

## PROPOSED ORDINANCE AMENDMENT

### REVISING THE COOK COUNTY PROCUREMENT CODE

**BE IT ORDAINED**, by the Cook County Board of Commissioners, that Chapter 34 FINANCE, Article IV PROCUREMENT CODE, Division 1 GENERAL PROVISIONS through Division 10 INVOICES FOR SERVICES RENDERED of the Cook County Code, is hereby amended as follows:

#### DIVISION 1. GENERAL PROVISIONS

##### Sec. 34-120. Short title.

Chapter 34, Article IV of this Code shall be known and may be cited as the "Cook County Procurement Code."

##### Sec. 34-121. Definitions.

Unless defined elsewhere in this Procurement Code or in Chapter 1, Section 1-3 of the County Code, terms used in this Procurement Code shall have the meanings set forth below:

*Affiliate*. An "Affiliate" of, or a Person "Affiliated" with, a specified Person shall mean any Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the Person specified.

*Applicant* means a person who submits documents and information seeking certification, or continued certification, ~~or re-certification~~ as an MBE, WBE, VBE, or SDVBE ~~to the Office of Contract Compliance~~.

*Assessor* means the Assessor of Cook County.

*Auditing Services* means the formal examination of accounting records or financial statements for compliance with financial accounting standards applicable to governmental entities, which functions are generally exclusively performed or supervised by Persons licensed and authorized to do business as public accountants in the State. The term "Auditing Services" shall also include any independent reports and management recommendations derived or resulting from the performance of auditing services and which reports and recommendations are included within the scope of the Contract for Auditing Services.

*Bid* means a response to a ~~Bid Notice~~ an Invitation for Bids submitted by a Bidder containing all Solicitation Documents and any other documents or information the Bidder is required to provide.

~~*Bid Documents* means the documents, specifications, forms and other information necessary required for a Bid.~~

~~*Bid Notice* means the notice from the CPO regarding a Procurement which shall include: a general description of the Procurement; information necessary to obtain the Bid Documents; and the date, time and place for both the submission of Bids and the opening of the Bids.~~

*Bid Price* means the dollar amount set forth in a Bid.

*Bidder* means any Person who submits a Bid.

*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.

*Chief Financial Officer* or *CFO* means the Chief Financial Officer of Cook County.

*Chief Information Officer* or *CIO* means the Chief Information Officer of Cook County.

*Chief Procurement Officer* or *CPO* means the Chief Procurement Officer of Cook County. References in this Procurement Code to actions required to be taken by the CPO shall be deemed to include designees or staff of the CPO.

*Consulting Services* means the rendering of analysis and advice requiring specialized expertise in a particular subject area or field. Such expertise may have been gained by education or experience in the area or field. The term "Consulting Services" expressly excludes auditing services.

*Contract* shall include any written document to make Procurements by or on behalf of Cook County.

~~*Contract Compliance Director* or *CCD* means the County Contract Compliance Director.~~

*Contractor* means the Person that enters into a Contract with the County.

*Control* means the unfettered authority to directly or indirectly manage governance, administration, work, and all other aspects of a business.

*Court Ordered Child Support Arrearage* means that the Circuit Court of Cook County has issued an order declaring the respondent in arrearage on child support obligations in a specific amount as of the date of that order, or that another Illinois or non-Illinois court of competent jurisdiction has issued such an order.

*Covered Services* means janitorial cleaning services, window cleaning services, elevator operator and starter services, and security services.

*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.

*Elected Official* means the President and Commissioners of the Cook County Board, Assessor, Board of Review, Chief Judge, Clerk of the Circuit Court, County Clerk, Sheriff, State's Attorney, Treasurer, and any other elected official included in the Cook County Appropriations Ordinance.

*Employee* means any individual working on a full-time basis, and providing services for an Employer under a Contract. "Employees" shall not include workers required to be paid the prevailing wage pursuant to Section 34-161.

*Employer* means any Person that employs one or more full-time Employees.

*Execution* means to sign a Contract, after it has been approved by the CPO or the Board, as required by this Procurement Code.

*Invitation for Bids* or *IFB* means all documents, whether attached or incorporated by reference, utilized for soliciting competitive Bids pursuant to Section 34-136 of this Procurement Code.

*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 relationship between the partners and their relationship and respective responsibility for the Contract.

*Living Wage* means those amounts established from time to time by the CFO, and posted on the CPO's website pursuant to Section 34-160.

*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 is submitted to the County, 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, even if the

Joint Venture does not, at the time of the Bid submittal, have such a bona fide establishment within the County.

*Local Small Business* means a Local Business which is also a Small Business.

*Not-for-Profit Organization* means an entity having tax exempt status under the United States Internal Revenue Code.

*Notice* means the public notice of a contract opportunity from the CPO regarding a Procurement which shall include: a general description of the Procurement; information necessary to obtain the Solicitation Documents; and the date, time and place for the submission of Bids, Proposals or Responses and the opening of the Bids.

*Person* or *Persons* means any individual, corporation, partnership, Joint Venture, trust, association, limited liability company, sole proprietorship or other legal entity.

*Procurement.* The term "Procurement", "Procurements" or "Procuring" means obtaining supplies, equipment, goods, or services of any kind. Procurement does not include grant agreements, interagency agreements, intergovernmental agreements, or purchase or lease of real property.

*Procurement Code* means Chapter 34, Article IV.

*Professional Social Service Contracts* or *Professional Social Service Agreements* means any contract or agreement with a social service provider, including other governmental agencies, nonprofit organizations, or for profit business enterprises engaged in the field of and providing social services, juvenile justice, mental health treatment, alternative sentencing, offender rehabilitation, recidivism reduction, violence reduction, foster care, substance abuse treatment, domestic violence services, community transitioning services, intervention, or such other similar services which provide mental, social or physical treatment and services to individuals. Said Professional Social Service Contracts or Professional Social Service Agreements do not include CCHHS managed care contracts that CCHHS may enter into with health care providers.

~~*Procurement Code* means Chapter 34, Article IV.~~

*Proposal* means a response to an RFP.

*Proposer* means a Person submitting a Proposal.

*Public Works* means all fixed works constructed or demolished by the County, or paid for wholly or in part out of public funds administered by the County. "Public Works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through federal or State government, or the County. "Public Works" does not include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multifamily residence. "Public Works" includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

*Response* means response to an RFQ.

*Respondent.* The term "Respondent" means a Person responding to an RFQ.

*Responsible* means a Person that has the capability in all respects to perform fully a Contract or to provide the required supplies, equipment, goods or services to the County, and the integrity and reliability that will assure good faith performance. Factors taken into consideration in determining whether a Person is Responsible may include quality, financial capacity, past performance, experience, adequacy and availability of staff, adequacy and availability of equipment, and the ability to perform within the required time frame required for the Procurement.

*Responsive* means a Bid, Proposal, a or Response ~~a Proposal~~ is in compliance in all material respects with all the terms, conditions and requirements set forth in the ~~Bid Documents, RFP, RFQ, request for~~

~~quotations or other terms required for a Procurement, including, but not limited to, completion and timely submittal of all required affidavits, statements, certifications, bid deposits, insurance, performance and payment bonds and other County requirements~~Solicitation Documents.

*Request for Proposals or RFP* means a Request for Proposals issued pursuant to this Procurement Code all documents, whether attached or incorporated by reference, utilized in requesting proposals pursuant to Section 34-138 of this Procurement Code.

*Request for Qualifications or RFQ* means a Request for Qualifications issued to obtain the qualifications of interested parties all documents, whether attached or incorporated by reference, utilized in requesting qualifications pursuant to Section 34-138 of this Procurement Code.

*Solicitation* means an IFB, RFP, RFQ, or any document(s) used to obtain Bids, Proposal, or Responses for the purpose of entering into a contract.

*Solicitation Documents* means the documents, specifications, forms and other information, whether attached or incorporated by reference, utilizing when issuing an Invitation for Bids, Request for Proposals, or Request for Qualifications.

*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.

*Technology-Related Procurements* means Procurements for any services, equipment, or interconnected system(s) or subsystem(s) of equipment, that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the County. For purposes of this definition, such services or equipment are included if used by the County directly or is used by a contractor under a contract with the County that requires its use; or to a significant extent, its use in the performance of a service or the furnishing of a product. Technology-Related Procurements include Procurements for computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including cloud computing and help-desk services or other professional services which support any point of the life cycle of the equipment or service), and related resources.

*Using Agency* means the departments or agencies within Cook County government, including Elected Officials.

*Utilization Plan* means a plan for utilization of VBE's, SDVBE's, and ~~PCEs~~ Protected Class Enterprises as defined in Division 8 of this Procurement Code.

*Wage.* The term "Wage" means compensation due to an Employee by reason of employment, including allowances for gratuities and for meals and lodging that are furnished by the Employer and actually used by the Employee.

## **Sec. 34-122. Procurements and contracts.**

All Procurements by any Using Agency of Cook County, regardless of the source of the funds used to pay for such Procurement, shall be made by the CPO, and in accordance with this Procurement Code and the procedures promulgated pursuant hereto. All Contracts shall be in a form determined by the CPO. Notwithstanding the foregoing, the Director of Risk Management or their designee shall be responsible for determining Contract specific insurance requirements. Contracts shall be approved and executed as set forth in the procedures promulgated pursuant to and in this Procurement Code. Notwithstanding, the

above provision or any other provision in this Procurement Code, the Board of Directors of the Cook County Health and Hospitals System ("System Board") shall have the authority over Procurements and Contracts for the Cook County Health and Hospitals System as provided in the ordinance establishing the CCHHS. The System Board shall adopt written rules, regulations and procedures in accordance and consistent with this Procurement Code and provisions set forth herein.

**Sec. 34-123. No power to act for procurements or expenditures of ~~\$150,000.00~~200,000.00 or more.**

The CPO shall have the authority to approve Procurements, execute Contracts and execute Contract amendments up to an amount less than ~~\$150,000.00~~200,000.00 without Board approval; provided, however, that Board approval shall be required for any Procurement of the same or similar supplies, goods, equipment or services which would result in the aggregate amount of such Procurements from the same vendor by the same Using Agency equaling or exceeding ~~\$150,000.00~~200,000.00 in any fiscal year. Notwithstanding, the CPO shall have the authority to execute (1) extension or renewal options on Contracts approved by the Board; provided, however, if the total of such extension or renewal option increases the original amount of such Contract by more than \$200,000.00, the amount and term of the Contract extension or renewal option must have been included in the Contract approved by the Board and (2) Contract amendments on Contracts approved by the Board; provided, however, that the total of such amendments does not increase the original amount of such Contract by more than ~~\$150,000.00~~200,000.00 during the term of the Contract. The "amount" of a Contract shall mean the maximum amount payable under such Contract.

No Person has the power or authority to approve, authorize or execute a Procurement, a Contract, Contract amendment or the expenditure of public money in the amount of ~~\$150,000.00~~200,000.00 or more without approval of the ~~County~~ Board, except in the following instances: the payment of public utility bills, the payment of rent pursuant to the provisions of a lease previously approved by the County Board, payment of insurance premiums, payment of any amount pursuant to the provisions of a Contract, the execution of which was approved by the Board pursuant to this Section 34-123 above, or other Board-authorized transactions. Any action in violation of this section shall be null and void.

All Contracts over \$1,000,000.00 shall be reviewed and approved as to form by an attorney from the Cook County State's Attorney's Office prior to execution.

**Sec. 34-124. Chief Procurement Officer.**

The President, with the consent of the Board, shall appoint a Chief Procurement Officer who shall serve as the purchasing agent for Cook County and shall be responsible for making all Procurements for all Using Agencies and for managing the County's Procurement Process in accordance with this Procurement Code. Any individual so appointed shall have at least three years' experience in an executive capacity in the purchasing office of a private or public entity with procurements reasonably comparable in size and nature to those of the County.

**Sec. 34-125. Powers and duties of the Chief Procurement Officer.**

The Chief Procurement Officer shall:

- (a) Make all Procurements and conduct all activities related to the Procurement Process in accordance with the Procurement Code and any procedures promulgated pursuant hereto;
- (b) Establish and maintain procurement policies and procedures, and standardized documents and forms to implement the Procurement Code;

- (c) ~~Cooperate with the Contracts Compliance Director to coordinate the procurement process with~~ Manage the administration of the Minority- and Women-Owned Business Program established pursuant to Division 8 of this Procurement Code;
- (d) Develop and maintain procedures for disseminating information and notice of procurement opportunities;
- (e) ~~Have authority to i~~Implement innovative procurement methods and processes pursuant to this Procurement Code;
- (f) ~~Have authority to a~~Approve and execute an assignment of ~~or an amendment to a Contract;~~ provided that any such amendment does not extend the Contract by more than one year, and further provided that the total cost of all such amendments does not increase the amount of the Contract beyond the authority of the CPO granted in Section 34-123;
- (g) ~~Have authority to e~~Establish the commencement and expiration dates of any Contract as necessary to permit the Contract period to commence upon the date of Execution of the Contract by the County, unless another commencement date is specified in the Contract;
- (h) Approve and execute Contracts within ~~his or her~~ their authority, or as directed by the Board;
- (i) Ensure that all certifications, statements and affidavits required by this Procurement Code are submitted;
- (j) Determine in conjunction with the Department of Facilities Management when supplies, materials and equipment are unusable, surplus, and/or obsolete and trade in, sell or dispose of such property, ~~except for with the exception of such property which has been approved for donation as a charitable contribution in accordance with Section 34-126 of the Procurement Code, and such property which is the responsibility of the Cook County Health and Hospitals System and such property which has been approved for donation as a charitable contribution per Section 34-126 below;~~
- (k) Compile and maintain information for all Procurements, including those ~~Procurements~~ Contracts and Contract amendments which do not require Board approval. The CPO shall submit a report to the Board on a monthly basis listing the ~~Procurements-Contracts~~ and ~~Procurement-Contract~~ amendments executed by the CPO that do not require Board approval; ~~including a list of each Person from whom the County makes such a Procurement and the method of Procurement applied,~~ as well as Procurements that authorize the advance payment for services. Such reports shall include:
  - (1) the Procurement method utilized;
  - ~~(2) The name of the Vendor; and~~
  - ~~(3) A brief description of the product or service provided; and~~
  - ~~(4) The name of the Using Department and budgetary account from which the funds are being drawn; and~~
  - ~~(5) The amount and term of the Procurement Contract or Amendment; and~~
  - (6) whether the Contract or amendment authorizes advance payment for services;
  - (7) the Contract utilization requirements; and
  - ~~(8) The amount and/or extension period of the amendment, if applicable. Such report shall be provided to the Board of Commissioners in an electronic format.~~
- (l) ~~Work with the Comptroller to provide~~ Assist the Comptroller in their preparation of a monthly report of the individual and total aggregate amount disbursements made for Procurements that

do not require Board approval. The Comptroller shall provide to the Board of Commissioners a report of all payments made pursuant to contracts for supplies, materials and equipment and for professional and managerial services for Cook County, including the separately elected Officials, which involve an expenditure of ~~\$150,000.00~~200,000.00 or more, within two weeks of being made. Such reports shall include:

- (1) The name of the Vendor;
  - (2) A brief description of the product or service provided;
  - (3) The name of the Using ~~Department~~Agency and budgetary account from which the funds are being drawn;
  - (4) The contract number under which the payment is being made. Such report shall be provided to the Board of Commissioners in an electronic format;
- (m) Make available on the County's website information related to all Procurements, including, but not limited to, a list of Contracts and a list of Contractors and subcontractors;
- (n) ~~Keep~~Maintain a record of any Person who has been disqualified under Division 4, Disqualification; Penalties, and ~~shall provide~~ make available such record to the Cook County Health and Hospitals System;
- (o) ~~Have authority to~~Terminate a Contract, in whole or in part, in accordance with its terms;
- (p) Issue notices of violation to enforce the provisions of this Code, as applicable, and institute enforcement proceedings under Chapter 2, Article IX, as appropriate;
- (q) ~~Work with the Comptroller to assure~~Ensure that ~~Contractors are not paid in advance of performance~~Contracts do not require advanced payment, unless such advance payment is ~~provided for and properly justified in the Contract~~ by the Using Agency in collaboration with the Comptroller;
- (r) Have charge of such other Procurement activities as may be assigned by the President or the Board;
- (s) ~~Have the authority to~~Require the CIO to review and approve all ~~Technology Related Procurements, Contracts or Contract amendments~~ Technology Related Procurements in advance of CPO and/or Board approval; the CIO may abstain from reviewing Technology-Related Procurements for separately elected offices if the CIO determines that the Technology Related Procurement is specific to the operational needs of that separately elected office and not likely to be utilized by another County Office; notice of the CIO's approval or disapproval, or abstention shall be provided by the CIO to the CPO and/or Board prior to approval in order for the CPO and/or Board to make an informed decision on the requested Technology Related Procurements, Contracts or Contract amendments; technology related Procurements, Contracts or Contract amendments include, but are not limited to, computer hardware, software, software and hardware maintenance, software and hardware service costs, information technology services, telecommunications services and telecommunications equipment Procurements, Contracts or Contract amendments.
- (t) Cancel any Solicitation, when it is determined to be in the best interest of the County and in accordance with rules and regulations promulgated by the CPO. The reasons for the rejection shall be made part of the Procurement file. Each Solicitation issued by the CPO shall state that the Solicitation may be cancelled as provided in this section.
- (u) Delegate their Procurement authority to a designated individual within any County Using Agency as follows:

- (1) In making the decision to delegate Procurement authority, the following factors shall be considered:
  - a. the Procurement expertise, specialized knowledge, past experience, and performance of the prospective designated individual;
  - b. the impact of the delegation on Procurement efficiency and effectiveness; and
  - c. the abilities and resources of the prospective designated individual to exercise the authority.
- (2) Delegation or any modification of delegated authority shall be in writing and shall specify:
  - a. the scope and type of authority delegated or modified;
  - b. any limits or restrictions on the exercise of the delegated authority;
  - c. whether the authority may be further delegated; and
  - d. the duration of the delegation.
- (3) Authority delegated may be suspended, revoked, or modified at any time by the CPO.
- (4) The designated individual receiving a delegation of authority shall exercise such authority in compliance with the Cook County Procurement Code, and applicable CPO policies and procedures, and the terms of the delegation.
- (5) Within five (5) business days of any decision of the CPO to delegate procurement authority, the CPO shall deliver a written memorandum to the Board detailing the terms of such delegation.

