

COUNTY OF COOK, ILLINOIS

**MINORITY, WOMEN AND VETERAN/SERVICE-DISABLED VETERAN-OWNED
BUSINESS ENTERPRISE PROGRAM**

RULES AND REGULATIONS

Effective August 14, 2015



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COUNTY OF COOK, ILLINOIS
RULES AND REGULATIONS GOVERNING CERTIFICATION OF
MINORITY, WOMEN AND VETERAN/SERVICE-DISABLED VETERAN OWNED BUSINESS
ENTERPRISES

Effective August 14, 2015

I. PURPOSE AND POLICY

Pursuant to the Cook County Code of Ordinances (“County Code”), this publication sets forth the rules and regulations associated with a) certification of Protected Class Enterprises (“PCEs”), including minority- and women-owned business enterprises (“MBE/WBEs”) and veteran- and service-disabled veteran-owned business enterprises (“VBE/SDVBEs”), by the Office of Contract Compliance for participation in Cook County procurements; and b) contract compliance. As set forth in the County Code:

“[i]t is the public policy of the County to strive to achieve the full and equitable participation of minority- and woman-owned businesses in the County’s procurement process as both prime and subcontractors. The County is committed to a policy of preventing discrimination in making procurements, and eliminating arbitrary barriers to participation in procurements by all persons, regardless of race, sex, or ethnicity.” Cook County, Ill., Code pt. 1, ch. 34, art. IV, div. 8, subdiv. 1, § 34-260 (2014).

II. DEFINITIONS (Source Sec. 34-263, except where noted)

- A. *Applicant* means a person who submits documents and information seeking certification, continued certification, or re-certification as an MBE, WBE, VBE, or SDVBE to the Office of Contract Compliance or whose continued certification is open to question.
- B. *Broker* means a Person who is not a Regular Dealer or Distributor or which neither manufactures the supplies, equipment or goods supplied nor owns or operates a store, warehouse or other establishment (and related distribution equipment) in which it maintains, consistent with industry standards, an inventory of the supplies, equipment or goods, required for performance of the Contract, for sale in the normal course of business. A Broker provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.
- C. *Certified or Certification* means the granting of Minority Business Enterprise (“MBE”), Women’s Business Enterprise (“WBE”), Veteran Business Enterprise (“VBE”), or Service Disabled Veteran Business Enterprise (“SDVBE”) status to a Person.
- D. *Chief Procurement Officer (“CPO”)* means the Chief Procurement Officer of the County of Cook.
- E. *Code* means the Cook County Code of Ordinances.
- F. *Commercially Useful Function* means the performance of a distinct element of work required for the Procurement, with the requisite skill and expertise.
- G. *Contract* means any Procurement or Contract in an amount exceeding \$25,000.00.

- H. *Contract Compliance Director* ("CCD") means the Contract Compliance Director of the County of Cook.
- I. *Contractor* means any person or business entity that enters into a contract with the County (*as defined in Section 34-121*), and includes all partners, joint ventures, and subcontractors of such person or entity.
- J. *Control* means the unfettered authority to directly or indirectly manage governance, administration, work, and all other aspects of a business.
- K. *Distributor* means a Person supplying a product with written confirmation of its authorized distributor relationship with a manufacturer. Such distributor may be stocking (maintaining inventory) or non-stocking.
- L. *Defined Group* means a subset or category of the population comprised of natural persons all of whom are either minorities, women, veterans or service-disabled veterans.
- M. *Distributor* means a firm supplying a product with written confirmation of its authorized distributor relationship with a manufacturer. Such firm may be stocking (maintaining inventory) or non-stocking.
- N. *Economically Disadvantaged* means an individual with a Personal Net Worth less than \$2,000,000.00 indexed annually for the Chicago Metro Area Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2008.
- O. *Joint Venture* means an association of two or more Persons proposing to perform a for-profit business enterprise. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the participants and their relationship and responsibility to the contract.
- P. *Local business* means a Person, including a foreign corporation authorized to transact business in Illinois, having a bona fide establishment located within the County at which it is transacting business on the date when a Bid or proposal is submitted to the County and when the relevant contract is actually performed, and which employs the majority of its regular, full-time work force within the County. A Joint Venture shall constitute a Local Business if one or more Persons that qualify as a "Local Business" hold interests totaling over 50 percent in the Joint Venture.
- Q. *Local Small Business* means a Local Business which is also a Small Business. Source: Sec. 34-121
- R. *Minority Business Enterprise ("MBE")* means a Local Small Business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:
 - 1. Which is at least 51 percent owned by one or more Minority Individuals, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals;
 - 2. Whose management, policies, major decisions and daily business operations are independently managed and Controlled by one or more such Minority Individuals; and
 - 3. Which has its principal place of business and a majority of its regular, full-time workforce located within the County's Marketplace.

- S. *Minority Individual* means a natural person of one of the following groups:
1. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
 2. Hispanic-Americans, which includes persons who are Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, regardless of race;
 3. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 4. Asian-Americans (persons whose origins are in any of the original peoples of the Far East Asia, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent);
or
 5. Other groups, including, but not limited to, Arab-Americans, found by the County 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 the County's Marketplace. Source: Sec. 34-263
- T. *Owned* means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risk and profits commensurate with the degree of ownership interest.
- U. *Person* or *Persons* means any individual, corporation, partnership, Joint Venture, trust, association, limited liability company, sole proprietorship or other legal entity.
- V. *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 Certified MBE or WBE, provided that the other Person is certified by a governmental agency that meets the County's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with a spouse, an individual's Personal Net Worth includes only that individual's share of such assets. An individual's Personal Net Worth also includes the present value of the individual's interest in any vested pension plans, individual retirement 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.
- W. *Procurement* or *Procuring* means obtaining supplies, equipment, goods, or services of any kind. Source: **Sec. 34-121**
- X. *Program* means a program established in the County Code that promotes or that is intended to promote the participation of certain Minority- and Women-owned Businesses, Veteran-owned Businesses, and other small businesses in County contracts. Source: **Sec. 34-265**
- Y. *Protected Class Enterprise* ("PCE") means those Persons qualifying under the definitions of Minority Business Enterprise and Women's Business Enterprise.

- Z. *Regular Dealer* means a Person that owns, operates, or maintains a store, warehouse, or other establishment in which the supplies, equipment, or goods (excluding software licenses) of the general character required for the Procurement are bought, kept in stock, and regularly sold or leased in the usual course of business. To be a Regular Dealer, the Person must be an established business that engages, as its principal business and under its own name, in the Procurement and sale or lease of the products in question. A Person 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 Person both owns and operates distribution equipment for the products. Any supplementing of such Person's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other Persons who arrange or expedite transactions are not Regular Dealers.
- AA. *Service-Disabled Veteran* means a Veteran who has been found to have ten percent or more service-connected disability by the U.S. Department of Veterans Affairs or the U.S. Department of Defense.
- BB. *Service-Disabled Veteran Business Enterprise (SDVBE)* means an Illinois-based small business that is not less than 51% actually owned, controlled, and managed by service-disabled veterans. Source: Sec. 34-229
- CC. *Small Business* means a small business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 CFR Part 121, as related to the nature of the work the Person seeks to perform on Contracts. A Person is not an eligible small business enterprise in any calendar fiscal year in which its gross receipts, averaged over the Person's previous five fiscal years, exceed the size standards of 13 CFR Part 121. Source: 34-121
- DD. *Socially Disadvantaged* means subject or subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged natural person must be a citizen or lawfully admitted permanent resident of the United States.
- EE. *Veteran* means a person who (i) has been either a member of the armed forces of the United States or, while a citizen of the United States, was a member of the armed forces of allies of the United States in time of hostilities with a foreign country and (ii) has served under one or more of the following conditions: (a) the veteran served a total of at least 6 months; (b) the veteran served for the duration of hostilities regardless of the length of the engagement; (c) the veteran was discharged on the basis of hardship; or (d) the veteran was released from active duty because of a service connected disability and was discharged under honorable conditions. Source: Sec. 34-229
- FF. *Veteran-owned Business Enterprise ("VBE")* means an Illinois-based small business that is not less than 51% actually owned, controlled, and managed by veterans. Source: Sec. 34-229
- GG. *Woman-owned Business Enterprise ("WBE")* means a Local Small Business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:

- HH. Which is at least 51 percent Owned by one or more Women, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is Owned by one or more Women;
- II. Whose management, policies, major decisions and daily business operations are independently managed and Controlled by one or more such Women; and
- JJ. Which has its principal place of business and a majority of its regular, full-time work force located within the County's Marketplace.

