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# CITY OF CHICAGO

## RULES

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### **MID-SIZED BUSINESS INITIATIVE (MBI) CONSTRUCTION PROGRAM**

**UNDER 2-92-820 and 2-92-860  
LAST UPDATED: October 18, 2018**



**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 **2-92-820 and 2-92-860**, THE FOLLOWING RULES REGARDING THE **MID-SIZED BUSINESS INITIATIVE (MBI) CONSTRUCTION PROGRAM** ARE ADOPTED HEREIN.

By Order of the Commissioner:

Signed:   
Chief Procurement Officer *ju*

Date: 18 October 2018

Effective: **OCT 18 2018**

The Mid-Sized Business Initiative Construction Program (the "MBI Program") is designed to increase the opportunities for mid-sized businesses to do business with the City of Chicago. These rules are adopted pursuant to Section 2-92-800 et seq. of the Municipal Code of Chicago and set forth the requirements for the MBI Program, which calls for mid-sized local businesses to be the exclusive bidders on certain construction projects. The MBI Program has two tiers: MBI 1 for contracts with an estimated contract value of not less than \$10,000,000 and not more than \$20,000,000 and MBI 2 for contracts with an estimated contract value of not less than \$3,000,000 and not more than \$10,000,000.

## **I. Definitions.**

A "mid-sized local business enterprise" means a mid-sized local business enterprise-one or mid-sized local business enterprise-two.

A mid-sized local business enterprise-one or "MSB-1" is a local business enterprise that has gross receipts, averaged over the firm's previous five fiscal years, or number of employees, per pay period averaged over the past twelve months, that do not exceed two times the size standards set forth in 13 C.F.R. Part 121 and which is at least 51 percent owned by one or more persons whose individual personal net worth is not more than two times the personal net worth of an "economically disadvantaged" person.

A "mid-sized local business enterprise-two" or "MSB-2" is a local business enterprise that has gross receipts, averaged over its previous five fiscal years, or number of employees, per pay period averaged over the past 12 months, that do not exceed one and a half times the size standards set forth in 13 C.F.R. Part 121; and (ii) which is at least 51 percent owned by one or more persons whose individual personal net worth is not more than one and a half times the personal net worth of an "economically disadvantaged" person.

"Economically disadvantaged" means an individual whose personal net worth is less than \$2,000,000.00, adjusted annually for inflation, based on the Consumer Price Index – Urban Wage Earners and Clerical Workers (Chicago All Items) published by the United States Bureau of Labor Statistics. The 2018 personal net worth limit is \$2,276,550.06.

A "local business enterprise" is an entity located within the counties of Cook, DuPage, Kane, Lake, McHenry, or Will in the State of Illinois (the "Six County Region"), which has the majority of its regular, full time work force located within the Six County Region.

## **II. Procedure.**

- A. (1) The Department of Procurement Services (DPS) will identify construction projects that will be offered exclusively to mid-sized local business enterprise-ones through this MBI Program in the City's Buying Plan, updated each quarter. MBI Program construction projects will be sized appropriately for mid-sized local business enterprise-ones and typically will be limited to estimated project construction costs between \$10,000,000 and \$20,000,000. (2) The Department of Procurement Services (DPS) will identify construction projects that will be offered exclusively to mid-sized local business enterprise-tuos through this MBI Program in the City's Buying Plan, updated each quarter. MBI Program construction projects will be sized appropriately for mid-sized local business enterprise-tuos and typically will be limited to estimated project construction costs between \$3,000,000 and \$10,000,000.
- B. For those bidders who are not presumed to be mid-sized local business enterprises, the bid package for each construction procurement identified as part of the MBI Program will contain the affidavit referred to in Section IV below to be completed by the bidder. Bidders may be required to submit documentation to verify the accuracy of the information provided in such affidavits including, but not limited to, corporate tax returns (for the bidder and its affiliates), personal tax returns for each owner whose ownership is being relied on for eligibility for the MBI Program, and personnel records. Failure to timely provide all requested documentation will result in the rejection of the bid and may result in a finding of non-responsibility.