**Sec. 34-126. Distribution of assets.**

The CPO, in conjunction with the Department of Facilities Management, is authorized to approve or deny the distribution of supplies, materials and equipment that have been declared unusable, surplus, and/or obsolete per Section 34-125(j) above and further defined as "Assets" in Section 2-1064 as charitable donations for distribution, per the County's Charitable Contributions Program Ordinance, as provided in Chapter 2, Article XVI of the Cook County Code of Ordinances.

**Secs. 34-127—34-134. Reserved.**

**DIVISION 2. PROCUREMENT PROCEDURES**

**Sec. 34-135. Procurement methods.**

All County Procurements shall be made pursuant to the appropriate procurement method set forth below and described in the applicable Section.

Sec. 34-136. Competitive Bidding;

Sec. 34-137. Small Procurements;

Sec. 34-138. Requests for Qualifications or Proposals;

Sec. 34-139. Sole Source Procurements;

Sec. 34-140. Comparable Government Procurement;



Sec. 33-141. Emergency Procurements;

Sec. 34-142. Joint Procurements;

Sec. 34-143. Consortium and Group Procurements;

Sec. 34-144. Innovative Procurement;

~~Sec. 34-145. Responsible Bidder Process for Public Works Construction, Maintenance and Repair Contracts;~~

~~Sec. 34-146. Performance and Accountability in Professional Social Service Contracts and Agreements.~~

### **Sec. 34-136. Competitive bidding.**

Procurements of supplies, materials, equipment, and services shall be made by the competitive bidding process as set forth in this section, unless such Procurements meet the criteria for another procurement method set forth in this division. The CPO shall follow the procedures set forth below for competitive bidding.

- (a) *Development and approval of Bid Solicitation Documents.* The Using Agency shall provide to the CPO all information required by the CPO to prepare the Bid Solicitation Documents, including minimum qualifications, specifications and any special conditions.
- (b) *Bid Notice.* Upon request by a Using Agency, the CPO shall publish a Bid Notice on the County's website at least five business days before the date for the submission of Bids.
- (c) *Pre-Bid conference or site inspection.* The Bid Solicitation Documents shall include details of any pre-Bid conference or site inspection, including whether any such pre-Bid conference or site inspection is mandatory. The CPO shall keep a record of all Persons who request Bid Solicitation Documents. The CPO will notify all Persons recorded as having requested Bid Solicitation Documents of any changes with respect to such conference or inspection no later than at least 24 hours prior to the original scheduled date and no less than two business days prior to any newly scheduled date for such conference or inspection.
- (d) *Communications with the County regarding competitive bidding process.* From the time the Bid Notice is issued until the successful Bidder has been recommended to the Board by the CPO, all communications to the County relating to the Bid must be directed in writing (which may be electronic) only to the CPO, or as otherwise specified in the *Bid Documents*. Upon receipt of such a request, the CPO will determine if a response will be provided. Any such response shall be provided in an addendum to all Persons requesting the Bid Documents. Notwithstanding the foregoing, communications may be made to the ~~Office of Contract Compliance~~ CPO in writing for the purpose of complying with Division 8, Minority and Women-Owned Business Enterprise Program.
- (e) *No changes to Bids.* No Bid may be changed, amended or supplemented in any way after the date and time for submission of Bids.
- (f) *Bid opening.* All Bids shall be opened and a record of such Bids shall be made on the date, and at the time and location as stated in the Bid Notice or as prescribed in an addendum issued by the CPO. All Bids shall be opened, and the name of the Bidder and the Bid Price shall be read publicly. If it is determined that an error was made in the public reading of the Bids, the CPO shall notify all Bidders of such error and reconvene the Bid opening to correct the record as soon as reasonably possible. If the Bids are submitted electronically, no public reading shall be required so long as a record of the Bids opened is publicly available immediately after the Bids are opened.

- (g) *If only one Bid is received.* If only one Bid has been submitted, the CPO will determine whether to open the Bid or return the Bid to the Bidder via certified mail and reissue the Bid Notice or use a different method to make the Procurement. If the Bid was submitted electronically, and is not opened, it shall be deleted from the electronic procurement system.
- (h) *Evaluation of Bids.* The CPO shall review, evaluate and tabulate Responsive Bids. In determining the apparent low Bid, the CPO shall consider the Responsibility of the Bidder and all applicable preferences and incentives provided in this Procurement Code. If two or more Responsible and Responsive Bids are tied for low price, the tied Bids will be evaluated based on the following criteria:

- (1) If the tied Bidders include a Bidder or Bidders whose principal place of business is located in Cook County, that Bid or Bidder shall be preferred over Bidders with their principal place of business not in the County.
- (2) If a Bid cannot be awarded based on subsection (h)(1), the award shall be made by lot unless the CPO determines that splitting the award among two or more of the tied Bidders is in the best interest of the County. Awards may be split if all affected bidders agree, if splitting is feasible given the type of goods or service requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.

The CPO shall then direct the Bids along with the tabulation to the Using Agency for review. Upon full review of the Bids and Bid tabulations, the Using Agency shall notify the CPO in writing of its Procurement recommendation, with justification supporting such recommendation. The CPO shall review the recommendation of the Using Agency, and shall post on the County's website ~~the CPO's recommended Bid for award~~ the name of the intended awardee and the amount of their Bid.

- (i) *Bid protest.* Any Bidder who reasonably believes that the recommended Bidder is not the lowest Responsive and Responsible Bidder, or has a complaint about the bid process, may submit a bid protest, in writing, and directed to the CPO. For all Contracts requiring Board approval, any bid protest must be submitted no later than three business days after the date upon which the CPO posts the recommended Bid for award. For all Contracts which can be executed by the CPO, any bid protest must be submitted no later than three business days after the date upon which the CPO posts the recommended Bid for execution. The bid protest must specify why the protester believes the recommended Bidder is not the lowest Responsive and Responsible Bidder, or why the protestor believes the bid procedure was unfair, including a statement of how the alleged unfairness prejudiced the protesting Bidder and the action requested of the CPO. A bid protest based on an issue which could have been clarified through a request for clarification or information pursuant to Section 34-136(d), Communications with the County regarding competitive bidding process, will not be considered if the protesting Bidder failed to make such request. When a bid protest has been submitted, no further action shall be taken on the Procurement until the CPO makes a decision concerning the bid protest, unless the Using Agency responds in writing and sufficiently demonstrates that (i) the item to be procured is urgently required and (ii) failure to make the award promptly will unduly delay delivery or performance or cause other undue harm.

The CPO shall issue a written decision on the bid protest to the protesting Bidder and to any other Bidder affected by such decision as soon as reasonably practicable. If the bid protest is upheld based on a lack of fairness in the bid procedure, the CPO shall re-bid the procurement. If the CPO determines that the recommended Bidder was not Responsive and Responsible, that Bidder shall be disqualified and the CPO may either recommend the lowest Responsive and

Responsible Bidder ~~or~~, re-bid, or cancel the Bid in accordance with Section 34-124(t) of the Procurement Code.

Any CPO decision concerning bid protest(s) shall be final. If Board approval and authorization is necessary for the CPO to execute the Contract, then the CPO shall provide a copy of any bid protest and written decision thereon to the ~~Board of Commissioners~~ for informational purposes prior to seeking Board Action pursuant to Section 34-136(j) below.

- (j) *Board Action.* Upon resolution of any bid protests, or expiration of the three-day protest period with no protests, the CPO shall either execute the Contract if within ~~his/her~~ their authority, or submit the Contract to the Board, ~~through its Finance Committee,~~ for approval and authorization for the CPO to execute the Contract. Once the Contract has been approved by the Board, or executed by the CPO, the CPO shall post on the CPO's website information regarding the Procurement.
- (k) *Right to reject Bids.* The County shall have the right to reject any and all Bids. The CPO is authorized to exercise this right on behalf of the Board. The CPO shall include a provision in the ~~Bid Solicitation~~ Documents reserving the right to reject any and all Bids.
- (l) *Procurements Under \$150,000.00.* The competitive bidding process for procurements greater than \$~~25,000.00~~ 25,000.00 and less than \$150,000.00 may consist of a solicitation posted on the CPO's website. The CPO shall promulgate policies and procedures to implement such Procurements. The CPO is not required to read or announce such Bids publicly. The CPO shall select the lowest Responsive Bid made by a Responsible Person, and shall post on the CPO's website information regarding the Procurement.

#### **Sec. 34-137. Small procurements.**

Procurements of the same or similar supplies, goods, equipment or services by a Using Agency in an aggregate amount from the same vendor of less than ~~\$15,000.00~~ \$25,000.00 in the same fiscal year do not require a competitive method. The CPO shall promulgate policies and procedures to implement such Procurements.

#### **Sec. 34-138. Requests for qualifications or proposals.**

- (a) *Criteria for use of request for qualifications or proposals.* The CPO in consultation with the Using Agency may determine that it is in the best interest of the County to make a Procurement utilizing the Request for Qualifications or Request for Proposals process. Examples of Procurements for which an RFQ or RFP process is appropriate include, but are not limited to: Procurements involving services requiring a high degree of professional skill where the ability or fitness of the Person plays an important part; Procurements where the requirements are not clearly known; Procurements where quality rather than quantity is a primary factor; and Procurements where it is not in the best interest of the County to make price a primary determinative factor. An RFP process is a competitive process under this Procurement Code, and a Person selected through an RFP process is not considered a "sole source."
- (b) *Content of RFQs and RFPs.* The CPO shall determine what provisions RFQs and RFPs should contain in consultation with the requesting Using Agency and will incorporate the necessary details, provisions and requirements for the RFQ or RFP. RFQs and RFPs shall include a provision stating that the County may negotiate a Procurement with one or more Respondents or Proposers.
- (c) *Issuance.* The CPO shall issue an RFQ or RFP after receiving a written request from the Using Agency and approval from the Using Agency regarding the contents of the RFQ or RFP. Notice of all RFQs and RFPs shall be posted on the CPO's website.

- (d) *Opening of Responses.* The Responses or Proposals shall be opened in the presence of one or more witnesses after the designated date and time for submission. A representative of the Using Agency may be present at the opening but shall not be required to attend the opening. The names of the Respondents or Proposers shall be available to the public after the Procurement has been completed.
- (e) *Evaluation and Selection for Contract Negotiation.* The CPO in coordination with the Using Agency shall develop evaluation criteria which are included in the RFQ or RFP. These criteria may include, but are not limited to, experience and qualifications of the Respondent or Proposer, the quality, content and completeness of the Response or Proposal, the demonstrated willingness and ability of the Respondent or Proposer to satisfy the requirements as described in the RFQ or RFP, and, if applicable, the cost proposal. The evaluation shall be performed by a committee chaired by the CPO or a designee of the CPO with representatives of the Using Agency and other persons designated by the CPO. Respondents or Proposers shall be accorded fair treatment with regard to evaluation of their Responses or Proposals. Any or all Respondents or Proposers may be requested to make presentations and/or submit clarifications or revisions to their Responses or Proposals for the purpose of obtaining best and final Responses or Proposals. The Using Agency shall document the results of the evaluation. The contents of the Responses or Proposals shall not be disclosed to competing Respondents or Proposers during the evaluation process or any discussions.
- (f) *Contract ~~negotiation, approval and execution.~~* The Using Agency may send its recommendation to the CPO, setting forth the reasons for such recommendation, which shall be based upon the evaluation criteria. Board approval is not required to negotiate a Contract. Negotiation of a Contract's terms shall take place between the prospective Contractor(s) and representatives of the ~~Purchasing Department~~ CPO and the Using Agency. After a Contract is negotiated, the CPO shall either Execute the Contract, if within the CPO's authority, or forward the Contract to the Board for approval and authorization for the CPO to execute the Contract. Such request shall include the justification for the Contract and the selection of the Contractor.
- (g) *RFP or RFQ protest.* Any interested party who has a complaint about the RFP or RFQ process may submit a protest in writing and directed to the CPO. For all Contracts requiring Board approval, any protest must be submitted no later than three business days after the date upon which the CPO posts the recommended contract for award. For all Contracts which can be executed by the CPO, any protest must be submitted no later than three business days after the date upon which the CPO posts the recommended Contract for execution. The subject of the protest for any RFP or RFQ shall concern fraud, corruption or illegal acts undermining the objectives and integrity of the procurement process. ~~Any RFP or RFQ protest must be submitted no later than three business days after the date upon which the CPO posts the recommended Response or Proposal for award.~~ The protest must contain a detailed statement of the factual and legal grounds of the protest, including all relevant documents and exhibits that demonstrate fraud, corruption or illegal acts having the effect of undermining the integrity of the procurement process and the action requested of the CPO. A protest based on an issue which could have been clarified through a request for clarification or information, will not be considered if the protestor failed to make such request. When a protest has been submitted, no further action shall be taken on the Procurement until the CPO makes a decision, unless the Using Agency responds in writing and sufficiently demonstrates that (i) the item to be procured is urgently required and (ii) failure to make the award promptly will unduly delay delivery or performance or cause other undue harm.

The CPO shall issue a written decision on the protest to the protestor and to any other Respondent or Proposer affected by such decision as soon as reasonably practicable. If the protest is upheld, the CPO shall consult with the Using Agency, and may exercise any of the following remedies: cancel the procurement; recommend commencing contractual negotiations to the next qualified Respondent or Proposer, or re-issue the RFP or RFQ.

Any CPO decision concerning RFP or RFQ protest(s) shall be final. If Board approval and authorization is necessary for the CPO to execute the Contract, then the CPO shall provide a copy of any RFP or RFQ protest and written decision thereon to the Board of Commissioners for informational purposes prior to seeking Board Action pursuant to Section 34-138(h) below.

- (h) *Board or CPO related action.* Upon resolution of any protests, or expiration of the three-day protest period with no protests, the CPO shall either execute the contract if within ~~his/her~~ their authority, or submit the Contract to the Board, ~~through its Finance Committee,~~ for approval and authorization for the CPO to execute the Contract. Once the Contract has been approved by the Board or executed by the CPO, the CPO shall post on the CPO's website information regarding the Procurement.

### **Sec. 34-139. Sole source procurements.**

Procurements of supplies, equipment, goods or services may be made without use of one of the competitive processes if there is either only one source or there is a need for the unique or specialized skill, experience, or ability possessed by a particular source. The Using Agency must submit a letter to the CPO justifying the sole source Procurement, and provide any other documents or information required by the CPO. At least 45 days prior to seeking Board Action with any proposed contract, the CPO shall provide such letter to the Board of Commissioners.

### **Sec. 34-140. Comparable government procurement.**

If a governmental agency has awarded a contract through a competitive method for the same or similar supplies, equipment, goods or services as that sought by the County, the Procurement may be made from that vendor at a price or rate at least as favorable as that obtained by that government agency without utilizing a competitive procurement method set forth in this Procurement Code. The County's contract may contain (i) a period of duration, i.e., a term, which varies from the term of the referenced Contract; (ii) such additional provisions as the CPO determines to be in the best interests of the County; and (iii) such insertions to or deletions from the referenced Contract as are required by law or ordinance applicable to the County. Prior to the award of any contract pursuant to this section, ~~the contracting agency~~ Using Agency shall provide to the CPO a detailed summary setting forth the justification for use of such reference contract including, but not limited to: the date, scope, subject matter and pricing of the original contract; a summary of the ~~bid~~ solicitation procedures of the original contracting authority; the basis for the County not entering its own competitive ~~bidding~~ solicitation process, ~~as well as~~ and a pricing comparison between the original contract and the proposed reference contract. At least 45 days prior to seeking Board Action with any proposed contract, the CPO shall provide such summary to the Board of Commissioners.