III. RACE- AND GENDER-NEUTRAL MEASURES TO IMPLEMENT (Source: Sec. 34-264)

- A. In implementing the MBE/WBE Ordinance, VBE/SDVBE Ordinance and other Small Business initiatives, the CCD shall use measures including, but not limited to:
 - 1. Establishing schedules for submitting Bids and Quotations with adequate time frames for identifying and contacting PCEs qualified to participate in the Procurement;
 - 2. Segmenting Procurements to facilitate the participation of MBEs, WBEs and other Small Business;
 - 3. Providing timely information on contracting procedures, Bid preparation and specific contracting opportunities;
 - 4. Participating in Pre-Bid or Pre-Submittal conferences, where appropriate, to explain the projects and to encourage Contractors to use available qualified PCEs;
 - 5. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the County;
 - 6. Collecting information from all Contractors detailing the Bids or proposals received from all subcontractors for Procurements and the expenditures to PCEs;
 - 7. At the discretion of the CCD, in cooperation with the CPO, periodically entering into a procurement process without Program Goals or Project Specific Goals in order to determine MBE and WBE utilization in the absence of such goals; and
 - 8. Referring complaints of discrimination to Cook County's Commission on Human Rights, or other appropriate authority, for investigation.

IV. PROGRAM ADMINISTRATION (Source: Sec. 34-265)

- 1. As stated in the Code, the Office of Contract Compliance, under the direction of the CCD shall administer the Program. The duties of the CCD shall include:
 - 1. Formulating, promulgating and implementing rules and regulations for the development, implementation and monitoring of the Program, certification process, and the recertification process, including time limitations for the submission of documents and information regarding certification, recertification and contract participation. The CCD is authorized to collect certification and recertification processing fees in the amount of \$250.00 per Application; the collection of said processing fees shall be transacted by the CCD through the Bureau of Finance;

2. Providing information and assistance to PCEs and Small Businesses relating to the Program, and serve as a liaison to community, contractor, professional and supplier groups, and associations and organizations;
3. Establishing uniform policies and procedures for certifying, recertifying and decertifying Persons as PCEs, accepting certifications by other agencies, and maintaining a directory of Certified PCEs. Such policies and procedures shall include non-certification or decertification for the willful submission of false or inaccurate material information and the failure to submit complete and accurate material information to the CCD regarding certification or a Procurement on a timely basis, and shall relate to both PCEs and PCE owners;
 1. Establishing Contract Specific Goals based upon the availability of PCEs to provide the supplies, materials, equipment or services required by the Contract;
 2. Monitoring Contracts to evaluate and enforce compliance with Contract Specific Goals and commitments;
 3. Cooperating with and providing assistance to Using Agencies to facilitate participation by PCEs in Procurements;
 4. Reviewing, approving or rejecting Utilization Plans for achievement of Contract Specific Goals, and evaluating the extent to which goals were achieved;
 5. Monitoring contracts to ensure compliance with Section 34-388, Prompt Payment of PCEs;
 6. Receiving, reviewing, and acting upon complaints and suggestions concerning the Program;
 7. Evaluating the effectiveness and utility of the Program;
 8. Monitoring the Program and the County's progress towards the Program Goals. The CCD shall report on a quarterly and annual basis to the President on the Program;
 9. Reporting to the Contract Compliance Committee as defined in Section 34-266, at its request, information regarding the administration of the Program and its progress toward achieving the Program Goals; and
 10. Developing and implementing strategies and initiatives to promote the capacity of MBE/WBE/VBE/SDVBEs to participate in County contracts.
4. Using Agencies shall cooperate with the CCD in the administration of the Program, specifically including assisting the CCD with setting Contract Specific Goals, assisting in the identification of available PCEs, and notifying the CCD of instances of non-compliance, suspected non-compliance, fraud, and suspected fraud related to the Program.

V. ENFORCEMENT

- A. The CCD may seek remedies and penalties against persons or entities determined to have violated the ordinance or these regulations, or provided assistance to others who have, including but not limited to decertification, contract suspension, contract termination, disqualification from contracting opportunities, imposition of fines or penalties, and imposition of penalties associated with future contracting opportunities.
- B. The following shall be accorded substantial weight by the CCD regarding penalties and fines: 1) False, erroneous or misleading information by any Applicant or Contractor regarding an Applicant's purported status as an MBE/WBE/VBE/SDVBE; 2) false or misleading information regarding Commercially Useful Functions associated with an MBE/WBE/VBE/SDVBE; 3) false or misleading information regarding the performance of or participation in a contract; 4) involvement in contracting or Certification-related irregularities with any private or governmental entity; and 5) non-compliance with reasonable requests by the CCD for information concerning Program eligibility or participation.

VI. CERTIFICATION STANDARDS

- A. The CCD or the CCD's designee periodically and thoroughly shall gather, investigate, review, and consider all relevant information, facts, documents, law, industry norms, findings, conclusions and other information with respect to initial certification, continued certification, denial of certification, decertification, sanctions and penalties.
 - 1. These may include, but are not limited to: information and documents submitted by the Applicant; individual interviews of principal management officials and/or owners of Applicants; facility site visits; informational solicitations from Persons, organizations and agencies having knowledge of the Applicant, its management, ownership and principal areas of specialty or expertise; and information obtained from any other source.
 - 2. Use of additional investigative techniques may be used to verify representations and documents submitted by an Applicant, or other documentation submitted.
- B. Certification does not guarantee contract participation.
- C. Initial certification does not guarantee continued certification.

VII. CERTIFICATION CRITERIA

The certification criteria listed below shall be used in determining an Applicant's eligibility. However, an Applicant's compliance with these certification criteria does not guarantee certification.

- A. Burden of Proof. The Applicant has the burden by a preponderance of the evidence to prove that it sufficiently meets the Program eligibility criteria set forth in the Cook County Code and these policies and procedures.
- B. Ownership.
 - 1. To obtain and maintain certification, a firm shall be at least 51 percent owned, controlled and managed by one or more members of the defined group. In the case of a corporation, such individual(s) must own at least 51 percent of the class of voting stock outstanding and at least 51 percent of the aggregate of all stock outstanding. In the case of a partnership, members of the defined group must own 51 percent of each class of the partnership interest. In the case of an LLC, the members of the defined group must own at least 51 percent of each class of member interest. Ownership shall be reflected in the relevant legal documents including By-Laws, Shareholder Agreements, Partnership Agreements, and Operating Agreements.
 - 2. The firm's ownership by members of the defined group must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The minorities, women and/or veteran owner(s) shall enjoy the customary incidents of ownership including:

- a. Ability to transfer stock, title, and possessions;
 - b. Ability to enter into contracts;
 - c. Ability to secure loans;
 - d. Ability to access and direct funds and bank accounts; and
 - e. Actually sharing in the risks and profits commensurate with ownership interest. Source: Sec. 34-268(b).
3. In determining if the purported ownership is real, substantial and continuing, the CCD may consider factors including but not limited to whether:
- a. A member of the defined group acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration;
 - b. There is a provision for the co-signature of a spouse who is not a member of the defined group on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents;
 - c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a member of the defined group to a spouse who is such an individual.

The CCD shall closely and carefully scrutinize the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by the member(s) of the defined group.

