer a Small Business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the firm seeks to perform on City contracts, or (2) if the entity's owners of 50 percent or more are persons who are not Economically Disadvantaged. A firm is not an eligible Small Business in any City fiscal year in which its gross receipts, averaged over the firm's previous five (5) fiscal years, exceed the size standards of 13 CFR Part 121 or if the personal net worth of the entity's owners of 50 percent or more exceeds the personal net worth limits set forth in these Regulations.

- B. In those cases in which an Applicant or Certified Firm and its affiliates are presumed, pursuant to the test described above, to constitute an Established Business the 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. The Applicant or Certified Firm also may provide evidence that the industry standard is incorrect or an improper industry standard is being applied to the entity.
- C. Except as stated in paragraph (vi), below, if the Chief Procurement Officer determines that an Applicant or Certified Firm is an Established Business in the NAICS code in which it is, or seeks to be, certified, the firm cannot be certified or recertified as Certified Firm. The Chief Procurement Officer's decision shall be final with no provision for appeal. The Applicant or Certified Firm will be notified of the decision that it is an Established Business and cannot be certified or recertified. If the entity is submitting a new application for certification, rather

than a Recertification, the Chief Procurement Officer's decision shall be effective as of the date of the letter and the entity will be denied certification on the basis of having exceeded the size standard and cannot receive partial credit for participation.

- i. The determination that a firm cannot receive continued eligibility because it is an Established Business shall become effective on the date specified in the notification letter of the 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 considered certified.
- ii. A MBE and/or WBE firm which cannot receive continued eligibility because it is an established firm will be considered a Participating Established Business as of the Effective Date. A Participating Established Business may participate in the City's MBE/WBE procurement program as follows:
 - (1) For a one-year period after the business entity has become an Established Business, 75% of such business's participation in a City contract shall count for the MBE or WBE participation requirement in accordance with Section 2-92-725 of the Municipal Code of Chicago;
 - (2) For a one-year period starting on the one-year anniversary of the date the business entity became an Established Business, 50% of such business's participation in a City contract shall count for the MBE or WBE participation requirement in accordance with Section 2-92-725 of the Municipal Code of Chicago;
 - (3) For a one-year period starting on the two-year anniversary of the date the business entity became an Established Business, 25% of such business's participation in a City contract shall count for the MBE or WBE participation requirement in accordance with Section 2-92-725 of the Municipal Code of Chicago.
- iii. A Participating Established Business will remain on the City of Chicago's directory of Certified Firms and is required to notify the City of any change in its ownership, control, management, officers or financial relationships which may impact on the firm's eligibility under these Regulations in writing within ten (10) business days of such change(s). Failure to communicate such change as required herein shall constitute grounds for the denial of continued participation in the City's MBE/WBE certification program and may be ineligible to apply for re-certification for at least three years from the three-year anniversary of the Effective Date.

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

XX. SUSPENSION

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

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

must provide to the 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 XIII. If the Department of Procurement Services commences a decertification or ineligibility proceeding, the suspension remains in effect during the proceeding.

XXI. DEPOSITORY OF RECORDS

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

XXII. COMPLIANCE WITH CONTRACT GOALS

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

XXIII. DISCRETION OF THE CHIEF PROCUREMENT OFFICER

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