### **Sec. 34-141. Emergency procurements.**

The CPO may make Procurements and execute Contracts without use of one of the competitive processes set forth in this Procurement Code and without prior approval of the Board, when such Procurements are necessary (i) due to a threat to public health or safety, (ii) for repairs to County property in order to protect against further loss or damage, (iii) to prevent or minimize serious disruption in County services, (iv) to ensure the integrity of County records, or (v) in the reasonable opinion of the CPO, for the best interests of the County. If practicable under the circumstances, the CPO shall obtain quotations or ~~P~~proposals from at least three Persons. The CPO shall report the basis for the emergency Procurement and the reasons for the selection of the Contractor to the ~~Finance Committee of the Board~~ within five business days of making an emergency Procurement.

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**Sec. 34-142. Joint procurements.**

Procurements may be made pursuant to the Governmental Joint Purchasing Act, 30 ILCS 525.

**Sec. 34-143. Consortium and group procurements.**

Procurements may be made pursuant to the County's membership or participation in a purchasing consortium, without utilizing a competitive procurement method set forth in this Procurement Code, provided that the Board has approved such membership or participation, for, at least in part, the purpose of obtaining advantageous pricing and other efficiencies for the County. Procurements made through a purchasing consortium shall be approved and executed as set forth in this Procurement Code.

**Sec. 34-144. Innovative procurement.**

- (a) The CPO may make a Procurement using innovative methods of procurement, including, but not limited to, electronic procurement, reverse auctions, electronic bidding, electronic auctions, prequalification and pilot procurement programs ~~that have no cost to the County~~. In order to implement innovative methods of procurement, either directly or through a service provider, the CPO must make a determination that such process is competitive and in the best interest of the County.
- (b) As an alternative or in addition to directly conducting procurement using innovative methods, the CPO may make a Procurement of electronic procurement services for conducting reverse auctions, electronic auctions, or provide an on-line or electronic forum for competitive Bids, Requests for Qualifications and Requests for Proposals and other types of innovative methods of procurement on the County's behalf. The Contract for such Procurement may contain such terms as the CPO deems necessary, including, but not limited to, terms that specify the source and amount of the compensation. With respect to Procurements made pursuant to this section, the CPO is authorized to charge a reasonable service fee to the Contractors from which Procurements are made in order to cover part or all of the County's costs associated with such electronic procurement, including the costs of engaging a service provider. Such service fee shall be paid as directed by the CPO.
- (c) The CPO shall have authority to adopt rules and regulations for the proper administration and enforcement of the provisions of this section, including the authority to modify the requirements of this Procurement Code as necessary to implement such innovative or electronic procurement method.
- (d) Any document, affidavit, certification or form required by the Procurement Code or submitted in connection with any Procurement may be accepted by the CPO in electronic format subject to compliance with accepted means and methods of verification and authentication of electronic signatures.

**~~Sec. 34-145. Responsible bidder process for public works construction, maintenance and repair contracts.~~**

~~For purposes of evaluating whether a Bidder for a Public Works Contract is Responsible, the CPO shall determine that the Bidder:~~

- ~~(a) Is authorized to do business in Illinois and the County;~~
- ~~(b) Has, as applicable, a Federal Employer Identification Number or Social Security Number;~~

- ~~(c) Meets any applicable insurance requirements in the Bid Document;~~
- ~~(d) Has certified that it is in compliance with all provisions of the Illinois Prevailing Wage Act, and State and Federal equal employment opportunity laws;~~
- ~~(e) Has certified that it participates in active apprenticeship and training programs approved and registered with the United States Department of Labor Bureau of Apprenticeship and Training for each of the trades of work contemplated under the awarded Contract;~~
- ~~(f) Contractually requires any subcontractor to participate in active apprenticeship and training programs approved and registered with the United States Department of Labor Bureau of Apprenticeship and Training for each of the trades of work contemplated under the awarded Contract; and~~
- ~~(g) Has agreed to provide Certified payrolls as specified in the Illinois Prevailing Wage Act.~~

~~For purposes of this Section 34-145, the terms, "Public Works" and Construction" shall have the meanings set forth in the Illinois Prevailing Wage Act, 820 ILCS 130/2.~~

#### **~~Sec. 34-146. Performance and accountability in professional social service contracts and agreements.~~**

~~All Professional Social Service Contracts and Professional Social Service Agreements entered into must include within its terms or general conditions a requirement that the contractor or provider of such social services submit an annual performance report to the Using Agency that includes, but is not limited to, relevant statistics, an empirical analysis where applicable, and a written narrative describing the goals and objectives of the contract or agreement and programmatic outcomes. The Chief Procurement Officer shall be responsible for ensuring that this requirement is included in said Professional Social Service Contracts and Professional Social Service Agreements. The annual performance report shall be provided and reported to the Cook County Board of Commissioners by the applicable Using Agency within 45 days of receipt. Failure of the contractor or provider to provide an annual performance report will be considered a breach of contract or agreement by the contractor or provider, and may result in termination of the contract or agreement.~~

#### **~~Sec. 34-147. Disclosure of anticipated future costs/amendments.~~**

~~Prior to the approval of a Contract, the Using Agency shall present to the Board all costs identified in the Contract, including costs identified for the purchase of optional services, goods, or equipment, contingency costs, or costs for renewal options.~~

**~~Secs. 34-148—34-159. Reserved.~~**

### **DIVISION 3. WAGE REQUIREMENTS**

#### **Sec. 34-160. Living wage.**

- (a) Unless expressly waived by the Board, any Contract requiring the use of full-time non-County Employees to provide services or labor under the Contract shall include a provision requiring that the Contractor shall pay not less than the Living Wage to such Employees, unless such Employees' Wages are governed by Federal or State law. The Contractor shall require all subcontractors to comply with this section. This Section shall not apply to Contracts with Not-for-Profit Organizations or Contracts funded by Federal grants or loans.

- (b) If a Contractor or any of its subcontractors is found to be in violation of this section, such Contractor be required to pay back pay to each affected Employee, and may also be fined by the County up to \$100.00 for each affected Employee for each day paid at less than the Living Wage. Such penalties will not be imposed on any Person except after a hearing pursuant to Chapter 2, Article IX, Administrative Hearings.
- (c) If a Contractor or any of its subcontractors is found to have retaliated against an affected Employee, the Contractor may be held to be in breach of the Contract and the Contract may be terminated unless such Contractor or the subcontractor appropriately reinstates or compensates such Employee.
- (d) The CPO shall require that any such Contractor certify that it will comply with this section.
- (e) Pursuant to County Code Chapter 2, Article V, Division 3, Subdivision I, Section 2-408, the CFO shall annually determine the Living Wage.
- (f) The CPO shall post the current Living Wage on the CPO's website.
- (g) Every Contractor and subcontractor required to pay the Living Wage shall notify its Employees of the Living Wage requirement and shall notify all of its Employees annually of any adjustment to the Living Wage. In addition, the Employer shall notify its Employees that if any Employee contends that the Employer is not paying a Living Wage or has otherwise violated this section, that Employee may file a complaint with the Cook County Commission on Human Rights ("Commission"). If at the conclusion of the Commission's investigation, the Commission finds that the Employer has violated this section, it shall (1) in the case of an Employer receiving a property tax incentive, notify the Assessor; or (2) in the case of a Contractor or a subcontractor required to pay the Living Wage, notify the CPO, who shall exercise such remedies as are in the best interest of the County, including ordering the Employer to pay back pay and penalties, as provided in this section.

**Sec. 34-161. Illinois prevailing wage.**

- (a) To the extent required by the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.) (the "Prevailing Wage Act"), the general prevailing rate of Wages in this locality for laborers, mechanics and other workers engaged in the construction of Public Works coming under the jurisdiction of this County shall be the same as the prevailing rate of Wages for construction work in the Cook County area as determined from time to time by the Department of Labor of the State of Illinois. The definition of any terms used in this section which are also used in the Prevailing Wage Act shall be the same as in said Act.
- (b) Nothing herein contained shall be construed to apply the general prevailing rate of Wages to any work or employment except Public Works of this County and only to the extent required by the Prevailing Wage Act.
- (c) The CPO shall include in the ~~Bid~~ Notice for any Public Works Contract, and shall include in the ~~Bid Solicitation Documents~~, a requirement that not less than the prevailing rate of Wages as found by the County or the Department of Labor or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under such Public Works Contract.
- (d) Prior to awarding any Public Works Contract, the CPO shall ascertain whether the ~~Bidder~~ Person is debarred pursuant to the Prevailing Wage Act.

**Sec. 34-162. Federal prevailing wage.**

If a Procurement will be paid for using federal funds, and if such federal funding requires compliance with the Davis-Bacon Act (40 U.S.C. 276a-276a-7), then the Contract shall contain provisions requiring that the Contractor and any subcontractors shall pay the Federal Prevailing Wage.



**Sec. 34-163. Prevailing wages for covered services.**

- (a) Not less than the prevailing rate of Wages shall be paid and prevailing working conditions shall be provided to any laborer, worker and mechanic providing Covered Services under a Contract.
- (b) In order to be considered a Responsive Bidder for any Contract for Covered Services, the Bidder Person shall certify that Wages paid to its employees will be no less, and fringe benefits and working conditions of such employees shall be no less favorable, than those prevailing in the locality in which the Covered Services are to be performed, as determined by the Chief of the Bureau of Human Resources and posted on the website.
- (c) The CPO of Cook County shall include in the Bid Solicitation Notice for any Contract for Covered Services, and shall include in the specifications for any such Contract a provision that (i) not less than the prevailing rate of Wages shall be paid, and prevailing working conditions shall be provided, to all laborers, workers and mechanics performing Covered Services and (ii) all bonds required under such Contract shall include such provisions as will guarantee the faithful performance of such provision in the Contract.

**Sec. 34-164. Prompt payments to subcontractors for non-public works.**

When a Contractor receives any payment from the County for any supplies, equipment, goods, or services, it has provided to the County pursuant to its non-public works Contract, the Contractor must make payment to its subcontractors within 15 days after receipt of payment from the County, provided that such subcontractor has satisfactorily provided the supplies, equipment, goods or services in accordance with the Contract and provided the Contractor with all of the documents and information required of the Contractor. The Contractor may delay or postpone payment to a subcontractor when the subcontractor's supplies, equipment, goods, or services do not comply with the requirements of the Contract, the Contractor is acting in good faith, and not in retaliation for a subcontractor exercising legal or contractual rights.

**Sec. 34-165. Prompt payments to subcontractors and material suppliers for public works.**

When a Contractor receives any payment from the County pursuant to a Public Works Contract, the Contractor shall pay each subcontractor and material supplier in proportion to the work completed by each subcontractor and material supplier less any retention within 15 days after receipt of payment from the County. If the Contractor receives less than the full payment due under the Public Works Contract, the Contractor shall be obligated to disburse on a pro rata basis those funds received with the Contractor, subcontractors and material suppliers, each receiving a prorated portion based on the amount of funds received. When, however, the County does not release the full payment due under the Contract because there are specific areas of work or materials the Contractor is rejecting or because the Contractor has otherwise determined such areas are not suitable for payment, then those specific subcontractors or suppliers involved shall not be paid for that portion of the work rejected or deemed not suitable for payment ~~and~~; all other subcontractors and suppliers shall be paid on a pro rata basis from the funds received, and shall receive full payment if funds are sufficient.

**Secs. 34-166—34-169. Reserved.**

**DIVISION 4. DISQUALIFICATION AND PENALTIES**

**Sec. 34-170. Disqualification due to contract default or termination.**

- (a) If a Person has had a Contract terminated for cause by the County, or if a Person has failed to cure a default within any cure period provided by the Contract, such Person shall be ineligible to enter into a Contract with the County for a period of 24 months from the date of termination or notice of default.
- (b) When a Contract has been terminated for cause or when an uncured default exists under a Contract, the Contractor may submit a request to the CPO for a reduction or waiver of the ineligibility period. The request shall be in writing and shall include documentation that one or more of the following actions have been taken:
  - (1) There has been a bona fide change in ownership or Control of the ineligible Person;
  - (2) Disciplinary action has been taken against the individual(s) responsible for the acts giving rise to the termination or default; or
  - (3) Remedial action has been taken to prevent a recurrence of the acts giving rise to the termination or default.

The CPO shall review the documentation, make any inquiries deemed necessary, and determine whether a reduction or waiver is appropriate.

- (c) A Using Agency may request an exception to such period of ineligibility by submitting a written request to the CPO, supported by facts that establish that it is in the best interests of the County that the Procurement be made from such ineligible Person. The CPO shall review the documentation, make any inquiries deemed necessary, and determine whether the request should be approved. If an exception is granted, such exception shall apply to that Procurement only and the period of ineligibility shall continue for its full term as to any other Procurements.

**Sec. 34-171. Disqualification due to County tax or debt delinquency or obligation default.**

- (a) A Person that is (i) delinquent in the payment of any tax (including real estate tax) or fees administered by the County; (ii) delinquent in the payment of any debt to the County; (iii) in default of any obligation to the County; or (iv) a "predatory lender," as determined pursuant to the Cook County Predatory Lending Ordinance, shall be ineligible to enter into a Contract with the County. Notwithstanding the foregoing, a Person shall not be ineligible, nor shall the County exercise any rights to set-off or other remedies set forth in this Division against a Person, if such Person is contesting liability for the delinquency in a pending administrative or judicial proceeding, or contesting the existence of a default, and shows proof of the contest; or if such Person has entered into an agreement for the payment of such delinquency and verifies compliance with the agreement.
- (b) The CPO shall obtain a written certification from every Person from whom the County seeks to make a Procurement that such Person meets the requirements of Subsection (a).
- ~~(c) The County shall not be prohibited from making a Procurement from, and shall not exercise rights to set off or other remedies set forth in this Division against a Person who is contesting liability for the delinquency, in a pending administrative or judicial proceeding, or contesting the existence of a default, and shows proof of the contest; from a Person who has entered into an agreement for the payment of such delinquency and verifies compliance with the agreement.~~
- ~~(c)~~ A Using Agency may request an exception to such ineligibility by submitting a written request to the CPO, supported by facts that establish that it is in the best interests of the County that the Procurement be made from such ineligible Person. The CPO shall review the documentation, make any inquiries deemed necessary, and determine whether the request should be approved.

**Sec. 34-172. Disqualification due to noncompliance with child support orders.**

- (a) A Person shall be ineligible to enter into a Contract with the County if such Person or a Substantial Owner (as defined in Part I, Chapter 34, Article V, Section 34-367 of the Cook County Code) is delinquent in the payment of a Court-Ordered Child Support Arrearage.
- (b) The CPO shall obtain an affidavit or certification from every Person, excluding political subdivisions of the Federal or State government and not-for-profit organizations, from whom the County seeks to make a Procurement that such Person including its Substantial Owners (as defined in Part I, Chapter 34, Article V, Section 34-367 of the Cook County Code) meets the requirements of Subsection (a).
- (c) If the County becomes aware that a Person or Substantial Owner becomes delinquent in payments under a Court-Ordered Child Support Arrearage after the County has entered into a Contract with such Person or Substantial Owner then, after notice from the County of such noncompliance and a 30-day opportunity to pay such delinquency, such delinquency shall constitute a default under the Contract. Such Person or Substantial Owner shall provide sufficient evidence to the CPO of payment of such delinquency.

**Sec. 34-173. Disqualification for illegal activity.**

- (a) *Disqualifying Acts.* A Person who has been convicted of, entered a plea of nolo contendere as to, or made an admission of guilt, pursuant to the laws of any Federal, State or local jurisdiction, for any of the following, shall be ineligible to enter into a Contract for a period of five years from the date of conviction, entry of a plea or admission of guilt:
  - (1) Bribing or attempting to bribe;
  - (2) Bid-rigging, attempting to rig bids;
  - (3) Price fixing or attempting to fix prices; or
  - (4) Defrauding or attempting to defraud.
- (b) *Disqualification due to acts of owner, partner or shareholder.* A Person shall be ineligible to enter into a Contract if an individual who Controls such Person would be disqualified under any provision of this Section.

**Sec. 34-174. Disqualification for willful violation of Cook County Independent Inspector General Ordinance.**

A Person found to have willfully failed to cooperate in an investigation by the Cook County Independent Inspector General or to report to the Independent Inspector General any and all information concerning conduct which they know to involve corruption, or other criminal activity, by another County employee or official, which concerns ~~his or her~~ their office of employment or County related transaction in accordance with Part I, Chapter 2, Article IV, Division 5, Section 2-285 of the County's Code shall be subject to disqualification as provided in Part I, Chapter 2, Article IV, Division 5, Section 2-291 of the County's Code.

**Sec. 34-175. Penalty for false statements.**

Any Person determined by the CPO to have knowingly made a false statement of material fact to Cook County in writing in connection with any aspect of a Procurement 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 Procurement Code or at law or in equity. Any person determined by the ~~CCDC~~CPO 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 Procurement Code or at law or in equity.