4. **Proof of Group Status.** A person's status as a member of the relevant group may be established initially through affirmations of such persons that they are members of the relevant group and are so regarded in their particular communities. The CCD may require submission of proof of a person's group membership, including but not limited to, birth certificates, passports, and other official documents, or proof that the person identifies with such group and is regarded in the community as a member of such group. A person's status as a Veteran or Service-Disabled Veteran is established as defined in Section 34-229 of the County Code and these Policies and Procedures.
5. **Securities Held By Owners.** Securities which represent ownership of the Applicant by minorities, women or veterans shall directly and physically be held by them, except that securities or assets held in trust may be regarded as held by minority, woman or veterans for purposes of determining ownership of the firm, if:
- a. The beneficial owners and the trustees of securities or assets held in trust are minorities, women or veterans;
 - b. The beneficial owners of a trust are minorities, women and/or veterans who exercise effective control over the management, policy-making, and daily operational activities of the firm; or
 - c. The beneficial owners of a revocable living trust are minorities, women or veterans as well as sole grantors and trustees.
6. **Real and Substantial Contribution.** Contributions of capital or expertise by minority, women or veteran owners to acquire their ownership interests in the Applicant shall be real and substantial, in accord with generally accepted industry standards, and be in proportion to the

interest acquired. If expertise is part of the contribution, the expertise must be of the requisite quality generally recognized in a specified field, necessary to the Person's potential success, specific to the type of work the Person performs and documented in the Person's records. Insufficient contributions shall include unsecured notes; unsecured promises to contribute capital in the future or promises to contribute expertise in the future; participation in Applicant by alleged minority, women, or veteran owners as employees without management responsibilities; and provision by any alleged owner of goods, services, equipment, etc. having an actual or estimated value, based upon industry standards, which is substantially less than the value attributed in Applicant's Application.

7. The CCD shall deem as held by a minority, woman, or veteran, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
 - a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - b. Through inheritance, or otherwise because of the death of the former owner.

8. The CCD shall presume as not being held by minority, woman, or veteran, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-minority, non-veteran or non-MBE/WBE firm who is:
 - a. Substantially involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
 - b. Involved in the same or a similar line of business;
 - c. Engaged in an ongoing business relationship with the firm; or
 - d. An affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption, the minorities, women or veterans must demonstrate, by clear and convincing evidence, that:

- a. The gift or transfer to the individual(s) was made for reasons other than obtaining certification; and
- b. The minorities, women, or veterans actually control the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-minority, non-eligible male or non-veteran who provided the gift or transfer.

C. Economic and Professional Independence.

1. Viability. All MBEs, WBEs, VBEs or SDVBEs shall be viable businesses. "Viability" of the Applicant shall be examined with reference to its financial state as determined from audited or auditable financial statements, or income projections when the Applicant is a new business; possession of insurance, bonds and licenses required by applicable governmental agencies to perform the work the Applicant represents as its principal area(s) of specialty and expertise; access to real properties and facilities from which to conduct day-to-day business operations; employment of or access to persons in sufficient numbers and with expertise essential to satisfactory contract performance in its proffered area(s) of specialty and expertise; the Applicant's ownership of or access to equipment, goods, supplies, etc., essential to its satisfactory performance in its asserted area(s) of specialty and expertise; and other factors identified by the CCD.

2. Professional Independence. All MBEs, WBEs, VBEs or SDVBEs shall be independent Persons. An independent Person is one whose viability does not depend on its relationship with a third party who is not an MBE, WBE, or VBE, and who has the capacity or ability to successfully undertake and complete the relevant work independently or with a third party who is a MBE, WBE, or VBE. The Person must have the ability to satisfactorily perform in its area(s) of specialty and expertise without substantial reliance upon finances, resources, expertise, management, manpower, facilities, equipment, etc. of non-minority, non-women or non-veteran business enterprises. Recognition of the Applicant as a separate and distinct entity by governmental taxing authorities shall not exclusively prove any Applicant's assertions of independence.

Absent clear and convincing evidence otherwise, an Applicant shall be presumed unable to operate independently of a third party who is not a minority, woman, or veteran or to otherwise meet the independence criteria herein under the following circumstances:

- a. Applicant is a party to any contract or lease on terms that depart from industry standards or prudent business practices;
- b. Interlocking ownership of the Applicant and a third party who is not an MBE, WBE, or VBE, in the same or related industry;
- c. Common directors or officers between the Applicant and a third party who is not an MBE, WBE, or VBE, in the same or related industry.
- d. Applicant's failure to demonstrate its ability to operate as a viable entity without continuing and substantial reliance upon the equipment, facilities, credit provided by a third party who is not a minority, woman, or veteran;
- e. Formation of, or change in, ownership and control of Applicant so as to create a 51% ownership in the firm by MBE, WBE, VBE, or SDVBEs within six months prior to the relevant bid notice or RFP;
- f. A previous or continuing employer-employee relationship among or between current minority, women, or veteran owners or principals of Applicant and owners or principals who are not minorities, women, or veterans; or
- g. Exclusive, or a pattern of exclusive, or primary dealings with firms that are not minority, women, or veteran owned.

D. Expertise in Area of Specialty.

1. An "Area of Specialty" means the type of business activity in which the MBE, WBE, VBE, or SDVBE is regularly engaged and in which an MBE, WBE, VBE, or SDVBE is competent to engage. Firms may be certified in more than one area of specialty, as long as the eligibility criteria are met. Applicants shall be required to demonstrate that the relevant owner(s) have the ability and expertise to successfully manage and control the Person's operations and work.
2. Information and documents regarding Expertise in Area of Specialty may include those associated with proof of ownership or access to relevant materials, supplies and equipment; proof of prior performance in the relevant field; pending or current contracts in the relevant field; invoices associated with work performed in the relevant field; relevant degrees, degrees, licenses and certification in the relevant field; and other factors identified by the CCD.
3. Applicants desiring to be certified in additional areas of specialty may submit an expansion request in writing along with supporting documentation as evidence to provide and perform the additional goods or services. Until such expanded Certification is granted, participation as an MBE, WBE, VBE, or SDVBE on any County contract in a different area of specialty/expertise shall

not count toward the fulfillment of MBE, WBE, VBE, or SDVBE contract goals.

4. If federal, state or local law, require a particular license or other credential to own or control a certain type of business, then the Socially and Economically Disadvantaged owner(s) shall possess the license or credential. If federal, state or local law does not require that the owner(s) possess the license or credential, then the CCD may consider the fact that the owner(s) lacks such license or credential in determining whether the Applicant has the requisite expertise.

E. Control.

1. Minority, women or veteran owners shall, either collectively or individually, have and exercise the actual and legal authority to direct or cause the direction of management, policies, and operations of the Applicant's day-to-day as well as long-term decisions on management, policy, operations and work. No formal or informal restrictions of any kind may limit the customary discretion of minorities, women or veterans in actual business control. Unless mandated by law, no restrictions in by-laws, partnership agreements, shareholders agreements, operating agreements, charter or similar documents may limit minorities, women or veterans from effective, continuous and actual control and management of the Applicant, without the cooperation of any owner who is not a minority, woman or veteran. The minority, woman or veteran owner(s) shall hold the highest officer position in the firm. In a corporation, the minority, woman or veteran owner(s) shall control the board of directors. In a partnership, one or more minority, woman or veteran owner(s) shall serve as managing partners.
2. Persons who are not members of the defined group may be involved in an MBE, WBE, VBE, or SDVBE firm as owners, managers, employees, stockholders, officers, or directors. Such individuals may not have authority or control over an aspect of the firm's management or operations unless legally, actually, and irrevocably delegated by relevant owners.

F. Management.

1. The Socially and Economically Disadvantaged individual(s) must actually exercise control over the Person's operations, work, management and policy.
2. The minority, woman or veteran owner(s) of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to others, regardless of whether such others are members of the defined group. Such delegations of authority must be revocable, and the minority, women or veteran owner(s) shall retain the power to hire and fire any person to whom such authority is delegated.
3. The managerial role of the minority, women and veteran owner(s) in the firm's overall affairs must be such that the CCD may reasonably conclude that the minority, women or veteran owners actually exercise control and management over the firm's operations and policy.
4. The minority, women or veteran owner(s) shall have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority, women or veteran owner is not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The minority, women or veteran owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to

make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control and management.

5. A Socially and Economically Disadvantaged owner may not engage in outside employment or other business interests that conflict with the management of the Person or prevent the owner from devoting sufficient time and attention to manage and Control the Person's day to day activities including, but not limited to, direction of its workforce, negotiation of contracts, estimation and bidding on contracts, securing loans, etc..
- G. Commercially Useful Function. Brokers may not be certified. Applicants may not be certified unless they demonstrate that they perform or are capable of performing a commercially useful function in the relevant area of specialty.
- H. Current Circumstances. The CCD shall evaluate the eligibility of a firm on the basis of current circumstances. The CCD shall not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by minorities and/or women at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor may it refuse to certify a firm solely on the basis that it is a newly formed firm.
- I. Failure to Cooperate. All firms seeking MBE, WBE, VBE or SDVBE Certification shall cooperate fully with requests from the Office of Contract Compliance for information and documents relevant to the certification process. Failure or refusal to provide such information and documents shall be grounds for denial of certification or decertification.

