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# CITY OF CHICAGO

## RULES

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### DIVERSE MANAGEMENT & WORKFORCE BID INCENTIVES

UNDER 2-92-407

LAST UPDATED: January 31, 2019



DEPARTMENT OF  
PROCUREMENT  
SERVICES

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Mayor Rahm Emanuel

Chief Procurement Officer Shannon E. Andrews

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BY AUTHORITY VESTED IN THE CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF PROCUREMENT SERVICES PURSUANT TO 2-92-407, THE FOLLOWING RULES REGARDING THE DIVERSE MANAGEMENT & WORKFORCE BID INCENTIVES ARE ADOPTED HEREIN.

By Order of the Commissioner:

Signed: John E. N.  
Chief Procurement Officer *jen*

Date: 31 January 2019

Effective: **JAN 31 2019**



## 1. GENERAL PROVISIONS

The Diverse Management and Workforce Incentives are designed to strengthen and enhance employment opportunities for diverse individuals and to promote employment equality by offering bid incentives for businesses with diverse management and workforce. These regulations are issued pursuant to Section 2-92-407 of the Municipal Code of Chicago. Section 2-92-407(g) authorizes the Chief Procurement Officer to adopt rules for the proper administration and enforcement of the incentives. These regulations describe how and when the bid incentives would apply, including the right of the Chief Procurement Officer to decline to apply the bid incentive.

## 2. DEFINITIONS

Unless otherwise specified, whenever used in these regulations, the following terms have the following meanings:

"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.

"Business Owner" means an individual having all of the customary incidents of ownership, including the right of disposition, and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.

"Contract" means any contract, purchase order or agreement awarded by the city and whose cost is to be paid from funds belonging to or administered by the city; provided that the term "contract" does not include: (i) a delegate agency contract; (ii) a lease of real property; or (iii) a collective bargaining agreement.

"Contract base bid" means the total dollar amount a contractor bids on a contract without factoring any bid incentive or percentage reductions to the bid amount.

"Diverse" means any of the following racial or ethnic groups:

- A. African-Americans or Blacks (persons having origins in any of the Black Racial groups of Africa):
- B. Hispanics (persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race):
- C. Asian-Americans (persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
- D. Other groups, or other individuals, found by the Affirmative Action Advisory Board ("AAAB") (see MCC 2-92-510 and 2-92-520) to be socially and economically disadvantaged and to have suffered actual racial, ethnic or gender discrimination and decreased opportunities to compete in Chicago area markets or to do business with the city. (Note: As of August 2018 no other groups have been found by the AAAB to be socially and economically disadvantaged.)

"Management" means (A) business owners, including all shareholders and partners; (B) directors and officers or managers as contemplated under 805 ILCS 5/Art. 8, 805 ILCS 180 or 805 ILCS 185,



or similar business organization statute applicable to the business, or (C) key employees authorized, at the executive level, to make significant discretionary, policy or operational decisions affecting the company. It does not mean registered agents who are not also employees. It does not mean independent contractors who would have a fiduciary duty to the business such as accountants and tax advisors, attorneys, or any other non-employees except those set out in (B) or (C) above.

"Prime Contractor" means the primary contractor on a contract. A "Prime Contractor" does not include any subcontractors.

"Workforce" means all who are employed by a prime contractor in a permanent, full-time employment capacity. It does not include independent contractors.

### 3. PROCEDURES

#### 3.1. Bid Incentive For Businesses With Diverse Management And Workforce ("Bid Incentives")

Unless otherwise prohibited by federal, state, or local law, for any contract advertised, or if not advertised awarded, after the effective date of Section 2-92-407 of the Municipal Code of Chicago, the Chief Procurement Officer shall allocate a bid incentive for diverse management ("Management Incentive"), and a bid incentive for diverse workforce ("Workforce Incentive") as follows:

| <b>Total % of Contractor Management That Is Diverse</b> | <b>Management Bid Incentive</b> |
|---|---------------------------------|
| 10% to 20%  | 0.5% of the contract base bid   |
| Greater than 20% up to 40%                              | 2% of the contract base bid     |
| Greater than 40%  | 4% of the contract base bid     |
| <b>Total % of Contractor Workforce That Is Diverse</b>  | <b>Workforce Bid Incentive</b>  |
| 10% to 20%  | 2% of the contract base bid     |
| Greater than 20% up to 40%                              | 4% of the contract base bid     |
| Greater than 40%  | 6% of the contract base bid     |

For both Bid Incentives, the calculation of the percentage is based on the number of individuals who comprise Management or Workforce, as applicable.

A Prime Contractor may qualify for and apply both the Management Incentive and Workforce Incentive on the same bid.

The Bid Incentives are limited in scope and therefore will not apply to every contract between the City of Chicago and an eligible business. The Bid Incentive does not apply if:

- the contract by its nature is not adapted to award by competitive bidding as set forth in 65 ILCS 5/8-10-4;
- the estimated value of the contract is less than \$100,000;
- prohibited by federal, state, or local law;
- an emergency exists;
- the contract is for cooperative purchasing or cooperative construction;



- the Chief Procurement Officer determines that application of the incentive is not in the best interest of the City.

### 3.2. Purpose and Effect of Bid Incentives

The purpose of the Bid Incentive is to identify the low bidder; it does not apply to or otherwise pertain to the contract price. In procurements where price is the only factor, the Bid Incentive(s) shall be applied by deducting the appropriate percentage or percentages from the bid price of the bidder meeting the eligibility criteria.

### 3.3. Application Procedures

- A. Affidavit. At the time of bid, bidders seeking to take advantage of the Bid Incentive(s) must submit the relevant affidavit(s) included in bid packages for the procurement of applicable contracts.
- B. Additional Documentation. The Chief Procurement Officer may require, at the time of bidding, prior to contract award, or during the term of the contract, such additional documentation, information, and/or site visit interviews as the Chief Procurement Officer deems necessary to verify that a bidder qualifies, or continues to qualify, for the Bid Incentive(s). At a minimum, for either incentive, the Chief Procurement Officer will require the apparent low bidder to submit backup documentation to support the information provided in the affidavit(s).

### 3.4. Records, Monitoring, and Compliance

The prime contractor shall maintain records adequate to monitor compliance with this section and shall submit such reports as required by the Chief Procurement Officer. Full access to the prime contractor's records shall be granted to the Chief Procurement Officer, the commissioner of the supervising department, the Inspector General, or any duly authorized representative thereof.

The prime contractor shall maintain all relevant records for a period of no less than three years after the expiration of the contract.

### 3.5. Penalties

Upon completion of the work on a contract, any business that received a bid incentive but that fails to maintain the level of diversity on which the incentive was based during the term of the contract for which the Bid Incentive(s) was/were awarded shall be fined in an amount equal to three times the amount of the bid incentive awarded., unless the prime contractor is able to show good cause for the failure.

## 4. FINAL DECISION

The Chief Procurement Officer or designee shall make the final determination regarding the applicability of the bid incentive to any procurement.

*This document may be updated periodically and is subject to change without notice.*