**Sec. 34-176. Penalty for failure to meet commitments.**

In the event that the ~~CCDC~~CPO 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 Procurement Code 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.

**Sec. 34-177. Penalties for failure to pay Cook County taxes and fees.**

The CPO shall include in every Contract a provision that entitles the County to set off and subtract from the Contract price a sum equal to any fines and penalties, including interest, for each tax or fee delinquency and any debt or obligation owed by the Contractor to the County.

**Sec. 34-178. Uniform penalties, interest and procedures.**

Violations of this Article and the assessment of any fine pursuant to this Article shall be adjudicated pursuant to Part I, Chapter 2, Administration, Article IX, Administrative Hearings, of this Code. The determination as to whether a Person is disqualified under any provision of this Division 4 or 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.

**Sec. 34-179. Disqualification due to violation of laws related to the payment of wages and Employer Paid Sick Leave Ordinance.**

- (a) A Person including a Substantial Owner (as defined in Part I, Chapter 34, Article V, Section 34-367 of the Cook County Code) who has admitted guilt or liability or has been adjudicated guilty or liable in any judicial or administrative proceeding of committing a repeated or willful violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., Illinois Minimum Wage Act, 820 ILCS 105/1 et seq., the Illinois Worker Adjustment and Retraining Notification Act, 820 ILCS 65/1 et seq., the Employee Classification Act, 820 ILCS 185/1 et seq., the Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq., or any comparable state statute or regulation of any state, which governs the payment of wages shall be ineligible to enter into a Contract with the County for a period of five years from the date of conviction, entry of a plea, administrative finding or admission of guilt.
- (b) A ~~p~~Person including a Substantial Owner who has admitted guilt or liability or has been adjudicated guilty or liable in any judicial or administrative proceeding of violating the Cook County Minimum Wage Ordinance (Sections 42-11—42-19 of the Cook County Code) shall be ineligible to enter into

a Contract with the County for a period of five years from the date of conviction, entry of a plea, administrative finding or admission of guilt.

- (c) The CPO shall obtain an affidavit or certification from every Person ~~or Substantial Owner~~ (as defined in Part I, Chapter 34, Article V, Section 34-367 of the Cook County Code) from whom the County seeks to make a Contract with certifying that the Person seeking to do business with the County including its Substantial Owners (as defined in Part I, Chapter 34, Article V, Section 34-367 of the Cook County Code) has not violated the statutory provisions identified in Subsection (a) and or (b) of this Section.
- (d) For Contracts entered into following the effective date of this Ordinance, if the County becomes aware that a Person including Substantial Owner (as defined in Part I, Chapter 34, Article V, Section 34-367 of the Cook County Code) under contract with the County is in violation of Subsection (a) or (b) of this Section, then, after notice from the County, any such violation(s) shall constitute a default under the Contract.
- (e) If a Person including a Substantial Owner (as defined in Part I, Chapter 34, Article V, Section 34-367 of the Cook County Code) is ineligible to contract with the County due to the provisions of Subsection (a) or (b) of this Section, the Person seeking the Contract may submit a request for a reduction or waiver of the ineligibility period to the CPO. The request shall be in writing in a manner and form prescribed by the CPO and shall include one or more of the following actions have been taken:
  - (1) There has been a bona fide change in ownership or Control of the ineligible Person or Substantial Owner;
  - (2) Disciplinary action has been taken against the individual(s) responsible for the acts giving rise to the violation;
  - (3) Remedial action has been taken to prevent a recurrence of the acts giving rise to the disqualification or default; or
  - (4) Other factors that the Person or Substantial Owner believe are relevant.

The CPO shall review the documentation submitted, make any inquiries deemed necessary, request additional documentation where warranted and determine whether a reduction or waiver is appropriate. Should the CPO determine that a reduction or waiver of the ineligibility period is appropriate; the CPO shall submit its decision and findings to the ~~County~~ Board.

- (f) A Using Agency may request an exception to such period of ineligibility by submitting a written request to the CPO, supported by facts that establish that it is in the best interests of the County that the Contract be made ~~from~~ with such ineligible Person. The CPO shall review the documentation, make any inquiries deemed necessary, and determine whether the request should be approved. If an exception is granted, such exception shall apply to that Contract only and the period of ineligibility shall continue for its full term as to any other Contract. Said exceptions granted by the CPO shall be communicated to the ~~County~~ Board.

**Secs. 34-180—34-189. Reserved.**

## **DIVISION 5. PROCUREMENT PROCEDURES AND POLICIES FOR CERTAIN PROCUREMENTS**

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**Sec. 34-190. Percentage of work of public works projects to be performed by county residents.**

For any Public Works Contract having an estimated contract price of \$100,000.00 or more, where not otherwise prohibited by Federal or State law, at least 50 percent of the total hours worked on the site by employees of the Contractor and subcontractors shall be performed by residents of the County.

**Sec. 34-191. Green construction.**

For all competitive ~~Bids-Solicitations~~ Bids-Solicitations for Public Works Contracts budgeted for \$2,000,000.00 or more, the ~~Bid-Solicitation~~ Bid-Solicitation Documents shall comply with the requirements of Chapter 30, ~~Environment, Article IXIII, Green Construction~~ Environment, Article IXIII, Green Construction Division 2, Subdivision (v), Section 30-952443, Emission Reduction and, of the Cook County Code; any Contract resulting therefrom shall include all provisions required by ~~Chapter 30, Article IX, Section 30-955446~~.

**Sec. 34-192. Predatory lenders.**

With each ~~Bid-ø~~, Bid-ø, Response, or Proposal submitted by a financial institution for any Contract, the following certification shall be signed by the chairman of the board, chief executive officer, or other officer of the financial institution acceptable to the Chief Financial Officer.

"We pledge that we are not and will not become a predatory lender as defined in Cook County's Predatory Lending Ordinance. We further pledge that none of our affiliates ~~is are, and none of them~~ nor will become, a predatory lender as defined in this Ordinance. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the County."

**Sec. 34-193. Contracts for consulting and auditing services.**

- (a) The County will not enter into any Contract for Auditing Services, nor shall it consent to a subcontract for such Auditing Services, with any Person, if such Person, or any Affiliate of such Person, has a Contract or subcontract for ~~e~~Consulting sServices for or with the County. Additionally, the County will not enter into any Contract for Consulting Services, nor shall it consent to a subcontract for such Consulting Services, with any Person, if such Person, or any Affiliate of such Person, has a Contract or subcontract for Auditing Services for or with the County. For purposes of this provision, "County" shall refer only to offices which are administered by the President of the County Board and shall not refer to offices which are administered by Elected Officials.
- (b) The County shall not enter into any Contract for Consulting Services on behalf of an Elected Official, nor shall it consent to a subcontract for such Consulting Services on behalf of an Elected Official, with any Person, if such Person, or any Affiliate of such Person, has a Contract or subcontract to provide Auditing Services for the Elected Official.
- (c) The CPO shall require the Contractor in each Contract for Auditing Services or Consulting Services for the County ~~(as defined in this Section)~~ to provide a certification acceptable to the CPO that neither the Contractor nor any Affiliate of the Contractor has a Contract or a subcontract to provide Consulting or Auditing Services for the County which is prohibited under Subsection (a) of this Section. In addition, the CPO shall require the Contractor in each Contract to provide Consulting Services for an Elected Official to provide a certification acceptable to the CPO that neither the Contractor nor any Affiliate of the Contractor has a Contract or a subcontract to provide Auditing Services for the Elected Official which is prohibited under Subsection (b) of this Section.

## **Sec. 34-194. Definitions.**

The following words, terms and phrases, when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Abusive forms of child labor* means:

- (1) Work performed by a person under the age of 18 when the person does not voluntarily seek the work or the person is threatened by the person's employer with physical, mental or emotional harm for nonperformance;
- (2) Work performed by a person under the age of 18 in violation of laws of applicable jurisdiction governing the minimum age of employment, hours and conditions of work, compulsory education, or occupational health and safety; or
- (3) The use of a person under the age of 18 for illegal activities, including, but not limited to, the production or trafficking of illicit drugs or for prostitution.

*Contract* means any contract, purchase order or agreement awarded by any officer or agency of the county for purchasing garments, and whose cost is to be paid from funds belonging to or administered by the county.

*Contractor* means any person, partnership, corporation or other entity, which has a contract with the county.

*Subcontractor* means any person, partnership, corporation or other entity that enters into an agreement with a contractor or other subcontractor for any work under a contract or to produce goods to be purchased by the County under a contract, whether directly or through a broker or agent.

*Foreign convict or forced labor* means any form of labor used to produce or manufacture goods prohibited from importation into the United States under 19 U.S.C. § 1307, which includes abusive forms of child labor and slave labor.

*Garment* means any clothing, including uniforms, footwear, and related clothing accessories, such as hats and caps, ties, scarves, ribbons and shoestrings.

*Procurement Living Wage* means, for domestic manufacturers, a living wage as defined in Chapter 34, Article IV, Section 34-160 of this Code.

*Slave labor* means any form of slavery or practices similar to slavery, such as the sale or trafficking of persons, debt bondage, indentured servitude, serfdom, forced or compulsory labor, or forced or compulsory recruitment of persons, below the age of 18 for use in armed conflict.

*Supply chain* means any manufacturer or distributor of garments.

*Sweatshop labor* means any work performed by any person under terms or conditions that seriously or repeatedly violate the domestic labor, employment or other workplace laws of the jurisdiction within which the work is performed, including without limitation laws concerning:

- (i) Wages and hours of work;
- (ii) Employee benefits, including paid and unpaid time off from work;
- (iii) Health and safety, including without limitation exposure to hazardous or toxic substances, and building and fire safety;
- (iv) Labor, including without limitation collective bargaining rights and individual employment contracts;

- (v) Discipline, nondiscrimination, harassment, or retaliation, including without limitation all laws prohibiting workplace and employment discrimination;
- (vi) Freedom of association;
- (vii) Forced, convict, and child labor; and
- (viii) All other conditions of work and employment.

For purposes of this section, domestic law includes without limitation international labor and human rights standards that are applicable to the jurisdiction within which the work is performed by virtue of international treaty or convention, including without limitation the International Labor Organization's 1998 Declaration on Fundamental Principles and Rights at Work, as amended. Sweatshop labor also means any work performed by any person that constitutes Foreign Convict or Forced Labor, or Abusive Forms of Child Labor or Slave Labor.

**Sec. 34-195. Sweatshop-free procurement.**

- (a) Any ~~s~~Solicitation for a contract advertised or otherwise communicated on or after passage of this section, and any contract entered into as a result of such ~~s~~Solicitation shall include a specification that Contractors, both prospectively and, thereafter, if awarded the contract, shall:
  - (1) Disclose to the ~~e~~CCounty, in bids for the contract and, if awarded the contract, thereafter upon the ~~e~~CCounty's request, in a form prescribed by the ~~chief procurement officer~~CPO, the prospective contractor's entire supply chain for the performance of the contract; including the name, address and contact information of all Subcontractors in the Supply chain for such contract;
  - (2) Complete and submit ~~a~~ certification or affidavit with the response or proposal to the ~~s~~Solicitation verifying that neither the Contractor nor any of its Subcontractors, in the performance of the contract, shall: (i) use Sweatshop labor, Foreign convict labor, Forced labor, Abusive forms of child labor or Slave labor; or (ii) fail to pay the applicable procurement living wage; (iii) ~~y~~the failure to complete and submit the certification or affidavit shall render the contractor's response or proposal non-responsive.
- (b) Before evaluating bids for contracts, the ~~chief procurement officer~~CPO or any other any officer or agency of the county shall exclude a prospective Contractor if:
  - (1) The prospective Contractor has provided insufficient information to establish compliance as set forth herein, despite the prospective contractor having been given notice and opportunity to correct this insufficiency; or
  - (2) There is evidence deemed credible in the opinion of the ~~Chief Procurement Officer~~CPO that the prospective Contractor or a Subcontractor that the prospective contractor has disclosed pursuant to subsection (a)(1): (i) uses Sweatshop labor, Foreign convict labor, Forced labor, Abusive forms of child labor or Slave labor, (ii) fails to pay the applicable Procurement living wage, despite the prospective Contractor having been given notice and opportunity to rebut the credibility of this evidence.
- (c) In evaluating bids for contracts, the ~~chief procurement officer~~CPO or any officer or agency of the ~~e~~CCounty shall in the evaluation of prospective Contractors' bids make a determination that each prospective Contractor is in compliance with this section.
- (d) A Contractor's failure to comply with this section or failure to perform in accordance with the certification or affidavit specified in (a)(2) shall constitute an event of default. In the event of default for failure to comply with this section, the ~~chief procurement officer~~CPO shall notify the contractor of such noncompliance and will, as appropriate: (i) issue the contractor a 30-day opportunity to cure;



- (ii) terminate the contract for breach and pursue any and all remedies available under law; (iii) terminate the contract and rebid the remaining contract amount; (iv) retain all monies earned under the contract until compliance with this section is achieved; or (v) assess the contractor with a penalty equal to the greater of \$1,000.00 or 20 percent of the value of the procured goods.
- (e) This section shall not be construed to prohibit the county from prosecuting any person who knowingly makes a false statement of material fact to Cook County pursuant to Section 34-175 of this Code.
- (f) The ~~chief procurement officer~~CPO is authorized to adopt rules and regulations for the proper administration and enforcement of this section. Each County officer or agency of the county, when requested by the ~~chief procurement officer~~CPO, shall cooperate with the ~~chief procurement officer~~CPO in the implementation, administration and enforcement of this section by providing relevant information that is in the officer or agency's possession and control, and providing any other assistance that it is feasible for the officer or agency to provide.
- (g) This section shall not apply to the extent it is preempted by applicable federal or state law or to the extent it conflicts with the terms or conditions of a federal or state of Illinois grant agreement.

**Sec. 34-196. Severability.**

~~If any provision, clause, sentence or paragraph of this division or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect, impair or invalidate any remaining subsection, paragraph, sentence or clause hereof or the application of this Section to any other person or circumstances, and to this end the provisions of this division are declared to be severable.~~

**Sec. 34-196. Responsible bidder process for public works construction, maintenance and repair contracts.**

For purposes of evaluating whether a Bidder for a Public Works Contract is Responsible, the CPO shall determine that the Bidder:

- (a) Is authorized to do business in Illinois and the County;
- (b) Has, as applicable, a Federal Employer Identification Number or Social Security Number;
- (c) Meets any applicable insurance requirements in the Solicitation Document;
- (d) Has certified that it is in compliance with all provisions of the Illinois Prevailing Wage Act, and State and Federal equal employment opportunity laws;
- (e) Has certified that it participates in active apprenticeship and training programs approved and registered with the United States Department of Labor Bureau of Apprenticeship and Training for each of the trades of work contemplated under the awarded Contract;
- (f) Contractually requires any subcontractor to participate in active apprenticeship and training programs approved and registered with the United States Department of Labor Bureau of Apprenticeship and Training for each of the trades of work contemplated under the awarded Contract; and
- (g) Has agreed to provide Certified payrolls as specified in the Illinois Prevailing Wage Act.

For purposes of this Section 34-145, the terms, "Public Works" and Construction" shall have the meanings set forth in the Illinois Prevailing Wage Act, 820 ILCS 130/2.

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**Sec. 34-197. Performance and accountability in professional social service contracts.**

All Professional Social Service Contracts entered into must include within its terms or general conditions a requirement that the contractor or provider of such social services submit an annual performance report to the Using Agency that includes, but is not limited to, relevant statistics, an empirical analysis where applicable, and a written narrative describing the goals and objectives of the contract or agreement and programmatic outcomes. The CPO shall be responsible for ensuring that this requirement is included in said Professional Social Service Contracts. The annual performance report shall be provided and reported to Board-by the applicable Using Agency within 45 days of receipt. All Professional Social Service Contracts must include a provision establishing that failure of the contractor or provider to provide an annual performance report will be considered a breach of contract or agreement by the contractor or provider, and may result in termination of the contract.

**Sec. 34-198. Disclosure of requirements and anticipated future costs/amendments.**

Prior to the approval of a Contract, the Using Agency shall present to the Board all costs identified in the Contract, and costs identified for the purchase of optional services, goods, or equipment, contingency costs, or costs for extension or renewal options.

**Sec. 34-199. Severability.**

If any provision, clause, sentence or paragraph of this division or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect, impair or invalidate any remaining subsection, paragraph, sentence or clause hereof or the application of this Section to any other person or circumstances, and to this end the provisions of this division are declared to be severable.

**~~Secs. 34-197 — 34-199. Reserved.~~**

**Subdivision I. Selection of Professional Services for Debt Transactions and Management of Bond Proceeds; Continued Participation of MBEs, WBEs, VBEs, and SDVBEs**

**Sec. 34-200. Definitions.**

The following words, terms and phrases, when used in this Subdivision shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Broker-Dealer* means a financial services Person who is registered as a broker-dealer with and in good standing with the United States Securities and Exchange Commission and the State of Illinois.