VIII. CERTIFICATION PROCEDURES

- A. Preliminary Review, Additional Information. Applications with omissions or deficiencies may 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 goal of subsection D until required documents and information are received. If upon initial receipt of an application for certification or recertification, the OCC determines that the application is incomplete, the OCC may request necessary documents and information from the Applicant, and the Applicant shall fully respond to the request within 5 business days of the receipt of the request. Failure to fully respond to the request in a timely fashion may result in a denial or decertification.
- B. Full Review, Additional Information. (1) In the event additional information or documents are necessary or helpful in determining eligibility for certification or recertification, the OCC may request such information or documents through a formal Request for Information ("RFI"). Applicants shall respond to the RFI within fifteen (15) business days of receipt of the RFI. If such information or documents are not received within fifteen (15) business days, a follow-up RFI may be sent to the Applicant and the Applicant shall have an additional ten (10) business days to respond. If, within the specified time period, the Applicant has not provided information or documents sufficient for determination, the CCD may deny or decertify.

- C. Additional Response Time. Within the given time periods provided in Sections A and B above and for a good cause shown, Applicants may request additional time to respond, in which case a corresponding extension of the 90-day determination goal shall apply. In the event of such request, the CCD may grant a minimum of ten (10) additional business days to respond.
- D. Determination Goal. It is the goal of the OCC to issue to the Applicant a letter confirming or denying certification within 90 business days of the Applicant's submission of information and documents sufficient to make a determination.
- E. Term of Certification, Annual Recertification Application. Assuming continuing eligibility, the MBE, WBE, or VBE certification shall be valid for five (5) years. On an annual basis the Applicant shall submit such information and documents as are required by the CCD, in the area of specialty/expertise specified. Failure to submit the information and documents annually shall result in the lapse of an Applicant's continued certification and ineligibility of that Applicant to participate in any contract as a MBE, WBE, VBE or SDVBE, and may result in decertification as provided herein.
- F. Term of Certification, Recertification Application. At the close of the five (5) year period referenced in Section E, Applicants may submit a Recertification Application, entailing such information and documents as are required by the CCD. Failure to submit a timely Recertification Application shall result in the lapse of the Applicant's certification and ineligibility of that Applicant to participate in any contract as a MBE, WBE, VBE or SDVBE, and may result in decertification as provided herein. To ensure continuing certification, applicant shall file a Recertification Application no less than sixty (60) days prior to the termination of the five (5) year period referenced herein. Upon request, CCD may grant the Applicant a minimum of ten (10) additional business days to respond.
- G. Additional Information. As a condition of certification, continued certification, or Recertification, the CCD may request at any time from any Applicant such additional information or documents as necessary or helpful in determining an Applicant's status as an MBE/WBE/VBE/SDVBE or its participation or proposed participation in a procurement. During any period for which any MBE, WBE, VBE or SDVBE certification shall be effective, all books and records in Applicant's possession and control, which are relevant to MBE, WBE, VBE or SDVBE eligibility or participation or proposed participation, shall be open for inspection and examination by the CCD upon reasonable notice.
- H. Change in Circumstances. All certified firms and Applicants shall inform the CCD in writing, of any change in circumstances such as ownership, changes in control, changes in management, or other material changes in the information or documents provided in their application relevant to the firm's eligibility for certification, within fifteen (15) business days of such change. Failure to communicate such changes may constitute grounds for the denial of certification or decertification. The firm shall attach supporting documentation describing in detail the nature of any changes. Upon request by the CCD, the notice shall take the form of a notarized affidavit by the owner(s) of the firm.
- I. Confidential Information. The CCD shall safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable federal, state, and local law.
- J. Credit Contingent. Credit toward meeting the MBE, WBE, VBE or SDVBE goals shall be contingent on the MBE, WBE, VBE or SDVBE certification approval.

K. Other Certification(s). The CCD may accept formal certifications by other entities, provided that the requirements of the County Code and these Policies and Procedures are met. Current certification by the following entities may also be accepted for purposes of proof of MBE or WBE status by firms participating or seeking to participate on County contracts unless the firm has been denied by Cook County, provided that the firm submits a Personal Net Worth/Size Standard Affidavit that demonstrates compliance with the requirements of the County Code:

1. City of Chicago

IX. DENIAL OF CERTIFICATION, DECERTIFICATION, AND APPEAL

A. ELIGIBILITY CRITERIA.

1. If the CCD determines that an Applicant does not meet the initial or continuing eligibility standards for certification as an MBE, WBE, VBE or SDVBE, or if an Applicant has been decertified or deemed ineligible by another public Agency, then the CCD shall issue a "Preliminary Notice" to the Applicant. The Preliminary Notice shall specifically inform the Applicant of all material facts and conclusions upon which the decision regarding denial or decertification is based, and shall cite the legal standards relied upon. The Preliminary Notice letter shall also state that the Applicant may appeal such decision by responding to the CCD within fifteen (15) business days of receipt of the Preliminary Notice.
2. If the Applicant chooses to appeal, the Applicant's response shall contain sufficient facts and legal arguments to establish that the facts and conclusions upon which the Preliminary Notice was based were erroneous, it shall include any relevant supporting information and documents, and it shall be signed and sworn to before a notary, by a person possessing personal knowledge of the facts stated therein. Upon request, properly authenticated original documents in support of the Applicant's response shall be provided to the CCD. Revisions to material facts or a restructuring of an Applicant's legal form and controls subsequent to issuance of the Preliminary Notice may be considered *pro forma* only.
3. The CCD shall review the Applicant's response to the Preliminary Notice, and make a determination as to whether the factors cited in the Preliminary Notice have been sufficiently refuted so as to permit certification or continuing certification. All final decisions of the CCD with respect to the Denial of Certification of any Applicant shall state whether and to what degree the Applicant responded to the Preliminary Notice, shall be communicated in writing to the Applicant. The written communication shall inform the Applicant of all material facts and legal principals upon which final decision was made, and the procedure for Administrative Review. Within thirty (30) calendar days from the receipt of Applicant's response, or upon expiration of the appeal period if Applicant fails to submit a response, the CCD shall send the Applicant either a "Notice of Rescission" or a "Notice of Denial or Decertification" listing the non-application period and the procedure for Administrative Review.

B. MISREPRESENTATION.

1. If the CCD determines that an Applicant or certified firm engaged in fraud, dishonesty, willful misrepresentation of a material fact regarding a procurement or the firm's status or participation in a county contract, or failed to provide accurate information regarding the firm's status or participation in a county contract, then the CCD shall issue a Preliminary Notice. The

Preliminary Notice shall specifically inform the Applicant of all material facts and conclusions upon which the decision regarding denial or decertification is based, and shall cite the legal standards relied upon. The Preliminary Notice letter shall also state that the Applicant may appeal such decision by responding to the CCD within fifteen (15) business days of receipt of the Preliminary Notice.

2. If the Applicant chooses to appeal, the Applicant's response shall contain sufficient facts and legal arguments to establish that the facts and conclusions upon which the Preliminary Notice was based were erroneous, it shall include any relevant supporting information and documents, and it shall be signed and sworn to before a notary, by a person possessing personal knowledge of the facts stated therein. Upon request, properly authenticated original documents in support of the Applicant's response shall be provided to the CCD. Revisions to material facts or a restructuring of an Applicant's legal form and controls subsequent to issuance of the Preliminary Notice may be considered *pro forma* only. If the Applicant fails to submit written information or documents within the required fifteen (15) business days, the CCD shall issue a "Notice of Denial or De-Certification" to the Applicant.
3. The CCD shall review the Applicant's response to the Preliminary Notice, and make a determination as to whether the factors cited in the Preliminary Notice have been sufficiently refuted so as to permit certification or continuing certification. Within thirty (30) calendar days from the receipt of Applicant's response, or upon expiration of the appeal period if Applicant fails to submit a response, the CCD shall send the Applicant either a "Notice of Rescission" or a "Notice of Denial or Decertification" listing the non-application period and the procedure for Administrative Review.