### III. Eligibility.

- A. To qualify for the MBI 1 program, a business must:
- i. Be an MSB-1;
  - ii. Perform more than fifty percent of the work on the construction project with its own forces or in conjunction with subcontractors who are also mid-sized local business enterprises; and
  - iii. Be independent, and not an affiliate or subsidiary of any other business.
- B. To qualify for the MBI II program, a business must:
- i. Be an MSB-2;
  - ii. Perform more than fifty percent of the work on the construction project with its own forces and/or subcontractors who are also small or mid-sized local business enterprises; and
  - iii. Be independent, and not an affiliate or subsidiary of any other business.
- C. Independence of a business is determined solely by the Chief Procurement Officer ("CPO") or his or her designee. Indicia of independence include the ability of the applicant to perform satisfactorily in its area(s) of specialty without substantial reliance upon finances, resources, bonding, expertise, staff, facilities, or equipment of another individual business. Recognition of the applicant as a separate and distinct entity by governmental taxing authorities is not dispositive of the applicant's assertion of independence. DPS will consider all affiliates of the bidder as well as any parent-subsidary relationships when determining whether a firm is independent. Affiliation is determined in accordance with 13 CFR Part 121. Except as otherwise provided in Section 13 CFR Part 121, firms are "affiliates" of each other when, either directly or indirectly: (1) one firm 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 will consider all appropriate factors, including common ownership, common management, and contractual or familial relationships. Independence will be evaluated as of the date the applicant was established through and including the date of application to the MBI.
- D. Only firms that meet the definition of mid-sized local business enterprise are eligible to bid on an MBI construction contract.
- E. Minority owned business enterprises (MBEs), women owned business enterprises (WBEs), and veteran-owned business enterprises (VBEs) that are certified by the City pursuant to the City's 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 (the "Certification Regulations") must also be small local business enterprises, as defined in Section 2-92-670 of the Municipal Code of Chicago, in order to be certified as an MBE, WBE, or VBE and therefore are presumed to be mid-sized local business enterprises. MBEs and WBEs certified by Cook County must also be small local businesses in order to be certified and therefore are presumed to be eligible.
- F. Firms certified as Disadvantaged Business Enterprises (DBEs) are presumed to meet the size standard for mid-sized business enterprises, but must prove that they are a local business enterprise in order to participate in the MBI Program; therefore, DBEs will be required to submit an affidavit in the form provided in the bid package regarding their status as a local business enterprise.

### IV. Affidavits, Reporting, and Investigations.

- A. A firm seeking to bid on a contract that has been designated as part of the MBI Program, who is not presumed to be a mid-sized local business enterprise in accordance with Section III.E. above, must complete and submit an affidavit with its bid attesting that it meets the eligibility requirements of the MBI program.



- B. Businesses that have been determined to be mid-sized local business enterprises will be required to submit annual affidavits confirming their continued compliance with the eligibility requirements of MBI Program.
- C. If a mid-sized business enterprise undergoes any change to its business, that affects its status as a mid-sized business enterprise, it must notify DPS within 5 business days of the change.
- D. Mid-sized business enterprises must provide any reports and documents required by the CPO in order to evaluate the effectiveness of the MBI Program, including, but not limited to the reports referred to in Subsection II (C) above.
- E. The CPO reserves the right to request additional reports or documents and/or site visits to determine the accuracy of the information provided in such affidavits and reports. Failure to provide the requested reports or documents and/or refusing a site visit will result in a determination that you are ineligible to participate in the MBI Program for that particular project.

**V. Enforcement and Penalties.**

- A. If the CPO determines, after notice and an opportunity for a hearing before the CPO, that a firm has made any fraudulent misrepresentations regarding its status as a mid-sized business enterprise, or has colluded with another making fraudulent misrepresentations regarding its status as a mid-sized business enterprise, the CPO will declare the firm to be ineligible to contract or subcontract on City contracts. The period of ineligibility may include permanent or indefinite ineligibility or ineligibility for a lesser duration. The City will regard as nonresponsive any bid submitted during such period of ineligibility which includes a disqualified entity as a contractor, subcontractor or member of a joint venture.
- B. In addition to a finding of ineligibility, if an individual knowingly obtains or assists in obtaining a contract with the City through false representations regarding it or another firm's status as a mid-sized business entity, the individual making or assisting in making such false representations may be subject to criminal consequences, including incarceration for a period of not to exceed six months or a fine of not less than between \$5,000 and not more than \$10,000.
- C. If the CPO determines that a contractor submitting a bid was not involved in any misrepresentation of the status of an ineligible subcontractor included in its bid, the CPO may allow the contractor to discharge the ineligible subcontractor and engage an eligible subcontractor as a replacement, if possible.
- D. In addition to the penalties set forth above, any person who violates these rules will be subject to a fine of not less than \$1,000 and not more than \$5,000 for each violation.