*Conduit Bonds/Private Activity Bonds* means a type of municipal bond sold by the County for the purpose of making proceeds available to a private entity for investment in projects that are in furtherance of a public purpose.

*Financial advisor* means a Person registered and in good standing as a municipal advisor with the United States Municipal Securities Rulemaking Board and the United States Securities and Exchange Commission.

*Investment Bank* means a Person responsible for participating in the underwriting and the marketing of bonds issued by the County or in the remarketing of short-term securities on behalf of the County.

Municipal (Financial) Advisor means a consultant that provides advice to or on behalf of a municipal entity with respect to municipal financial products or the issuance of municipal bonds.

Public Private Partnership (“P3”) means a contract that is formed between public and private-sector partners.

**Sec. 34-201. Competitive process for legal counsel and finance teams for debt transactions.**

- (a) The Chief Financial Officer or the CPO, on request of the Chief Financial Officer, may issue an RFQ at least once every three years for selection of legal counsel and finance professionals required for debt transactions, including but not limited to bond counsel, pension disclosure counsel, and underwriters counsel; investment banks; and financial advisors.
- (b) The RFQ for legal counsel shall request at least the following information:
  - (1) Descriptive information about the law firm, including the experience of the attorneys within the law firm having expertise in the areas of municipal finance law and tax law;
  - (2) The manner in and degree to which the law firm operates or is otherwise present in the County;
  - (3) Whether and by whom the law firm is certified as a MBE, WBE, VBE or SDVBE;
  - (4) The manner in and degree to which the law firm is owned by minority, woman, or veteran attorneys;
  - (5) The manner in and degree to which the law firm employs minority, woman, or veteran attorneys and promotes or incubates the participation of minority, woman, or veteran attorneys in public finance initiatives;
  - (6) The law firm's written policies regarding sexual harassment; and
  - (7) Other special areas of expertise or strength.
- (c) The RFQ for investment banks shall request at least the following information, as applicable:
  - (1) Experience and expertise in structuring and marketing bonds and notes, detailing experience with various types of issuances, including general obligation bonds, revenue bonds, variable rate demand bonds, commercial paper, tax anticipation notes, and other debt instruments being contemplated by the County, including examples of similar financings on which the investment bank has been senior manager or co-manager;
  - (2) Financial strength of the investment bank, particularly its capital allocated to underwriting municipal bonds;
  - (3) Degree of corporate investment or "presence" in the County, including the location of corporate offices, brokerage offices, or back-office operations;
  - (4) The number and qualifications of personnel associated with efforts to sell municipal bonds, and the regular trading inventory of the investment bank with respect to municipal bonds;
  - (5) Whether and by whom the investment bank is certified as a MBE, WBE, VBE or SDVBE;
  - (6) The manner in and degree to which the investment bank is owned by minorities, women, or veterans;
  - (7) The manner and degree to which the investment bank employs minority, woman, or veteran finance professionals;
  - (8) The manner in and degree to which the investment bank promotes or incubates the participation of minority, woman, or veteran finance professionals in public finance initiatives;

- (9) The investment bank's written policies regarding sexual harassment; and
  - (10) Other special areas of expertise or strength.
- (d) The RFQ for financial advisors shall request at least the following information, as applicable:
- (1) Experience and expertise in structuring bonds and notes, detailing experience with various types of issuances, including general obligation bonds, revenue bonds, variable rate demand bonds, commercial paper, tax anticipation notes, and other debt transactions being contemplated by the County, including examples of similar financing initiatives as financial advisor.
  - (2) Degree of corporate investment or presence in the County, including the location of corporate offices;
  - (3) Whether and by whom the financial advisor is certified as a MBE, WBE, VBE or SDBVE;
  - (4) The manner in and degree to which the financial advisor is owned by minorities, women, or veterans;
  - (5) The manner in and degree to which the financial advisor employs minority, woman, or veteran finance professionals and promotes or incubates the participation of minority, woman, or veteran professionals in public finance initiatives;
  - (6) The financial advisor's written policies regarding sexual harassment; and
  - (7) Other specialized areas of expertise or strength.
- (e) A "qualified" list of law firms, investment banks, and financial advisors shall be developed by the Chief Financial Officer for each type of financing, applicable to a term of no more than three years per each RFQ.
- (f) For debt transactions, such as a P3, that involves Conduit or Private Activity Bonds, the private sector partner ("P3 Partner") shall be allowed to select their own bond counsel, underwriter's counsel, disclosure counsel and any other financial professional necessary to represent their interests in the transaction. The fees of such counsels and financial professionals shall be the sole responsibility of the P3 Partner.
- (1) While the P3 Partner is not required to choose their legal or finance team from the County's list of qualified finance and legal professionals, they are strongly encouraged to meet the County's goal under the Cook County Minority-and-Women Owned Business Enterprise Ordinance of having 35 percent of their cumulative legal and financial services provided by firms that are certified as MBE or WBE.
  - (2) The Chief Financial Officer has the right to select its own Issuer's Counsel, Municipal Advisor and/or any other finance professional it deems necessary to represent the interests of the County in the transaction.
  - (3) The County maintains the right to charge an Issuer's Fee for its participation in debt transactions under this Section.

**Sec. 34-202. Selection.**

- (a) For each debt transaction or for multiple debt transactions the Chief Financial Officer shall select three or more firms from the qualified list for each of the following, as required for the transaction: bond counsel, underwriter counsel, special tax counsel, pension-disclosure counsel, and financial advisor.

- (b) The Chief Financial Officer shall request that each of the law firms under consideration to provide legal services submit a Proposal which shall include at least the following: experience with the relevant type of financing; knowledge of the County; the key personnel to be assigned for the engagement, including their qualifications and experience; the proposed fees or fee structure for the engagement; the firm's capacity for, experience in, and commitment to providing continuing legal advice and support in such areas as compliance and taxation; and the manner and degree to which the firm will use an engagement on the contemplated financing initiative to promote or incubate the participation of minorities, women, and veterans as finance professionals, on the potential engagement.
- (c) The Chief Financial Officer shall request that each of the firms under consideration for investment banking services submit a Proposal which shall include at least the following: experience with the particular type of financing; a recommended strategy for identifying and targeting investors in the bonds or notes; knowledge of the County; the key personnel to be assigned for the engagement, including their qualifications and experience; the proposed fees or fee structure for the engagement; and the manner in and degree to which the firm will use an engagement on the contemplated financing initiative to promote or incubate the participation of minorities and women as finance professionals on any potential engagement.
- (d) The Chief Financial Officer shall request that each of the financial advisors under consideration to provide financial-advisory services submit a Proposal which shall include at least the following: experience with the particular type of financing; knowledge of the County; the key personnel to be assigned for the engagement, including their qualifications and experience; the proposed fees for the engagement; the firm's capacity for, experience in, and commitment to providing advice and support in such areas as pricing and marketing of municipal bonds; and the manner in and degree to which the firm will use an engagement on the contemplated financing to promote or incubate the participation of minorities, women, and veterans as finance professionals, on the potential engagement.
- (e) To redress the historical under-representation of minority- and woman-owned firms in the financial services arena, in the selection of law firms, investment banks, and financial advisors associated with bond issuances, it shall be the continued goal of the County that:
  - (1) No less than 35 percent of the cumulative remunerated portion of legal services and financial-advisory services associated with a financing initiative shall be provided by law firms that are certified as MBEs or WBEs under Cook County's Minority- and Women-Owned Business Enterprise Ordinance and financial-advisor firms that are at least 51 percent owned, controlled, and managed by one or more persons who are either a minority or a woman and that consistently maintain and staff a functional commercial presence and office in the County; and
  - (2) Thirty-five percent of the cumulative underwriting liability in a financing initiative shall be undertaken by investment banks that consistently maintain and staff a functional commercial presence and office in the County and are at least 51 percent owned, controlled, and managed by minority individuals or women.
- (f) The Chief Financial Officer shall recommend to the President the selection of legal counsel, investment banks, financial advisors, and other professionals based upon the proposals provided per this subdivision. In making the recommendation, the Chief Financial Officer shall consider methods to give multiple firms a fair opportunity to compete for and participate in County bond sales. The selection shall be made by the President upon the recommendation of the Chief Financial Officer, and shall be submitted to the ~~County~~ Board for approval. The Chief Financial Officer shall report to the ~~County~~ Board a summary of the rationale of any proposed financing initiative; the financial benefits of a proposed financing approach with regards to the County's long-term fiscal health; a summary of the financing team proposed to work on the financing initiative; an identification of any

firms that are certified as MBEs or WBEs or 51 percent owned, controlled, and managed by minority individuals or women; the total estimated participation of such firms as a percentage of professional services (comprised of legal and financial advisory services) and as a percentage of underwriting liability; and, on financing initiatives where circumstances are such that the 35 percent goals set forth in Subsection (e) cannot be prudently reached, an explanation of such circumstances. The Proposals by firms selected to work on a financing initiative shall be available for review by members of the ~~County~~ Board.

**Sec. 34-203. Specific bond underwriter requirements.**

Each Contract between the County and any bond underwriters shall include the following:

- (1) The underwriter shall use its best efforts to assure that the County meets its objectives in the fair and reasonable allocation of bond selling commissions to members of the underwriting syndicate, particularly to Cook County and minority- and women-owned firms;
- (2) The underwriter shall report the allocation of bond selling commissions and fees received by each member of the underwriting syndicate to the Chief Financial Officer within 30 days of closing of the bond issue; and
- (3) The underwriter shall comply with all limitations or disclosure requirements concerning political contributions that are or may be imposed by the Municipal Securities Regulatory Board or the Securities and Exchange Commission. Failure by the underwriter to comply with this provision shall not void the sale, but the underwriter may be subject to disqualification as set forth in Division 4.

**Sec. 34-204. Continued Management of Bond Proceeds.**

- (a) When permissible and practicable under related bond ordinances, debt instruments, and debt agreements, the Chief Financial Officer shall maintain investment of bond proceeds in accord with:
  - (1) The County Taxpayers' Interest Assurance Ordinance;
  - (2) The Illinois Public Funds Investment Act; or
  - (3) Such policies as are promulgated by the Chief Financial Officer, following submission to the ~~County~~ Board.
- (b) In selecting financial institutions to serve as broker-dealers in acquiring investments of bond proceeds under this Section, the Chief Financial Officer shall, for each contemplated investment, elicit proposals from at least three broker-dealers deemed qualified under policies and procedures promulgated by the Chief Financial Officer, the State of Illinois, or the City of Chicago.
- (c) In the selection of broker-dealers under this Section, it shall be the continued goal of the County that no less than 35 percent of the cumulative value of the proposed investment purchased in a given fiscal year shall be consummated by one or more broker-dealers that consistently maintain and staff a functional commercial presence and office in the County and are at least 51 percent owned, controlled, and managed by minority individuals or women.

**Secs. 34-205—34-214. Reserved.**

**Subdivision II. Recycled Products**

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**Sec. 34-215. Purpose.**

This Subdivision shall be known as the "Cook County Recycled Product Procurement Policy."

Its purpose is to promote market development of recycled products, recyclable products, and equipment capable of using such materials by establishing preferential purchasing programs applicable to all Using Agencies and Contractors, thereby diverting materials from the solid waste stream.

**Sec. 34-216. Policies.**

- (a) All Using Agencies shall whenever practicable use recycled products, recyclable products and reusable products to meet their demands.
- (b) Using Agencies and the CPO shall, whenever practicable, specify in the Contract Documents the use of recycled products and recyclable products.
- (c) In procuring designated products pursuant to this division, the CPO shall require recovered material and/or post-consumer material content to be factors in determining the lowest Responsive Bid in any competitive bidding procurement process.

**Sec. 34-217. Definitions.**

The following words, terms and phrases, when used in this subdivision shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Chlorine-free paper or paper products* means recycled paper in which the virgin content is unbleached or bleached without chlorine or chlorine derivatives, or virgin paper which is unbleached or processed with a sequence that includes no chlorine or chlorine derivatives.

*Designated products* means all products that have been or may be identified pursuant to Section 34-218 as products that can be procured with significant levels of recovered materials.

*Minimum content standards* means standards set by the ~~County~~ Board, or in its absence, standards or guidelines currently promulgated by the United States Environmental Protection Agency, specifying the minimum level of recovered materials and/or post-consumer material necessary for designated products to qualify as recycled products.

*Paper and paper products* means all items manufactured from paper or paperboard.

*Post-consumer material* means only those products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from the solid waste stream for the purposes of collection, recycling, and disposition.

*Post-consumer paper material* means paper, paperboard, and fibrous waste including corrugated boxes, newspapers, magazines, mixed waste paper, tabulating cards and used cordage after the point at which they have passed through their end use as consumer items.

*Practicable* means:

- (1) Able to perform in accordance with applicable specifications;
- (2) Offered as the low Bid under the procedures in Section 34-219(b), herein;
- (3) Available within a reasonable period of time; and
- (4) Maintaining a satisfactory level of competition.

*Recovered material* means material and byproducts which have been recovered or diverted from solid waste, but does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process (such as mill broke or home scrap).

*Recovered paper material* means paper waste generated after the completion of a paper making process, such as post-consumer material, envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, butt rolls, and mill wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residue such as bark.

*Recyclable* means that the product is technically capable of being recycled, and that economic markets for collecting and recycling the product exist within a reasonable distance, including steel and plastic.

*Recycle or recycling* means any process by which materials that would otherwise become municipal waste are collected, separated or processed and returned to the economic mainstream in the form of new, reused or reconstituted products, but does not include the recovery of materials for fuel in combustion or energy production processes. For lubricating oil, the term recycling is to be synonymous with re-refining. For toner cartridges, the term recycling is to be synonymous with re-manufacture.

*Recycled designated product* means a product designated in or pursuant to Section 34-218 that meets or surpasses the County's minimum content standards, and all other criteria for qualification as specified in this Division.

*Reusable product* means a product that can be used several times for an intended end use before being discarded, such as a washable food or beverage container or a refillable ball point pen.

#### **Sec. 34-218. Designated products and recycled designated products.**

For all purposes of this Subdivision, the products listed in this Section or added pursuant to it are designated as products that can be readily procured with significant levels of recovered materials. Designated products shall qualify as recycled designated products if they meet minimum content standards established in this Subdivision. Designated products shall include:

- (1) Paper and paper products, including, but not limited to writing and copying paper, napkins, tissue and towels, uncoated boxboard, construction paper, computer printout, coffee filters, letterhead stationery, envelopes and printing.
- (2) Compostable products, certified as conforming to ASTM or other international standards.
- (3) Horticultural mulch made with recycled land clearing and other wood debris.
- (4) Construction aggregates made with recycled cement concrete, tire rubber, glass or asphalt.
- (5) Cement and asphalt concrete containing glass cullet, recycled fiber or plastic, or tire rubber.
- (6) Antifreeze.
- (7) Recycled plastic products, including lumber shapes, refuse carts, traffic cones, insulation, receptacle liners and recycling bins, traffic barriers and office products.
- (8) Retreaded tires and products made from recycled tire rubber, including rubber mats and playfield surfaces.
- (9) Toner cartridges for computer printers.
- (10) Lubricating oil and hydraulic oil with re-refined oil content.



- (11) Insulation products.
- (12) Paint.
- (13) Wood products containing 50 percent or more reused or deconstructed wood.
- (14) Carpeting made from recycled fibers.
- (15) Office furniture.
- (16) All steel products.
- (17) Reusable products or products in reusable packaging.
- (17~~8~~) Other products as designated by the CPO.

**Sec. 34-219. Requirements for procurements.**

- (a) Bid Notices and requests for Quotations for the procurement of tangible supplies, equipment, or goods shall contain no terms, requirements or specifications prohibiting or discouraging post-consumer or recovered material content, unless a Using Agency provides the CPO with satisfactory evidence that, for technical reasons and for a particular end use, a product containing such materials will not meet reasonable performance standards.
- (b) In determining the lowest Responsive and Responsible Bid for the Procurement of designated products, the CPO shall use the procedures and evaluation criteria specified in this Subdivision. If the lowest price offered for a recycled designated product is not more than the specified percentage higher than the lowest offered price for that same designated product that is not recycled, the offered price for the recycled designated product shall be considered the low Bid if such Bidder is otherwise Responsive and Responsible. The specified percentage will not be less than ten percent. However, nothing contained in this division shall preclude Using Agencies from requiring post-consumer or recovered material content as a bid specification.
- (c) Each Contractor supplying the County with recycled designated products shall provide acceptable certification from all product manufacturers that the products being supplied meet or surpass County minimum content standards, and shall agree to reasonable verification procedures specified by the CPO.
- (d) Bid Notices for designated products, whether recycled or not, shall require the successful Bidder to provide quarterly summaries of the quantities Procured by Using Agencies, unless the CPO determines that this requirement would significantly reduce the number of Bids received by Cook County.
- ~~(e) The County shall not Procure any item whose original manufacturer places restrictions on the remanufacturing of such item by other businesses.~~

**Sec. 34-220. Procurement of paper and printing services.**

- (a) The County recycled paper procurement goal for Using Agencies (expressed as percentage of the total volume of paper Procured) shall be 60 percent. Each department shall be responsible for making its best effort to meet or surpass these goals.
- (b) All paper Procured by the County shall be recycled paper, and all printed materials Procured by the County shall be on recycled paper, containing at least 30 percent post-consumer content, unless use of such recycled paper is not practicable. For all other paper products, the CPO shall adopt minimum content standards for recycled paper products which shall, at minimum, be consistent with standards presently promulgated by the United States Environmental Protection Agency.