C. EFFECTS AND REAPPLICATION.

1. Following decertification of any Applicant, the name of such firm shall be removed from the directory of certified firms maintained by the OCC.
2. As of the date of decertification, the Applicant's participation in a County contract shall no longer be counted towards the relevant contractual MBE, WBE, VBE or SDVBE goal.
3. Firms that have been denied certification or decertified for failure to meet eligibility standards, under Section A above, may re-apply for certification with the County after a period of one (1) year from the date of the Notice of Denial or Decertification or as otherwise permitted by the Cook County Code.
4. Firms denied certification or decertified for misrepresentation, under Section B above, may re-apply for certification with the County after a period of 18 months to a period not to exceed five (5) years from the date of the Notice of Denial or Decertification, as determined by the CCD, or as otherwise permitted by the Cook County Code. Factors to be considered in establishing the non-application period shall include the nature and degree of the relevant misrepresentation; the nature of the relevant procurement, if any; the degree to which the Applicant's conduct was reckless or intentional; the number of instances the Applicant made similar representation to the County or other government agencies; whether and to what degree the Applicant colluded with or did not collude with another contractor; and, other factors deemed relevant by the CCD.

X. MBE/WBE/VBE/SDVBE DIRECTORY

The CCD shall maintain a directory of Minority Business Enterprises, Women Business Enterprises and Veteran/Service-Disabled Veteran Business Enterprises. The Directory shall identify all Certified MBEs, WBEs, VBEs and SDVBEs by name, contact information and principal contact person, Certification status (i.e., MBE, WBE, VBE and/or SDVBE), area of specialty or expertise, and date of Certification, No-Change or Re-Certification. The Directory shall be published on the County's Website and shall be available to all interested persons.

XI. REFERRAL TO THE INSPECTOR GENERAL

If at any time following investigation, the CCD has reason to believe that any Person has knowingly or willfully submitted or presented false information and documents regarding a procurement or the firm's status or participation in a county contract of a MBE/WBE/VBE/SDVBE, or failed to provide accurate information regarding the firm's status or participation in a county contract of a MBE/WBE/VBE/SDVBE, such matters shall be immediately referred to the Inspector General. Such referral shall not limit the discretion of the CCD regarding investigation, certification, and decertification.

XII. DISCLOSURE TO OTHER GOVERNMENTAL ENTITIES

Upon reasonable request from any governmental entity during the course of any legitimate and lawful inquiry, the CCD may disclose to such governmental entity such information and documents as are relevant to any Applicant's eligibility for Certification as a MBE, WBE, VBE or SDVBE. However, no disclosure of any information or documents shall be made without prior consultation with, and approval by the Cook County State's Attorney.

XIII. NON-DISCLOSURE OF CERTIFICATION INFORMATION

Unless otherwise mandated by law, no County employee or agent with access to documents or information regarding MBE, WBE, VBE or SDVBE Certifications shall disclose the documents or information to any person, other than the CCD, the Cook County State's Attorney, or other persons duly authorized to receive the documents and information. Nor shall such employee or agent disclose to, or discuss with, any unauthorized person, information regarding deliberations by the Office of Contract Compliance in connection with Certification or De-Certification of any Applicant or as otherwise permitted by law. Non-compliance with this section shall subject the employee to applicable County disciplinary sanctions up to and including termination.

XIV. DEPOSITORY OF RECORDS

Records of all applications for Certification as MBE, WBE, VBE or SDVBE shall be maintained within the Office of Contract Compliance for a reasonable period of time, in compliance with applicable law.

XV. PROGRAM GOALS

- A. For non-public works contracts, the County has an annual aspirational goal of twenty-five (25) percent of the annual total dollar amount of such contracts to MBEs, and ten (10) percent of the total dollar amount of such contracts to WBEs. For Public Works contracts, the County has an annual aspirational goal of twenty-four (24) percent for MBEs and ten (10) percent for WBEs. In addition, the County sets an annual "best efforts" goal of thirty-five (35) percent PCE participation for the total professional services and consulting services utilized by the County.
- B. It is the goal of the County to award each year not less than three percent of its total expenditures for supplies, equipment, goods, and services to VBEs and SDVBEs, in combination. Source: Sec. 34-237
- C. The CCD, in consultation with the CPO and the Using Agency, shall establish specific MBE and WBE participation goals for each procurement that is subject to the Program. In establishing a Contract Specific Goal, the CCD shall consider the availability of Certified MBEs and WBEs for the supplies, equipment, goods, and services associated with the Procurement. Source: Sec. 34-267(b)
- D. When practicably feasible and effective, the CCD, in consultation with the CPO and the Using Agency, shall establish VBE and SDVBE goals for all contracts that are subject to the Program. In establishing a Contract Specific Goal, the CCD shall consider the availability of Certified VBEs and SDVBEs for the supplies, equipment, goods, and services associated with the Procurement. Source: Sec. 34-237
- E. Prior to the advertisement of a solicitation, the Office of the Chief Procurement Officer ("OCPO") shall request a goal recommendation from the CCD for the bid or proposal. Within ten (10) business days after the receipt of all the required information, the CCD shall submit a goal recommendation to the OCPO.
- F. No goal shall be treated as a quota nor shall it be used to discriminate against any Person on the basis of race, color, national origin, religion or sex. Source: Sec. 34-267(c)
- G. Goals shall be set if there are at least three certified MBEs or WBEs available to provide the goods or services associated with the solicitation. The CCD in his/her discretion may set goals in other circumstances.
- H. The CCD may elect not to set goals when there is insufficient availability of MBEs or WBEs to provide the commodities or services identified in the solicitation, or when there are insufficient subcontracting opportunities, or when it is the best interest of the County to do so.

XVI. UTILIZATION PLAN

- A. The CPO shall include in Contract Documents for procurements subject to the Program, a requirement that a Utilization Plan be submitted which either:
 - 1. Commits to PCE participation, and when applicable, VBE/SDVBE participation, equal to or greater than the applicable Program Goals or Contract Specific Goals, or
 - 2. Requests a waiver of all or a portion of a Program Goal or Contract Specific Goal. Source: Sec. 34-269(a).
- B. The Utilization Plan shall include a Letter of Intent that is executed by the responding parties and that contains such information as required by the CCD. The Utilization Plan shall be in such form and shall contain additional information as is required by the CCD, and may include such components as direct

participation, indirect participation, and a mentoring relationship between a prime Contractor and one or more MBE/WBE/VBE/SDVBEs. Source: Sec. 34-269(a)(1).

- C. The completed Utilization Plan shall be due when the bid or proposal is due. Failure to include additional information sufficient for the CCD to make an informed determination as to the compliancy of a Utilization Plan within three (3) business days of the OCC's request for such information shall render the submission not responsive. Source: Sec. 34-269(a)(2).
- D. The CCD shall review and either approve or reject the Utilization Plan. In evaluating a Utilization Plan, the OCC shall consider only Commercially Useful Functions relative to the Procurement and the type of work for which the MBE/WBE/VBE/SDVBE has been certified. Source: Sec. 34-269(a)(3).
- E. When the CCD has approved a Utilization Plan, the Utilization Plan shall not be revised, including substituting the parties named in the Utilization Plan, without the prior written approval of the CCD. Source: Sec. 34-269(a)(4). Except in instances of changes orders initiated by the County, the procedure for revising an approved Utilization Plan shall be as follows:
 - 1. The prime contractor shall submit, to the CCD, a written and signed request to revise the Utilization Plan, which includes an explanation as to why the participation of the relevant subcontractors is to be reduced or eliminated; the efforts undertaken by the prime contractor to continue the participation of the subcontractors; whether, in the case of the proposed reduction of participation or the elimination of a subcontractor, the participation of another MBE/WBE/VBE/SDVBE is feasible; whether and to what degree the prime contractor actually proposes the substitution of another MBE/WBE/VBE/SDVBE; and information or documents that demonstrate the foregoing.
 - 2. Upon receipt of such submission, the CCD shall render a decision within a reasonable amount of time, taking into account the totality of circumstances, or request additional information and documents. In the event the prime contractor does not submit the requested additional information and documents in the reasonable time established by the CCD, the CCD shall deny the request.
 - 3. Upon the submission of a revised Utilization Plan and Letter of Intent reflective of the decision reached by the CCD and written communication from the CCD to the prime contractor, the revision shall be effective. Source: Sec. 34-269(a)(4).
 - 4. All requests for modification of the approved Utilization Plan shall include information and documents sufficient for the CCD to determine whether the request has been made in good faith. The basis for the request for modification to the approved Utilization Plan may not entail facts or circumstances that the requesting party or parties knew or should have known prior to the submission of the approved Utilization Plan.
 - 5. Substitutions of the M/WBE subcontractors who are parties to the approved Utilization Plan may be permitted in the following circumstances:
 - a. Unavailability after receipt of reasonable notice to proceed;
 - b. Failure of performance;
 - c. Financial incapacity;
 - d. Refusal by the subcontractor to honor the bid or proposal price;
 - e. Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached;
 - f. Failure of the subcontractor to meet insurance, licensing or bonding requirements;

- g. The subcontractor's withdrawal of its bid or proposal;
- h. The Decertification of the relevant M/WBE contractor; or
- i. Other factors or circumstances that, in the sole discretion CCD, promote the intents and purposes of the M/WBE Program.