- (c) Printing services provided by the County or Procured by the County from an outside vendor shall utilize soy or other vegetable-based inks. If lithographic ink is used in printing performed by the County or in printing services Procured by the County from an outside vendor, the ink shall contain not less than the following percentages of vegetable oil:
  - (1) News ink, 40 percent;
  - (2) Sheet-fed and forms ink, 20 percent;
  - (3) Heat-set ink, ten percent.

High quality color process printing on high speed heat-set presses is excepted when slow drying time significantly increases production costs.

- ~~(d) Departments shall publicize the County's use of recycled paper by printing the words "Printed on Recycled Paper" on all letterhead paper and on the title page of all reports printed on recycled paper.~~
- ~~(e) To reduce the volume of paper Procured, departments shall use both sides of paper sheets whenever practicable. If possible, copies shall be made by photo copying from one computer generated original, such that two sided copies can be produced, rather than printing multiple one sided originals.~~
- (fd) The CPO may enter into joint purchasing with other local and State agencies to reduce the cost of recycled paper product Procurements.
- (ge) All Bids for new equipment and services shall include language that will encourage the use of recycled paper and paper products, wherever practicable.
- (hf) Contracts shall contain provisions requiring all reports submitted by the Contractor shall use recycled paper, except where the specialized nature of certain materials (such as photographs) requires otherwise, and shall be printed two-sided unless two-sided printing is not practicable.

### **Sec. 34-221. Responsibilities and reporting requirements CPO.**

The CPO is responsible for:

- (1) Revising or amending standard ~~Bid~~Solicitation Documents and contract language where necessary to implement this division.
- (2) Working with Using Agencies and the Department of Environment and Sustainability, to adopt and update minimum content standards or other specifications for designated recycled products.

### **Sec. 34-222. Exemptions.**

Nothing in this Division shall be construed as requiring a department or contractor to procure products that do not perform adequately for their intended end use or are not available at a reasonable price in a reasonable period of time.

### **Secs. 34-223—34-228. Reserved.**

## **DIVISION 6. BID INCENTIVES AND PREFERENCES**

### **Sec. 34-229. Definitions.**

The following words, terms and phrases, when used in this Division shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning. Terms not

defined in this section are defined in Division 1 of this Procurement Code, or in Section 1-3 of the Cook County Code.

*Apprentice* means any person who: (1) is enrolled in an apprenticeship program approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization; or (2) has graduated within the past four years from an apprenticeship program that has been approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization.

*Armed forces of the United States* means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or service in active duty as defined under 38 U.S.C. Section 101. Service in the Merchant Marine that constitutes active duty under Section 401 of federal Public Act 95-202 shall also be considered service in the armed forces for purposes of this division.

*Bid incentive* means an amount deducted, for bid evaluation purposes only, from the contract base bid in order to calculate the bid price to be used to evaluate the bid on a competitively bid project.

*Committee* means Cook County Re-entry Employment Committee as defined in Section 34-232.

*Contract base bid* means the total dollar amount bid on a project without factoring any bid incentive or percentage reductions to the bid amount.

*County Marketplace* means the six-county region, currently the counties of Cook, DuPage, Kane, Lake, McHenry, and Will.

*Disadvantaged* refers to individuals who are mentally, physically, economically, or educationally disadvantaged, including, but not limited to, individuals who are living below the poverty line, developmentally disabled, mentally ill, substance abusers, recovering substance abusers, elderly and in need of hospice care, gang members, on welfare, or people with arrest or conviction records.

*Disability* or *Disabled* means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

*Earned Credit* means the amount allocated to a Contractor upon completion of a Qualifying Contract through which the Contractor met or exceeded the goals for the utilization of Former Offenders, Apprentices or youth.

*Economically Disadvantaged*, with respect to an individual, means having 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.

*Eligible 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 six 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.

*Former Offenders* means adults who are residents of the County and who have been convicted of a crime.

*Labor hours* means the total hours of workers receiving an hourly wage who are directly employed at the work site. "Labor hours" shall include hours performed by workers employed by the contractor and

all subcontractors working at the work site. "Labor hours" shall not include hours worked by nonworking foremen, superintendents, owners and workers who are not subject to prevailing wage requirements.

*Persons with Disabilities Owned Business Enterprise (PDBE)* means a small business (i) that is at least 51 percent owned, controlled and managed by one or more Persons with a Disability, or in the case of a corporation, at least 51 percent or more of the stock of which is owned, controlled, and managed by one or more Persons with a Disability; (ii) that has its home office in Illinois, as certified by the ~~CCDC~~CPO under policies and procedures promulgated by the ~~CCDC~~CPO.

*Qualifying Contract* means a Contract for Public Works with a Bid Price of \$100,000.00 or more, for which the Contractor is eligible for Earned Credits.

*Service-connected disability* means a disability incurred in the line of duty in the active military, naval, ~~or air, or space~~ service as described in 38 U.S.C. 101(16).

*Service-Disabled Veteran* means an Eligible Veteran who has been found to have ten percent or more service-connected disability by the United States Department of Veterans Affairs or the United States Department of Defense.

*Service-Disabled Veteran-owned Business Enterprise (SDVBE)* means a small business (i) that is at least 51 percent owned, controlled, and managed by one or more qualified service-disabled veterans or, in the case of a corporation, at least 51 percent or more of the stock of which is owned, controlled, and managed by one or more Service Disabled Veterans; (ii) that has its home office in Illinois, as certified by the ~~CCDC~~CPO under policies and procedures promulgated by the ~~CCDC~~CPO.

*Social Enterprise* means a ~~p~~Person which has its principal place of business and a majority of its regular, full-time work force located within the County Marketplace on the date a bid is submitted and which is: (i) an Illinois benefit corporation subject to Benefit Corporation Act (805 ILCS 40/1 et seq.); (ii) an Illinois low-profit limited liability company subject to Section 1-26 of the Limited Liability Company Act (805 ILCS 108/1-26); (iii) a nonprofit or private-sector entity (or any business unit thereof which maintains separate books and records) which (a) uses earned revenue strategies, either exclusively as a business or as a significant part of a nonprofit's revenue stream, and (b) directly addresses social needs either (1) through its goods and/or services or (2) by employing people who are disadvantaged, or (3) both.

*Time of hostilities with a foreign country* means any period of time ~~in the past, present, or future~~ during which a declaration of war by the United States Congress has been or is in effect or during which an emergency condition has been or is in effect that is recognized by the issuance of a Presidential proclamation or a Presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to Presidential executive order.

*Youth* means a ~~male or female~~ resident of Cook County between the ages of 16 and 19 years of age.

*Veteran-owned Business Enterprise (VBE)* means a small business (i) that is at least 51 percent owned, controlled, and managed by one or more Eligible Veterans or, in the case of a corporation, at least 51 percent or more of the stock of which is owned, controlled, and managed by one or more Eligible Veterans; (ii) that has its home office in Illinois, as certified by the ~~CCDC~~CPO under policies and procedures promulgated by the ~~CCDC~~CPO.

### **Sec. 34-230. Local business preference; all contracts.**

The CPO shall recommend award of the Procurement to the lowest Responsible and Responsive Bidder which is a Local Business, so long as the Bid of such Bidder does not exceed the Bid of the lowest Responsible and Responsive Bidder by more than five percent.

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**Sec. 34-231. Re-entry employment program established; public works contracts only.**

For all Public Works Contracts with an estimated Bid Price of \$100,000.00 or more, there is hereby established the Cook County Re-entry Employment Program, with the goal of increasing public safety and reducing recidivism by providing assistance to adults who are residents of the County and who are former offenders in finding employment opportunities.

**Sec. 34-232. Re-entry employment committee.**

- (a) The President shall appoint the members of the Committee which will consist of:
  - (1) A representative of the Cook County Bureau of Human Resources;
  - (2) A representative of the Justice Advisory Council;
  - (3) A representative of the Office of ~~Contract Compliance~~ the CPO;
  - (4) A representative of a nonprofit organization whose mission is to reintegrate former Offenders into society;
  - (5) A representative of organized labor; and
  - (6) A Cook County Commissioner.
- (b) The Committee shall work with appropriate organizations to identify Former Offenders for participation in this program.

**Sec. 34-233. Re-entry employment plan.**

A Contractor may qualify for Earned Credits by utilizing Former Offenders for work under a Qualifying Contract. In order to so qualify, a Bidder must include in its Bid for such Qualifying Contract an employment plan for Former Offenders by Contractor or any subcontractors. Bidders may request from the Committee a list of candidates. If the Bidder or any subcontractor employs Former Offenders or identifies potential candidates on its own, such candidates may be submitted to the Committee to determine if they are Former Offenders, as defined in this division.

**Sec. 34-234. Re-entry employment earned credits.**

- (a) The CPO shall include information regarding re-entry employment Earned Credits in all advertisements for Qualifying Contracts.
- (b) Upon the completion of a Qualifying Contract, a Contractor may apply to the CPO for Earned Credits, on such forms and including such information as required by the CPO. ~~If the Contractor met or exceeded the Former Offender employment goals established in the Qualifying Contract.~~ If the CPO determines that the Contractor has successfully met or exceeded its employment plan in the Qualifying Contract, the CPO shall issue an Earned Credit Certificate that evidences the amount of Earned Credits calculated as set forth below. The Contractor may utilize the Earned Credits as set forth in this division in a future Bid for a Contract for Public Works of equal ~~or~~ or greater value as the Qualifying Contract, by including a copy of the Earned Credit Certificate with its Bid.
- (c) For any Qualifying Contract, the CPO shall determine the Earned Credits, as follows. And issue an Earned Credit Certificate, which shall be valid for three years from the date of issuance.

Percentage of Total Labor Hours Performed by Former Offenders	Earned Credit
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5—10%	½% of Bid price
Over 10%	1% of Bid price

- (d) For purposes of calculating the lowest Responsive and Responsible Bidder only, the CPO shall deduct from the Bid Price the amount of Earned Credit set forth on the Earned Credit Certificate submitted by at the Bidder. If the Bidder is awarded the Contract, such Earned Credit Certificate may not be used again in a future Bid.

**Sec. 34-235. Re-entry employment contractor's records.**

A Contractor shall retain all records supporting any Certificate of Earned Credits issued to such Contractor for a period of at least three years after issuance of such Certificate. A Contractor shall impose this requirement by contract with any subcontractors included in the employment plan. ~~The Office of the CPO shall have access to the Contractor's and such subcontractors' records~~ To remain eligible to use the Certificate, the Contractor and subcontractors must provide the CPO with access to such supporting records, upon request.

**Sec. 34-236. Eligible veterans' preference established.**

- (a) *Veterans' Workplace Preference.* The CPO shall give a preference of one percent of the amount of the Contract to a Responsible and Responsive Contractor for a Public Works Contract when such Contractor has committed by affidavit to utilize Eligible Veterans for at least five percent of the hours worked under such Contract. Failure to utilize Eligible Veterans in accordance with the affidavit will result in breach of contract, in addition to any available sanctions ~~or actions the CCD may, within its discretion, recommend~~ that the CPO may take with respect to the contractor or subcontractor as specified in Section 34-275.
- (b) *Veteran-owned Business and Service Disabled Veteran-owned Business preference.* The CPO shall give a preference of five percent of the amount of the Contract to a Responsible and Responsive VBE or SDVBE. ~~The CPO shall develop procedures for implementation of this Section.~~

**Sec. 34-237. Veteran-owned and Persons with Disabilities Owned businesses.**

- (a) 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, SDVBEs, and PDBEs. ~~The CCD CPO~~ may count toward its three-percent yearly goal that portion of all Contracts in which the Contractor subcontracts with a VBE, SDVBE, or PDBE. ~~CCD~~ The CPO shall submit an annual report to the ~~County~~ Board that shall include, at a minimum, the following for the preceding fiscal year:
- (1) The number of responsible VBEs, SDVBEs, and PDBEs that submitted a Bid or proposal;
  - (2) The number of VBEs, SDVBEs, and PDBEs that entered into Contracts, the specific industry or category of goods, services, or supplies for each Contract, and the total value of those Contracts;
  - (3) The participation of VBEs, SDVBEs, and PDBEs at both contractor and subcontractor levels;
  - (4) The total number of the County's certified VBEs, SDVBEs, and PDBEs available for participation in procurement, by category or industry; and
  - (5) Whether the County achieved the goal described in this subsection.
- (b) Each year, the ~~CCD~~ CPO shall review the three-percent goal with input from the Cook County Chairman of Veterans Affairs, the Cook County Director of Veterans Affairs, countywide veterans'

service organizations, countywide service organizations for people with disabilities and from the business community including VBEs, SDVBEs, and PDBEs, and shall make recommendations to the ~~County~~ Board regarding continuation, increases, or decreases in the percentage goal. The recommendations shall be based upon the number of VBEs, SDVBEs, and PDBEs and on the continued need to encourage and promote businesses owned by qualified veterans and people with disabilities.

- (c) The CPO will make best efforts to recruit and solicit bids and make procurements from VBEs, SDVBEs, and PDBEs.
- (d) The above-stated goal shall not be treated as a quota nor shall it be used to discriminate against any person or business enterprise on the basis of race, color, national origin, religion, sex or disability.
- (e) The ~~CCDCPO~~, in consultation with the Using Agency and the CPO, shall consider the size and complexity of the procurement before establishing contract specific goals and shall only be required to establish contract specific goals on procurements that have an available pool of certified VBEs, SDVBEs, and PDBEs for supplies, materials and equipment, or services.
- (f) The provisions of this Division 6, Section 34-237(a) shall be effective as of June 1, 2019. The Contract Compliance Director shall as soon as practicable develop and implement procedures and any corresponding regulations for certifying and monitoring utilization of VBEs, SDVBEs, and PDBEs. Effective December 1, 2024, the authority of the Contract Compliance Director shall vest to the CPO.

**Sec. 34-238. VBE/SDVBE Certification and Outreach.**

- (a) The ~~CCDCPO~~ shall certify a Person as a VBE when it is a small business:
  - (1) That is at least 51 percent owned, controlled, and managed by one or more Eligible Veterans; and
  - (2) That has its home office in Illinois.
- (b) The ~~CCDCPO~~ shall certify Person as a SDVBE when it is a small business:
  - (1) That is at least 51 percent owned, controlled, and managed by one or more qualified service-disabled veterans; and
  - (2) That has its home office in Illinois.
- (c) In lieu of conducting its own certifications, the ~~CCDCPO~~ by rule may accept formal certifications by other entities, provided that Cook County's requirements are met.
- (d) In order to increase awareness and provide opportunities for VBEs and SDVBEs, the ~~CCDCPO~~ shall provide education, outreach, and the dissemination of information to VBEs and SDVBEs regarding the County's certification program and available opportunities. The ~~CCDCPO~~, in collaboration with other departments, shall from time to time, by way of seminars, workshops, and internet-based communications, make available to the business community such information, documents, and personnel as well as:
  - (1) Assist otherwise eligible businesses in applying for, gaining, and maintaining certification;
  - (2) Assist the business community in understanding the manner in which to properly complete a Utilization Plan including how a full or partial waiver may be requested, and the manner in which such a request may be supported;
  - (3) Identify best practices by other governmental entities and private sector firms that may improve the Program; and

- (4) Identify systemic or organizational problems and related solutions associated with certification and contract participation.

**Sec. 34-239. Apprenticeship earned credits.**

A contractor may qualify for Earned Credits by utilizing Apprentices for work under a Qualifying Contract. In order to so qualify, a Bidder must include in its Bid for such Qualifying Contract a copy of the certificate approving the apprenticeship standards and a copy of each apprentice or apprenticeship completion certificate which corresponds to the individual in which the contractor claims credit.