XVII. COMMERCIALY USEFUL FUNCTION

- A. A procurement and relevant contractors shall not be in compliance with the requirements of PCE or VBE/SDVBE participation, unless those PCEs or VBE/SDVBE perform a Commercially Useful Function. Source: Sec. 34-269(b) and Sec. 34-296.
 - 1. In the case of a procurement relating to supplies, equipment, or goods, simply placing an order for delivery directly to the Using Agency is not a Commercially Useful Function, except for (a) bona fide suppliers in public works; and (b) bona fide authorized distributors. Source: Sec. 34-269(b)(1).
 - 2. A PCE or VBE/SDVBE subcontractor shall be presumed not to be performing a commercially useful function by entering into a sub-subcontract unless the PCE or VBE/SDVBE demonstrates that the sub-subcontract is consistent with normal industry practices and does not entail a portion of the subcontract that is significantly greater than normal industry practices. Source: Sec. 34-269(b)(1).
 - 3. In the case of a Procurement of services, a Person who subcontracts with another to perform the relevant services does not perform a Commercially Useful Function unless said Person also performs significant supervisory or management responsibilities. Source: Sec. 34-269(b)(2).
 - 4. In the case of a Joint Venture, each Joint Venturer must perform a Commercially Useful Function. Source: Sec. 34-269(b)(2).
- B. A PCE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the Contract through which funds are passed in order to obtain the appearance of PCE participation. Source: Sec. 34-269(b)(3).
- C. When a PCE is presumed not to be performing a Commercially Useful Function, the Certified PCE and the Person seeking to include that PCE in its Utilization Plan, may present evidence to rebut this presumption. Source: Sec. 34-269(b)(4). For the presumption to be rebutted, such evidence shall be presented to the OCC within three (3) business days of notification by the OCC. Source: Sec. 34-269(b)(4).

XVIII. METHODS TO ACHIEVE GOALS AND COMPLIANCE

- A. A Person may achieve the Contract Specific Goals in any one or more of the methods set forth below. The same PCE, whether as a contractor, subcontractor or supplier, cannot be utilized as both an MBE and a WBE on the same Contract. In the event that a PCE is certified as both an MBE and WBE, the Utilization Plan shall indicate which certification shall apply to the Procurement. Source: Sec. 34-270(1).

1. *PCE as prime Contractor.* In the event the PCE functions as a prime contractor, participation may be achieved according to the degree in which a PCE so functions. Such PCE shall meet any remaining portion of the Procurement goal by methods described herein, unless a request for a total or partial waiver of the goals has been granted. Source: Sec. 34-270(1).

2. *Joint Venture with one or more PCEs.* If the Utilization Plan anticipates the participation of a Joint Venture, in which a PCE is a Joint Venturer, the Utilization Plan shall be accompanied by the Joint Venture agreement and documents and information, in such form as established by the CCD, sufficient to demonstrate that the proposed Utilization Plan satisfies the Program Goals, including information and documents regarding:
 - a. Each Joint Venturer's initial capital investment;
 - b. The extent to which the PCE's proposed participation in the performance of the Contract constitutes a Commercially Useful Function;
 - c. Whether the PCE's share in the risks and profits of the Joint Venture is proportional to its interests in the Joint Venture; and
 - d. Whether and to what degree the PCE will have duties, responsibilities, management Control and risk with respect to the Joint Venture in proportion to its interest in the Joint Venture; Source: Sec. 34-270(2).

3. *Subcontracting.* A Person may achieve Contract Specific Goals by subcontracting with, or purchasing the relevant goods or services from one or more PCEs. Source: Sec. 34-270(3).

- B. If a firm is pending MBE, WBE, VBE or SDVBE certification, credit toward meeting the MBE, WBE, VBE or SDVBE goals shall be denied until the MBE, WBE, VBE or SDVBE certification has been approved.

- C. The CCD may accept formal certifications by other entities, provided that the requirements of the County Code and these Policies and Procedures are met. Current certification by the following entities may also be accepted for purposes of proof of MBE or WBE status by firms participating or seeking to participate on County contracts unless the firm has been denied by Cook County, provided that the firm submits a Personal Net Worth/Size Standard Affidavit that demonstrates compliance with the requirements of the County Code:
 1. City of Chicago

XIX. REQUEST FOR A PARTIAL OR FULL WAIVER; GOOD FAITH EFFORTS FOR PROFESSIONAL SERVICES, GOODS AND SERVICES

- A. Documents submitted in response to a procurement notice may include a request for a full or partial waiver of the contract specific goals or the Program Goals in such form as established by the CCD.

- B. The OCC shall evaluate the request to determine whether the waiver is based upon good faith efforts to meet the applicable goals, including whether and to what degree the requesting party has:

1. Reviewed lists of PCEs maintained by the County to identify qualified PCEs for contract participation; Source: Sec. 34-271(a)(1).
 2. Divided Procurement elements into discrete tasks, quantities or economically feasible units, consistent with the availability of PCEs, to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces; Source: Sec. 34-271(a)(2).
 3. Adjusted or offered to adjust relevant insurance requirements or otherwise assisted or offered to assist PCEs in obtaining relevant insurance, where economically feasible, to encourage participation by PCEs; Source: Sec. 34-271(a)(3).
 4. Made timely attempts to contact PCEs capable of providing relevant goods or services and provide them with a convenient and timely opportunity to obtain, review, and respond to all relevant information concerning the Procurement; Source: Sec. 34-271(a)(4).
 5. Followed up initial contacts of PCEs to determine if they are interested in participating in the Procurement; Source: Sec. 34-271(a)(5).
 6. Negotiated in good faith and on a timely basis with PCEs to enable them to participate in the Procurement. Evidence of such negotiation shall include full contact information for the relevant PCEs; a description of the information provided regarding relevant plans and specifications for the work; and an explanation as to why an agreement in principle could not be reached. Source: Sec. 34-271(a)(6).
 7. Made efforts to assist relevant PCEs in obtaining equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that the PCE remains responsible for actually paying for such items and is in a position to fulfill a commercially useful function; Source: Sec. 34-271(a)(7).
 8. Established delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit; Source: Sec. 34-271(a)(8).
 9. Used the services and assistance of the CCD's staff; Source: Sec. 34-271(a)(9).
 10. Timely notified appropriate community and minority and women's business organizations, identified by the OCC as assist agencies, of the opportunity for participation in the Procurement; Source: Sec. 34-271(a)(10).
 11. Has established a mentor/protégé agreement with a PCE, to help improve or develop the PCEs business, operations, capacity, financial management, reputation or skills, which sets forth the actual or projected effects of such agreement; provided, however, that the mentor/protégé agreement supports or relates to commercially useful functions; is included in the Utilization Plan; clearly defines the respective responsibilities of the Contractor and the PCE; includes specific, measureable goals to be attained by both parties through the performance of the agreement; and will be effective for a reasonable period of time taking into account the nature and term of the procurement. Source: Sec. 34-271(d).
 12. Demonstrated to the CCD that no PCE exists with which a mentor/protégé relationship could be established, as described in Section 34-271(d). Source: Sec. 34-271(a)(11).
- C. Additional Factors Regarding Good Faith Efforts. In determining whether a Bidder or Respondent has made Good Faith Efforts the CCD may consider any or all of the following:
1. The levels of participation by PCEs set forth in Utilization Plans submitted by other Persons for the same Procurement. Source: Sec. 34-271(b).
 2. Whether and to what degree the requesting party will endeavor to maximize indirect participation. Source: Sec. 34-269(a)(1) and 34-271(c)(2).
 3. Whether the requesting party has, without sound and demonstrable reasons, rejected PCEs as being unqualified.