- (a) For any project advertised after the effective date of this ordinance having an estimated contract value of \$100,000.00 or more, and where not otherwise prohibited by federal, state or local law, the ~~chief procurement officer~~CPO shall allocate to any qualified bidder the following bid incentive for utilization of apprentices in performance of the total labor hours performed under contract.
- (b) For any project advertised after the effective date of this ordinance having an estimated contract value of \$100,000.00 or more, and where not otherwise prohibited by federal, state or local law, the ~~chief procurement officer~~CPO shall allocate to any qualified bidder the following bid incentive for utilization of apprentices in performance of the total labor hours performed under contract.
- (c) Earned Credits for total labor hours performed by apprentices shall be earned as follows:

Percentage of Total Labor Hours Performed by Apprentices	Earned Credit
5—10%	½% of Bid price
Over 10%	1% of Bid price

- (d) The bid incentive is used only to calculate an amount to be used in evaluating the bid. The bid incentive does not affect the contract price.
- (e) For all projects advertised after the effective date of this ordinance, the ~~chief procurement officer~~CPO shall include the bid incentive provision in all such advertisements.
- (f) As part of the contract close-out procedure, if the ~~chief procurement officer~~CPO determines that the bidder has successfully met ~~his or her~~their apprentice utilization goals, the ~~chief procurement officer~~CPO shall issue an earned credit certificate that evidences the amount of earned credits allocated to the bidder. The bidder may apply the earned credits as the bid incentive for any future project contract bid of equal or greater dollar value.
- (g) The earned credit certificate is valid for three years from the date of issuance and shall not be applied towards any future contract bid after the expiration of that period.
- (h) The bidder may apply the earned credit certificate on multiple future project bids during the three-year period in which the certificate is valid, but may only receive one bid incentive for bid evaluation purposes on one project contract award. If the contractor applies the earned credit certificate on multiple project bids and is the lowest responsive and responsible bidder on more than one project bid, the earned credit certificate shall be applied to the project first to be advertised by the ~~Department of Procurement Services~~CPO, or if multiple project bids were advertised on the same date, the earned credit certificate shall be applied only to the project with the greatest dollar value.
- (i) The contractor shall maintain accurate and detailed books and records necessary to monitor compliance with this section and shall submit such reports as required by the ~~chief~~



~~procurement officer~~CPO, or the ~~commissioner of the supervising department~~any duly authorized representative of the Using Agency.

- (j) Full access to the contractor's and subcontractors' records shall be granted to the ~~chief procurement officer~~CPO, the ~~commissioner of the using Agency~~ or any duly authorized representative ~~thereof~~of the Using Agency for a period of at least three years after final acceptance of the work. A Contractor shall impose this requirement by contract with any subcontractors providing Apprentices under a Qualifying Contract
- (k) The ~~chief procurement officer~~CPO is authorized to adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement of this section.

**Sec. 34-240. Youth employment earned credits.**

A contractor may qualify for Earned Credits by hiring youth for work under a Qualifying Contract.

- (a) For any project advertised after the effective date of this ordinance having an estimated contract value of \$100,000.00 or more, and where not otherwise prohibited by federal, state or local law, the ~~chief procurement officer~~CPO shall allocate to any qualified bidder the following bid incentive for the total labor hours performed under contract by a youth employee.
- (b) For any project advertised after the effective date of this ordinance having an estimated contract value of \$100,000.00 or more, and where not otherwise prohibited by federal, state or local law, the ~~chief procurement officer~~CPO shall allocate to any qualified bidder the following bid incentive for the total labor hours performed under contract by a youth employee.
- (c) Earned Credits for total labor hours performed by youth employees shall be earned as follows:

Percentage of Total Labor Hours Performed by Youth Employees	Earned Credit
1—10%	.25% of Bid price
Over 10%	.50% of Bid price

- (d) The bid incentive is used only to calculate an amount to be used in evaluating the bid. The bid incentive does not affect the contract price.
- (e) For all projects advertised after the effective date of this ordinance, the ~~chief procurement officer~~CPO shall include the bid incentive provision in all such advertisements.
- (f) As part of the contract close-out procedure, if, based upon documentation provided by the bidder to the Using Agency, the ~~chief procurement officer~~CPO determines that the bidder is entitled to an earned credit based on the percentage of total hours worked by youth employees, the ~~chief procurement officer~~CPO shall issue an earned credit certificate that evidences the amount of earned credits allocated to the bidder. The bidder may apply the earned credits as the bid incentive for any future project contract bid of equal or greater dollar value.
- (g) The earned credit certificate is valid for three years from the date of issuance and shall not be applied towards any future contract bid after the expiration of that period.
- (h) The bidder may apply the earned credit certificate on multiple future project bids during the three-year period in which the certificate is valid, but may only receive one bid incentive for bid evaluation purposes on one project contract award. If the contractor applies the earned credit certificate on multiple project bids and is the lowest responsive and responsible bidder on more than one project bid, the earned credit certificate shall be applied to the project first to be advertised by the ~~Department of Procurement Services~~CPO, or if multiple project bids were

advertised on the same date, the earned credit certificate shall be applied only to the project with the greatest dollar value.

- (i) The contractor shall maintain accurate and detailed books and records necessary to monitor compliance with this section and shall submit such reports as required by the ~~chief procurement officer~~CPO, or ~~the commissioner of the supervising department~~any duly authorized representative of the Using Agency.
- (j) Full access to the contractor's and subcontractors' records shall be granted to the ~~chief procurement officer~~CPO, ~~the commissioner of the using Agency~~ or any duly authorized representative ~~thereof~~of the Using Agency for a period of at least three years after final acceptance of the work. A Contractor shall impose this requirement by contract with any subcontractors providing youth employees under a Qualifying Contract.
- (k) The ~~chief procurement officer~~CPO is authorized to adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement of this section.

#### **Sec. 34-241. Social enterprise preference; all contracts.**

The CPO shall recommend award of the Procurement to the lowest Responsible and Responsive Bidder which is a Social Enterprise, so long as the Bid of such Bidder does not exceed the Bid of the lowest Responsive and Responsible Bidder by more than five percent. The CPO shall develop procedures for implementation of this section.

#### **Sec. 34-242. Businesses owned by people with disabilities.**

- (a) *Preference for Businesses Owned by People with Disabilities.* The CPO shall recommend award to the lowest Responsible and Responsive Bidder who is a PDBE, provided that the Bid of such bidder does not exceed the Bid of the lowest Responsive and Responsible Bidder by more than five percent. The preference created by this section may not be combined with any other earned credit or preference created by this Division. The CPO shall develop procedures for implementation of this Section.
- (b) *Certification.* The ~~CCDC~~CPO shall certify a Person as a PDBE when it is a small business:
  - (1) That is at least 51 percent owned, controlled, and managed by one or more qualified, economically disadvantaged Disabled Persons; and
  - (2) That has its home office in Illinois.
- (c) In lieu of conducting its own certifications, the ~~CCDC~~CPO by rule may accept formal certifications by other entities, provided that Cook County's requirements are met.
- (d) In order to increase awareness and provide opportunities for PDBEs, the ~~CCDC~~CPO shall provide education, outreach, and the dissemination of information to PDBEs regarding the County's certification program and available opportunities. The ~~CCDC~~CPO, in collaboration with other departments, shall from time to time, by way of seminars, workshops, and internet-based communications, make available to the business community such information, documents, and personnel as well as:
  - (1) Assist otherwise eligible businesses in applying for, gaining, and maintaining certification;
  - (2) Identify best practices by other governmental entities and private sector firms that may improve the Program; and
  - (3) Identify systemic or organizational problems and related solutions associated with certification and contract participation.

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- (e) The ~~Chief Procurement Officer~~CPO may determine not to allocate a bid incentive under this section under the following circumstances:
- (1) For public works contracts, as defined by Section 34-122 of the Procurement Code; and
  - (2) Where the ~~Chief Procurement Officer~~CPO otherwise concludes that the allocation of the bid would not be in the best interest of the County. The ~~Chief Procurement Officer~~CPO shall develop rules related to the administration of this provision.

**Secs. 34-243—34-249. Reserved.**

## **DIVISION 7. INTEGRITY IN THE PROCUREMENT PROCESS**

### **Sec. 34-250. Reporting suspected or known fraudulent activity.**

Any Person involved in the Cook County Procurement process, including employees, contractors, and those seeking to do business with the County, shall report directly and without any undue delay, any suspected or known fraudulent activity in the County's procurement process to the Cook County Office of the ~~Cook County Independent~~ Inspector General. In addition to any applicable laws protecting whistleblowers, the County shall ensure that a report made in good faith will not result in any adverse action taken by the Board or the County against the Person making such a report. The CPO's procedures will include a mechanism to publish this provision to all appropriate Persons.

### **Sec. 34-251. Communications.**

For all Active Procurements, the CPO shall establish procedures to ensure that communications from individuals outside the County regarding an Active Procurement shall be memorialized and maintained in the procurement file. Communications about an Active Procurement from or on behalf of an Elected Official or a Using Agency shall also be memorialized and maintained in the Procurement file. For purposes of this Section, "Active Procurement" means a procurement process beginning with requisition or determination of need by a Using Agency and continuing through the resolution of any protest, if applicable, and publication of an award notice or other completion of a final procurement action.

**Secs. 34-252—34-259. Reserved.**

## **DIVISION 8. MINORITY- AND WOMAN-OWNED BUSINESS ENTERPRISES**

### **Subdivision I. General Provisions**

#### **Sec. 34-260. Short title.**

This Subdivision shall be known and may be cited as the Cook County Minority- and Women-Owned Business Enterprise General Ordinance. This Subdivision is applicable to all Contracts, except Public Works Contracts which are governed by Subdivision II of this Division 8.

#### **Sec. 34-261. Preface and findings.**

- (a) The County has heretofore adopted a Minority and Woman-Owned Business Enterprise Ordinance to ensure that small businesses owned by economically disadvantaged minorities and women are provided full and equal opportunity to participate in Contracts.

- (b) The Supreme Court of the United States in *City of Richmond v. Croson*, 488 U.S. 469 (1989), has enunciated certain standards which are necessary to maintain effective affirmative action programs in compliance with constitutional requirements.
- (c) The County continues to be committed to implementing an affirmative action program associated with small businesses owned by economically disadvantaged minorities and women in conformance with the United States Supreme Court's decision in *City of Richmond v. Croson* and other relevant law.
- (d) In furtherance of this commitment, the Board and the President of the Board, supported by County staff, professionals, and consultants, conducted an investigation to determine whether and to what degree:
  - (1) There continues to be discrimination in County Procurements and in the award of and participation in contracts in the metropolitan County economy;
  - (2) Such discrimination or the effects thereof has denied and continues to deny small and economically disadvantaged minority- and women-owned business enterprises equal opportunity to participate in such Procurements and contracts;
  - (3) Small businesses owned and managed by economically disadvantaged minorities and women in the County Marketplace experience disparate negative impacts in terms of participating in public and private transactions, including, but not limited to, transactions with the County, those private enterprises with whom it does business, and other private enterprises;
  - (4) Small, economically disadvantaged businesses owned and managed by minorities and women in the County Marketplace experience reduced earnings;
  - (5) The formation of businesses owned and managed by minorities and women in the County Marketplace is disproportionately low;
  - (6) There continues to be a chronic lack of wealth, business loans, and financial liquidity among the County's minority communities and among minorities who own and operate their own small businesses;
  - (7) The disproportionate levels of poverty among minorities in the County and any of the foregoing elements detrimentally affect the County's efforts to protect and promote public safety, health and welfare, and to identify the appropriate affirmative action steps to be taken to eliminate any such discrimination, obstacles, and poverty and their continuing effects.
- (e) Minority- and women-owned small businesses continue to be awarded prime contracts and subcontracts in dollar amounts that are disproportionately lower than the availability of such businesses willing and able to perform Contracts.
- (f) The County's procurement practices in the past have contributed to the above identified underutilization of minority, and women small businesses on contracts and subcontracts.
- (g) Minority- and women-owned small businesses continue to be disadvantaged by discriminatory practices in the local construction industry and economy when competing for contracts and in seeking subcontracting opportunities on such contracts.
- (h) The County was a passive participant in the discriminatory practices of businesses which discriminate against minority- and women-owned businesses by entering into contracts with such discriminating businesses.
- (i) Despite the County's good faith efforts and implementation of previous affirmative action programs, minority- and women-owned small businesses remain at a competitive disadvantage in competing for contracts and subcontracts.

- (j) Race and gender-neutral measures or affirmative action programs without numerical goals have not and are not likely to eliminate the competitive disadvantage of minority- and women-owned small businesses in participating in contracts due to discrimination in the local economy.
- (k) The numerical goals for the participation of minority and women's businesses in Contracts are commensurate with the availability of minority- and women-owned businesses willing and able to perform County work.
- (l) The reduction of such discrimination in the local economy will help reduce the disproportionate levels of poverty among minorities in the County and positively affect the County's efforts to protect and promote public safety, health, and welfare.
- (i) The County has a compelling interest in preventing discrimination and desires to reaffirm its commitment to full and fair opportunities for all firms to participate in its construction contracts.

**Sec. 34-262. Policy and purpose.**

Based on the foregoing findings, the policy and purpose of this division are as follows:

- (a) It is the continuing public policy of the County to strive to achieve the full and equitable participation of local small businesses owned by economically disadvantaged minorities and women in the County's procurement process as both prime contractors and subcontractors.
- (b) The County is committed to a policy of preventing and reducing discrimination in making Procurements, and eliminating arbitrary barriers to participation in Procurements by all persons, regardless of race, sex, or ethnicity.
- (c) To offset the effects of negative disparate impacts on small businesses owned and controlled by economically disadvantaged minorities and women with respect to public and private transactions; reduced earnings among County-based small businesses owned by minorities and women; reduced business formation among County-based minorities and women; a chronic lack of wealth and financial liquidity among the County's minority communities; the obstacles and hindrances in obtaining business loans faced by County-based small businesses owned by minorities and women; the underutilization of regionally-based small businesses owned by minorities and women in public and private-sector business; and the grossly disproportionate levels of poverty among minorities in the County, the purpose of this Division is to establish and implement goals for participation of PCEs in Procurements, in compliance with all applicable laws.

**Sec. 34-263. Definitions.**

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section, Terms not defined in this Section are defined in Division 1 of this Procurement Code, or in Section 1-3 of the County Code. Additional terms applicable to Subdivision II are set forth in such subdivision.

*Affiliate.* An "Affiliate" of or a Person "Affiliated" with, a specified Person shall mean any Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the Person Specified. Affiliates shall be considered together in determining whether a firm is a small business.

*Applicant* means a person who submits documents and information seeking certification or continued certification, as a PCE to the ~~Office of Contract Compliance~~ CPO.

*Broker* means a Person who 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~~their supplier and ~~his or her~~their customer.

*Business* means a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity.

*Certified firm* means a firm that has been accepted by the County as a certified MBE or WBE or Established Business.

*Commercially Useful Function* means the performance of a distinct element of work required for the Procurement, with the requisite skill and expertise.

~~*Compliance Contract Director or CCD* means the Contract Compliance Director.~~

*Contract* means any Procurement or Contract (as defined in Section 34-121) in an amount exceeding \$25,000.00.

*Contractor* means any business that seeks to enter into a contract with the County, and includes all partners and Affiliates Business.

*Contract Specific Goals* means the aspirational goals established under Section 34-267(b) that are based upon relevant factors, including, but not limited to, the availability of MBEs or WBEs relative to the scope of work of the Project.

*County Marketplace* means the six-county region, currently the counties of Cook, DuPage, Kane, Lake, McHenry and Will.

*Disparity Study* means the stringent review examining Cook County's M/WBE Program for contracts issues by Cook County Government and Cook County Health and Hospital System.

*Economically Disadvantaged*, with respect to an individual, means having 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.

*Established Business* means a Local Business that is not a Small Business and was certificated as an MBE or WBE within the past 12 months:

- (1) Which is at least 51 percent owned by one or more Minority Individuals or 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 such Minority Individuals or Women;
- (2) Whose management, policies, major decisions and daily business operations are independently owned and controlled by one or more such Minority Individuals or Women; and
- (3) Which has its principal place of business located within the County's Marketplace.

*Expertise* means demonstrated skills, knowledge or ability to perform, as defined by normal industry practices, including licensure where required, in a field.

*Good Faith Efforts* shall have the meaning set forth in Section 34-271.

*Joint Venture* means an association of two or more Businesses 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 partners and their relationship and responsibility to the contract.

*Local Business* means a Business located within the County's Marketplace.

*Local Small Business* means a Local Business which is also a Small Business.

*Manufacturer* means a Person that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required for a Procurement and of the general character described by the specifications.

*Minority Business Enterprise* or *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 who are economically disadvantaged, 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 such Minority Individuals;
- (2) Whose management, policies, major decisions and daily business operations are independently owned and controlled by one or more such Minority Individuals; and
- (3) Which has its principal place of business located within the County's Marketplace.

*Minority Individual* means an individual in 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; or
- (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 and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in the County's Marketplace or to do business with the County. Owned means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risks and profits commensurate with the degree of ownership interest.

*Person* or *Persons* means any natural person, corporation, partnership, Joint Venture, trust, association, limited liability company, sole proprietorship or other legal entity.

*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 business that is not publicly held, or the individual's equity in any real estate and any related fixtures or furnishings. In addition, the classes of assets not subject to the calculation would also include the market value of goods such as art, furnishings, jewelry, vehicles and other non-monetary assets. 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 net worth also does not include the value of the individual's interest in any pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs. Program means the Minority- and Women-Owned Businesses Enterprise Program established in this division, and shall include the Public Works Participation Program.