4. Whether the requesting party's conclusion that PCEs were not available for participation in the procurement is based solely on additional costs associated with such participation. Source: Sec. 34-271(a)(6).
- D. Additional Factors Regarding Good Faith Efforts, Professional Services. Where the County requires professional services, the County must be able to call upon those professionals whose particular training and experience are most beneficial to the County. In determining whether a Respondent has made Good Faith Efforts, the CCD shall consider any or all of the following:
1. Whether subcontractors are or may be typically used for the type of Procurement. Source: Sec. 34-271(c)(1).
 2. If the requesting party has an affirmative action plan and goals or a supplier diversity plan or program, whether requested or relevant information regarding the plan, goals, and program have been submitted, and whether and to what degree the plan and program goals are being met. Source: Sec. 34-271(c)(3).
- E. The CCD may grant a total or partial waiver based upon the following criteria:
1. Whether and to what degree the waiver request demonstrates good faith efforts to meet the contract specific goals or program goals; Source: Sec. 34-271(e)(4).
 2. Whether and to what degree there are insufficient PCEs capable of providing the relevant goods or services; Source: Sec. 34-271(e)(1).
 3. Whether and to what degree the Procurement can be reasonably divided; Source: Sec. 34-271(e)(2).
 4. Whether and to what degree the requesting party has demonstrated that the price resulting from potential PCE participation is greater than ten (10) percent above competitive levels. Source: Sec. 34-271(e)(3).
- F. The CCD shall communicate his or her decision regarding requests for full or partial waiver to the CPO.

XX. REQUEST FOR A TOTAL OR PARTIAL WAIVER; GOOD FAITH EFFORTS FOR CONSTRUCTION/PUBLIC WORKS

- A. Documents submitted in response to a procurement notice may include a request for a full or partial waiver of the contract specific goals or the Program Goals in such form as established by the CCD. Source: Sec. 34-297(f).
- B. The OCC shall evaluate the request to determine whether the requested waiver is based upon good faith efforts to meet the applicable goals, Source: Sec. 34-297(c), including whether and to what degree the requesting party has:
1. Reviewed lists of PCEs maintained by the County to identify qualified PCEs for contract participation. Source: Sec. 34-297(c)(6).
 2. Divided Procurement elements into discrete tasks, quantities or economically feasible units, consistent with the availability of PCEs, to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces. Source: Sec. 34-297(c)(2).
 3. Adjusted or offered to adjust relevant insurance requirements or otherwise assisted or offered to assist PCEs in obtaining relevant insurance, where economically feasible, to encourage participation by PCEs. Source: Sec. 34-297(c)(4).

4. Made timely attempts to contact PCEs capable of providing relevant goods or services and provide them with a convenient and timely opportunity to obtain, review, and respond to all relevant information concerning the Procurement. Source: Sec. 34-297(c)(1).
 5. Followed up initial contacts of PCEs to determine if they are interested in participating in the Procurement. Source: Sec. 34-297(c)(1).
 6. Negotiated in good faith and on a timely basis with PCEs to enable them to participate in the Procurement. Evidence of such negotiation shall include full contact information for the relevant PCEs; a description of the information provided regarding relevant plans and specifications for the work; and an explanation as to why an agreement in principle could not be reached. Source: Sec. 34-297(c)(1).
 7. Made efforts to assist relevant PCEs in obtaining equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that the PCE remains responsible for actually paying for such items and is in a position to fulfill a commercially useful function. Source: Sec. 34-297(c)(5).
 8. Established delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit. Source: Sec. 34-297(c)(1).
 9. Used the services and assistance of the CCD's staff. Source: Sec. 34-297(c)(6).
 10. Timely notified appropriate community and minority and women's business organizations, identified by the OCC as assist agencies, of the opportunity for participation in the Procurement. Source: Sec. 34-297(c)(6).
 11. Has established a mentor/protégé agreement with a PCE, to help improve or develop the PCEs business, operations, capacity, financial management, reputation or skills, which sets forth the actual or projected effects of such agreement; provided, however, that the mentor/protégé agreement supports or relates to commercially useful functions; is included in the Utilization Plan; clearly defines the respective responsibilities of the Contractor and the PCE; includes specific, measureable goals to be attained by both parties through the performance of the agreement; and will be effective for a reasonable period of time taking into account the nature and term of the procurement. Source: Sec. 34-297(c).
 12. Demonstrated to the CCD that no PCE exists with which a mentor/protégé relationship could be established, as described in Section 34-271(d). Source: Sec. 34-297(c).
- C. Additional Factors Regarding Good Faith Efforts. In determining whether a Bidder or Respondent has made Good Faith Efforts the CCD may consider:
1. The levels of participation by PCEs set forth in Utilization Plans submitted by other Persons for the same Procurement. Source 34-297(d).
 2. Whether the requesting party has, without sound and demonstrable reasons, apparently rejected PCEs as being unqualified. Source: Sec. 34-297(c).
 3. Whether the requesting party's conclusion that PCEs were not available for participation in the procurement is based solely on additional costs associated with such participation. Source 34-297(c)(3).
- D. The CCD may grant a total or partial waiver based upon the following criteria:
1. Whether and to what degree the waiver request demonstrates good faith efforts to meet the contract specific goals or program goals. Source: Sec. 34-297(g).
 2. Whether and to what degree there are insufficient PCEs capable of providing the relevant goods or services. Source: Sec. 34-297(g).
 3. Whether and to what degree the Procurement can be reasonable be divided. Source: Sec. 34-297(g).

4. Whether and to what degree the requesting party has demonstrated that the price resulting from potential PCE participation is greater than ten (10) percent above competitive levels. Source: Sec. 34-297(g).
- E. The CCD shall communicate his or her decision regarding requests for full or partial waiver to the CPO prior to the award or rejection of the bid or proposal. Source: Sec. 34-297(g) and (h).

XXI. DOCUMENTS REQUIRED FOR BIDS AND PROPOSALS

- A. Failure to submit the following documents in a timely fashion, in the form and containing the information required by the CCD, shall render a bid or proposal non-responsive:
1. Utilization Plan or Petition for Reduction or Waiver; or
 2. Letter of Intent, signed by the proposing or bidding contractor and one or more proposed M/WBEs.
- B. In addition to the foregoing, bidders and proposers shall submit a current Certification Letter from Cook County or the City of Chicago verifying that the relevant M/WBE is certified in the relevant specialty area and in the event the relevant contract does not relate to construction or public works and the certification is by the City of Chicago, an MBE/WBE Reciprocal Certification Affidavit.

XXII. CALCULATING THE VALUE OF A CONTRACT AND MBE/WBE PARTICIPATION

- A. In calculating the value of a contract, the CCD shall consider the value of the funds projected to be disbursed to the contractor, and for contracts under which compensation to or value received by a contractor is based on a commission or proceeds collected or gained by the contractor, the projected amount of such commission or proceeds.
- B. In calculating the value of the M/WBE participation set forth in the Utilization Plan, a request for a partial or full waiver, and actual or reported M/WBE participation in a contract, the following standards shall apply:
1. For non-public works contracts, the dollar value of that portion of a Procurement that is performed by the PCEs' own workforce shall be counted, included the cost of supplies, materials and equipment furnished by the PCE for the Procurement, whether purchased or leased (except supplies and equipment the MBE or WBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate). Source: Sec 34-272(a).
 2. For public works contracts, the entire amount of that portion of a contract that is performed by the MBE's and WBE's own forces shall be counted, including the cost of supplies and materials obtained by the MBE or WBE for the work on the contract, and supplies purchased or equipment leased by the MBE or WBE (except supplies and equipment the MBE or WBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate) Source: Sec. 34-296(a).
 3. The dollar amount of fees or commissions charged by a PCE for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services. Source: Section 34-272(b) and 34-296(b).

4. When an MBE or WBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the MBE or WBE with its own workforce and for which it is separately at risk, shall be counted. Source: Section 34-272(c) and 34-296(c).
5. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services. Source: Sec 34-272(f) and 34-296(e).
6. For non-public works contracts, one hundred percent of the cost of the supplies, equipment or goods obtained from a PCE Manufacturer, or Distributor, or Regular Dealer shall be counted. Source: Sec 34-272(e).
7. For public works contracts, sixty percent of the cost of the supplies, equipment or goods obtained from a PCE Distributor or Regular Dealer shall be counted. Source: Sec 34-296(g).
8. For public works contracts, one hundred percent of the cost of the supplies, equipment or goods obtained from a PCE Manufacturer shall be counted. Source: Sec 34-296(f).
9. For contracts under which compensation is based on a commission or proceeds collected or gained by the contractor, M/WBE participation shall be the mathematical portion of the commission or proceeds collected or gained by the M/WBE as compared to the entire amount collected or gained under the contract, as established by the CCD.
10. If a firm ceases to be a Certified Firm for any other reason than graduation from the M/WBE Construction Program during its performance on a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted. Source: Sec 34-296 (h).
11. If a PCE ceases to be Certified during its performance on a Procurement, the dollar value of work performed under a Contract with that Person after it has ceased to be Certified shall not be counted. Source: Sec 34-272(g).
12. In measuring the participation of PCEs, only the amount of monies paid to the MBE or WBE shall be counted.

XXIII. PRE-SUBMITTAL MEETING

Provided that the CCD has received at least 10 business days' notice, the CCD shall assign a CO to attend the pre-submittal meeting to provide an overview of the County's M/WBE Program, goals, required forms to determine responsiveness to the M/WBE goals, and address any questions relating to the M/WBE Program.

XXIV. PRE-AWARD COMPLIANCE REVIEW

- A. The OCPO shall provide a copy of the complete proposal and final contract value to OCC.
- B. OCC shall review the Utilization Plan including the Letter(s) of Intent, which details the identity of and the financial degree to which MBEs or WBEs would participate in the proposed contract. If Project Specific Goals have been established, the CO shall determine the degree to which the Project Specific Goals would be met, and if the goals would not be met, the Contractor shall demonstrate its Good Faith Efforts to meet the goals.
- C. The Utilization Plan shall be due at the time the bid/proposal is due. Failure to provide a Utilization Plan shall be grounds for determining the bid/proposal non-responsive.
- D. Any agreement between a Contractor and an MBE or WBE in which the Contractor requires that the

MBE or WBE not participate in a bid or proposal with another Contractor is prohibited.

- E. Where the Contractor requests a partial or full waiver of the goals, the OCC shall thoroughly review all the supporting documentation submitted by the Bidder/Proposer for final determination as whether the Contractor has made Good Faith Efforts to meet the Goal(s).

XXV. CONTRACT COMPLIANCE

- A. The Utilization Plan approved by the CCD, and the continuing certification of the relevant M/WBE contractors, entail material covenants of performance by the relevant Contractors and subcontractors which are incorporated in the contract.
- B. The OCC and the User Department shall monitor compliance with the approved utilization plan during the course of the contract. The County shall have full and timely access to the Contractor's books and records, including, without limitation, payroll records, tax returns and records and books of account, to determine the Contractor's compliance with the utilization plan and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the County for any purpose.
- C. No revisions to the approved Utilization Plan shall be effective without the express and prior written approval of the CCD, CPO, and the User Agency. Source: Sec. 34-269(a)(4). Failure to comply with the approved Utilization Plan, may constitute a breach of contract and grounds for rejection of a subsequent bid or proposal, and may expose the relevant contractor and subcontractors to additional sanctions and penalties as provided in the County Code and these policies and procedures. Source: Sec. 34-269(a)(4)
 - 1. All requests for modification to the approved Utilization Plan, including those associated with contracts whose scope has been revised by the County, shall be submitted to the CCD in writing by the interested parties, or by parties who demonstrate in good faith that they were unable to obtain written submission from all interested parties, and shall clearly and fully set forth the basis for the request as provided herein Section XVIII(A)(4).
- D. The decision as to whether the request for the modification of the approved Utilization Plan shall be permitted or denied, and the basis of the decision, shall be communicated to the parties in writing by the CCD.
- E. Any change in scope to a contract and its effect on the achievement of the relevant M/WBE goals shall be immediately communicated in writing and documented by the User Agency Department to the CCD.

XXVI. VERIFICATION OF COMPLIANCE AND MONITORING CONTRACT PERFORMANCE

- A. Regularly during contract performance, the CCD shall monitor and evaluate the fulfillment of the Utilization Plan.
- B. All contractors and subcontractors shall provide all information and documents required by the CCD, including information and documents regarding the disbursement and receipt of payments and other compensation in such time and manner as established and communicated by the CCD.

- C. The CCD may utilize additional mechanisms to monitor and ensure full compliance with the requirements of the Program, including but limited to site visits, telephone audits, and record and documentation review.

XXVII. SANCTIONS AND PENALTIES

- A. If the CCD determines that a Contractor has failed to comply with the Cook County Minority- and Women-owned Business Enterprise General Ordinance, the policies and procedures promulgated thereunder, the approved Utilization Plan, or any associated general contractual terms, the CCD shall notify the Contractor of such determination and may take any and all actions set forth in the Ordinance, the policies and procedures, the approved Utilization Plan, or any associated general contractual terms, which includes but is not limited to pursuing disqualification, penalties, withholding of payments or other remedies in law or equity.

- B. False Statements.

- 1. Any person determined by the CCD to have made a false statement of material fact to Cook County in writing regarding the status or contractual participation of a MBE, WBE, VBE or SDVBE is liable to the County for a penalty of \$2,500.00, and may be subject to termination of any Contract and disqualification for a period of up to five years from the date of such finding in addition to any other remedy provided for in the County Code or at law or in equity. Source: Sec. 34-175. Violations and the assessment of any fine shall be adjudicated pursuant to Part I, Chapter 2, Administration, Article IX, Administrative Hearings, of the Code. Sec. 34-178. The determination as to whether a Person has made a false statement shall be subject to said Person's petition for review in a proceeding pursuant to Part I, Chapter 2, Article IX, Administrative Hearings, and the Administrative Rules promulgated thereunder. Source: Sec. 34-178.
- 2. In the event an applicant or certified contractor willfully submits false or inaccurate material information regarding a procurement or certification or fails to submit complete and accurate material information to the CCD regarding a procurement or certification within 14 days of request by the CCD, the CCD may deny certification to or decertify the contractor, provided that such denial or decertification shall not be effective less than 10 days from a Notice of Denial or Decertification, and further provided that said Notice shall be subject to Administrative Review. The denial or decertification shall relate to both PCEs and PCE owners and may be for a period not to exceed five (5) years. Source: Sec. 34-265(3).

- C. Failure to Meet Commitments.

- 1. In the event that the CCD determines that a Person failed to fulfill in good faith a project specific goal, including, but not limited to, MBE, WBE, VBE, or SDVBE participation commitments reflected in a Utilization Plan, as may be amended through change orders or otherwise over the term of the Contract, the CPO may declare said Person to be in material breach of the Contract, and may withhold payments under the Contract, and recover contractual penalties, in addition to disqualification and any other remedy provided for in the County Code, and at law or in equity. A contractual penalty for failure to meet MBE, WBE, VBE, or SDVBE participation commitments pursuant to this Section shall be in the amount of the discrepancy between actual MBE, WBE, VBE, or SDVBE participation, and the goal set forth in the Utilization Plan, as may be amended through change orders or otherwise over the term of the Contract. Source: Sec. 34-

176.

2. Violations and the assessment of any fine or penalty shall be adjudicated pursuant to Part I, Chapter 2, Administration, Article IX, Administrative Hearings, of the Code. Sec. 34-178.

D. Penalties.

1. Penalties payable under this section shall be made within 30 days of the relevant notice from the CCD in the absence of Administrative Review, or 30 days

XXVIII. REPORTING/RECORD KEEPING

The Contractor shall comply with the reporting and record-keeping requirements in the manner and time established by the Ordinance, the policies and procedure promulgated thereunder, and the Contract Compliance Director. Failure to comply with such reporting and record-keeping requirements may result in a declaration of Contract default. Upon award of a Contract, a Contractor shall acquire and utilize all Cook County reporting and record-keeping forms and methods which are established by the Office of Contract Compliance. The County shall have full and timely access to the Contractor's books and records, including, without limitation, payroll records, tax returns and records and books of account, to determine the Contractor's compliance with the utilization plan and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the County for any purpose.

XXIX. AMENDMENTS TO POLICIES AND PROCEDURES

These Policies and Procedures may be amended from time to time by the CCD, provided that such amendments shall not be effective less than fourteen (14) days from modification.