*Program Goals* means the aspirational contract-specific goals set forth in Section 34-267(a).

*Protected Class Enterprise* or *PCE* means a business meeting the definition of Minority Business Enterprise, Women's Business Enterprise, or Established Business as set forth in this section.

*Public Works Participation Program* means the program established pursuant to Subdivision II.

*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. Packers, manufacturer representatives, or other Persons who arrange or expedite transactions are not Regular Dealers.

*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 seven fiscal years, exceed 150 percent of the applicable size standards of 13 CFR Part 121.

*Socially Disadvantaged* means having been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of identity as a member of a group, and without regard to individual qualities, stemming from circumstances beyond the relevant person's control.

*Using Agency* or *User Agency* means the departments or agencies within Cook County government, including Elected Officials.

*Utilization Plan* means the document, submitted to the County as part of a bid or proposal, in which one or more bidders or proposers commit to a level of PCE participation in the subject contract, identify the associated responsibilities and scope of work, and dollar value or the percentages of the work to be performed.

*Woman* means a person of the female gender.

*Woman-owned Business Enterprise* or *WBE* 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 economically disadvantaged 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 such Women;
- (2) Whose management, policies, major decisions and daily business operations are independently owned and controlled by one or more such Women; and
- (3) Which has its principal place of business located within the County's Marketplace.

#### **Sec. 34-264. Race- and gender-neutral measures to implement the program.**

The County shall use measures such as the following in implementing the Program.

- (a) Establishing schedules for submitting Bids and Quotations with adequate time frames for identifying and contacting PCEs qualified to participate in the Procurement;
- (b) Segmenting Procurements to facilitate the participation of MBEs, WBEs and other Small Businesses.
- (c) Providing timely information on contracting procedures, Bid preparation and specific contracting opportunities;



- (d) Holding pre-Bid conferences, where appropriate, to explain the projects and to encourage Contractors to use available qualified PCEs;
- (e) Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the County;
- (f) Collecting information from all Contractors detailing the Bids or proposals received from all subcontractors for Procurements and the expenditures to PCEs;
- (g) At the discretion of the ~~CCDCPO~~, 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;
- (h) Referring complaints of discrimination to Cook County's Commission on Human Rights, or other appropriate authority, for investigation.

**Sec. 34-265. Program administration.**

- (a) ~~The Office of Contract Compliance, under the direction of the CCDCPO~~, who shall report to the President, shall administer the Program. The duties of the ~~CCDCPO~~ shall include:
  - (1) Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program, certification process, and no-change affidavits, including time limitations for the submission of documents and information regarding certification applications and contract participation. The ~~CCDCPO~~ is authorized to collect certification processing fees in the amount of \$250.00 per Application; the collection of said processing fees shall be transacted by the ~~CCDCPO~~ 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 procedures and criteria for certifying and decertifying Persons as PCEs, accepting certifications by other agencies, and maintaining a directory of Certified PCEs. Such procedures and criteria shall include non-certification or decertification for the willful submission of false or inaccurate material information, the failure to submit complete and accurate material information to the ~~CCDCPO~~ regarding certification, or a Procurement on a timely basis, and shall relate individually and jointly to both PCEs and PCE owners.
  - (4) Establishing contract-specific goals, in collaboration with the User Agency, based upon the availability of PCEs to provide the supplies, materials and equipment or services required by the Contract.
  - (5) Monitoring contracts to evaluate compliance with contract-specific goals and commitments.
  - (6) Cooperating with and providing assistance to Using Agencies to facilitate participation by PCEs in Procurements.
  - (7) Reviewing, approving or rejecting Utilization Plans and Good Faith Efforts for achievement of contract-specific goals, and evaluating the extent to which goals were achieved.
  - (8) Monitoring contracts to ensure compliance with Section 34-388, Prompt Payment of PCEs.
  - (9) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
  - (10) Evaluating the effectiveness and utility of the Program.
  - (11) Monitoring the Program and the County's progress towards the Program Goals. The ~~CCDCPO~~ shall report on a quarterly and annual basis to the President on the Program.

- (12) Reporting to the CCC, at its request, information regarding the administration of the Program and its progress toward achieving the Program Goals.
- (b) Using Agencies shall cooperate with the ~~CCDC~~CPO in the administration of the Program, specifically including assisting the ~~CCDC~~CPO with setting contract-specific goals and assisting in the identification of available PCEs.

**Sec. 34-266. Contract Compliance Committee.**

The Contract Compliance Committee ("CCC") shall be a Standing Committee of the Board, consisting of seven members of the Board selected as set forth in Chapter 2, Article III, Section 2-105 of the Code. The CCC shall review procedures, proposed modifications to the Program or this Division 8, and complaints as referred by the ~~CCD~~ or the CPO.

**Sec. 34-267. Program goals.**

- (a) The County aspires to the following annual Program Goals: A program goal of 25 percent of the annual total dollar amount of Contracts other than Public Works Contracts to MBEs, and ten percent of the total dollar amount of such Contracts to WBEs. In addition, the County aspires to annual "best efforts" goal of 35 percent PCE participation for the total professional services and consulting services utilized by the County.
- (b) The ~~CCDC~~CPO, following the compilation of the Main Final Contract Data File ("MFCDF") and the Hospital Final Contract Data File ("HFCDF") stringent review the most current data that is feasibly and practicably available relative to the availability of MBEs and WBEs who have the capacity to successfully supply the relevant goods and services, and in consultation with the ~~CPO~~ and the Using Agency, shall establish contract-specific goals for each Contract, which shall be incorporated into each bid and request for proposal. Using the stringent review of the Program to set legally defensible Program Goals will provide transparency and defensibility, as well as reduce requests for Program Goal reductions or full waivers. Program Goal setting involves four steps:
- (1) Weight the estimated dollar value of the scopes of the contract by six-digit NAICS codes, as determined during the process of creating the solicitation.
  - (2) Determine the unweighted availability of MBEs and WBEs in those scopes, as estimated in the most recent Disparity Study.
  - (3) Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
  - (4) Adjust the resulting percentage based on current market conditions and progress towards the annual Program Goals.
- (c) 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.
- (d) Notwithstanding the above, Established Businesses may participate in the Program as authorized under Section 34-279.

**Sec. 34-268. Certification criteria and process.**

- (a) Only Persons that meet the criteria for certification as a PCE may participate in the Program. The applicant has the burden of proof by a preponderance of the evidence.
- (b) The Person must be either an individual who is Socially and Economically Disadvantaged or 51 percent owned by one or more individuals who are Socially and Economically Disadvantaged.

- (1) The Ownership by a Socially and Economically Disadvantaged Person must be real, substantial, and continuing, going beyond pro forma ownership of the Person as reflected in Ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.
  - (2) The contributions to acquire the Ownership interest must be real and substantial, direct, and in accord with generally accepted industry standards. If expertise is part of the contribution, the expertise must be of the requisite quality generally recognized in a specialized field, necessary to the Person's potential success, specific to the type of work the Person performs and documented in the Person's records.
- (c) The Person must be owned and controlled by one or more Socially and Economically Disadvantaged individual.
- (1) There must not be any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged individual(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged individual(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged individuals, from making any business decision of the Person, including the making of obligations or the dispersing of funds.
  - (2) The Socially and Economically Disadvantaged individual(s) must possess the power to direct or cause the direction of the management and policies of the Person and to make day-to-day as well as long-term decisions on management, policy, operations and work.
  - (3) The Socially and Economically Disadvantaged individual(s) may delegate various areas of the management or daily operations of the Person to individuals who are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged individual(s) must retain the power to hire and fire any such Person. The Socially and Economically Disadvantaged individual(s) must actually exercise control over the Person's operations, work, management and policy.
  - (4) The Socially and Economically Disadvantaged individual(s) must have an overall understanding of, and managerial and technical competence, experience and expertise, directly related to the Person's operations and work. The Socially and Economically Disadvantaged individual(s) must have the ability to intelligently and critically evaluate information presented by other participants in the Person's activities and to make independent decisions concerning the Person's daily operations, work, management, and policymaking.
  - (5) If federal, state or local laws, regulations or statutes require a particular license or other credential to own or control a certain type of Person, then the Socially and Economically Disadvantaged owner(s) must possess the license or credential. If state law, county ordinance or other law regulations or statute does not require that the owner possess the license or credential, then the fact that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner(s) actually controls the firm.
  - (6) A Socially and Economically Disadvantaged owner cannot 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.
- (d) Only an independent Person may be certified as a MBE or WBE. An independent Person is one whose viability does not depend on its relationship with another Person, and who has the capacity or

ability to successfully undertake and complete the relevant work. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a Person is independent. In determining whether an applicant is an independent business, the CCDCPO will:

- (1) Scrutinize relationships with non-Certified Person in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - (2) Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner(s) of the applicant and non-Certified Persons associated with non-Certified Firms compromise the applicant's independence.
  - (3) Examine the applicant's relationships with non-Certified Persons to determine whether a pattern of exclusive or primary dealings with non-Certified Persons compromises the applicant's independence.
  - (4) Consider the consistency of relationships between the applicant and non-Certified Persons with normal industry practice.
- (e) The CCDCPO shall certify only Persons that meet all the above criteria. An applicant shall be certified only for specific supplies, equipment, goods or services, or for types of work in which the Socially and Economically Disadvantaged owner(s) has the ability and expertise to manage and control the Person's operations and work.
- (f) The County shall certify the eligibility of Joint Ventures involving PCE and non-Certified Firms, provided that the Joint Venture meets the criteria for certification as a PCE. To be considered an eligible Joint Venture, at least one partner of the Joint Venture must be a Certified Firm, with a share in the capital contribution, control, management, risks, and profits of the Joint Venture which is equal to its ownership interest. Each Certified Firm partner must contribute property, capital, efforts, skill and knowledge and be responsible for a distinct, clearly defined portion of the work of the contract. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.
- (g) In lieu of conducting its own certifications, the CCDCPO by rule may accept formal certifications by other entities, provided that Cook County's requirements are met.
- (h) The certification status of all PCEs shall be reviewed periodically by the ~~Office of Contract Compliance~~CPO. Failure of the Person to seek continued certification by filing the necessary documentation with the CCDCPO as provided by rule may result in decertification.
- (i) It is the responsibility of the Certified PCE to notify the CCDCPO of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the PCEs decertification.
- (j) The CCDCPO shall decertify a PCE that does not continuously meet the eligibility criteria.
- (k) Disqualification pursuant to Division 4 of the Procurement Code shall create a prima facie case for decertification by the County. The challenged PCE shall have the burden of proving that its County certification should be maintained.
- (l) Decertification by another agency shall create a prima facie case for decertification by the County. The challenged PCE shall have the burden of proving that its County certification should be maintained.
- (m) PCEs shall submit to the CCDCPO complete and accurate material information, and shall not submit to the CCDCPO false, deceptive, fraudulent, or inaccurate material information, relative to:
- (1) Its status as a PCE;
  - (2) Certification or continued certification;

- (3) Proposed or actual contract participation; and
- (4) Any other matter that arises during an investigation by the ~~CCDC~~CPO or another County official, and shall be subject to the penalties set forth in Section 34-175 and 34-275 for a violation of this subsection.
- (n) A Person that has been denied certification or has been decertified may protest the denial or decertification by submitting a petition for review in a proceeding made pursuant to Part I, Chapter 2, Article IX, Administrative Hearings, and the Administrative Rules promulgated thereunder.
- (o) A Person found to be ineligible for certification or continuing certification for reasons other than those referenced in Section 34-275 may not apply for certification for one year after the effective date of the final decision.
- (p) A third party may challenge the eligibility of an applicant for Certification or a Certified PCE pursuant to procedures established by the ~~CCDC~~CPO. Such challenges shall be signed and sworn by the individual challenging the eligibility of an applicant for Certification or a Certified PCE. The burden of proof shall rest with the complainant. Such challenges to eligibility shall be subject to an appeal. The ~~CCDC~~CPO shall be the final arbiter of all challenges. The presumption that the challenged PCE is eligible shall remain in effect until the ~~CCDC~~CPO renders a final decision.

**Sec. 34-269. Utilization plan; commercially useful function.**

- (a) *Utilization Plan.* The CPO shall include in Contract Documents for Contracts covered by this Division a requirement that a Utilization Plan be submitted which either: (i) commits to PCE participation equal to or greater than the applicable contract-specific goal or goals, or (ii) requests a waiver of all or a portion of a contract-specific goal by submitting a Good Faith Effort Transparency Report pursuant to Section 34-281.
  - (1) The Utilization Plan shall be in such form and contain such information as is required by the ~~CCDC~~CPO, and may include such components as direct PCE participation, indirect PCE participation, and a mentoring relationship with one or more PCEs.
  - (2) The Utilization Plan shall be due at the time the bid or proposal is due. In the event a bid or proposal leads to a Contract with the County, the Utilization Plan as approved by the ~~CCDC~~CPO shall be incorporated as a material commitment on the part of the Contractor to each relevant PCE and the contractor and the County. Failure to include a Utilization Plan shall render the bid or proposal not Responsive.
  - (3) The ~~CCDC~~CPO shall review and either approve or reject the Utilization Plan. For purposes of evaluating a Utilization Plan, only PCEs which perform a Commercially Useful Function relative to the supplies, equipment, goods, services, or types of work for which the PCE has been certified shall be considered.
  - (4) Once a Utilization Plan has been approved, the Contractor may not change the Utilization Plan, including substituting PCEs named in the Utilization Plan, without the prior written approval of the ~~CCD~~, ~~in consultation with the CPO and, in consultation with~~ the Using Agency. Upon such written approval by the ~~CCDC~~CPO, the revised Utilization Plan shall be incorporated into the Contract as an amendment by the CPO. The ~~CCDC~~CPO shall promulgate policies and procedures with respect to change to a Utilization Plan.
- (b) *Commercially Useful Function.* To be considered in meeting Goals, a PCE must perform a Commercially Useful Function.
  - (1) In the case of a Procurement of supplies, equipment, or goods, placing an order for delivery directly to the Using Agency is not a Commercially Useful Function; provided, however, that

to the extent such practice is consistent with normal industry practices, a PCE subcontractor may enter into second tier subcontracts. However, if a PCE Contractor or subcontractor subcontracts a significantly greater portion of the work of the Contract than would be expected on the basis of normal industry practices, the PCE shall be presumed not to be performing a Commercially Useful Function.

- (2) In the case of a Procurement of services, a Person which subcontracts with another Person to perform the services required does not perform a Commercially Useful Function unless such Person also performs significant supervisory or management responsibilities. In the case of a Joint Venture partner, each Joint Venture partner must perform a Commercially Useful Function.
- (3) 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.
- (4) 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.

#### **Sec. 34-270. Methods to achieve goals and compliance.**

A Person may achieve the applicable Contract Specific Goals in any one or more of the methods set forth below. The same PCE, whether as a contractor, subcontractor or supplier, may not be utilized duplicatively as an MBE and a WBE on the same Contract.

- (1) *PCE as prime Contractor.* An MBE or WBE may count its own participation toward the achievement of the applicable MBE or WBE goal. Such PCE will be required to meet the other goals by another method described herein. If a PCE is certified as a WBE and a MBE, such PCE's participation may count toward the MBE or WBE Goal.
- (2) *Joint Venture with one or more PCE.* Where a Person engages in a Joint Venture with one or more PCEs, the Utilization Plan shall include a written agreement containing at least the information set forth in this Subsection. The ~~CEEDCPO~~ shall consider the following in determining whether the proposed Utilization Plan satisfies the Program Goals based upon such written Joint Venture agreement and the Utilization Plan.
  - a. Each Joint Venture partner's initial capital investment;
  - b. The extent to which each PCE's proposed participation in the performance of the Contract constitutes a Commercially Useful Function;
  - c. Whether the relevant PCE shares in the risks and profits of the Joint Venture is proportional to their ownership interest;
  - d. Whether the relevant PCE will have duties, responsibilities, management Control and risk with respect to the Joint Venture in proportion to its ownership interest;
- (3) *Subcontracting.* A Person may achieve the Contract Specific Goals by means of subcontracting with, or purchasing from one or more PCEs.

#### **Sec. 34-271. Request for a full or partial waiver; good faith efforts.**

- (a) Parties submitting bids or proposals for Procurements may in all instances request a partial or full waiver of one or more established contract-specific goal for PCE participation. A Contractor, Person, or Business requesting a partial or full waiver shall submit, in writing, a report detailing its

efforts to comply with County's "good faith efforts" as defined in Section 34-281, hereinafter referred to as the "Good Faith Effort Transparency Report". In reviewing a Contractor, Person, or Business' written request for a partial or full waiver of a contract-specific goal, the CCDCPO shall determine whether a Contractor, Person, or Business has made good faith efforts to meet the applicable Goals and to what extent the waiver request should be granted. In determining whether a Contractor, Person, or Business has made Good faith efforts, the CCDCPO will consider the Good Faith Effort Transparency Report, pursuant to Section 34-281 and additional factors, pursuant to Section 34-282. Upon evaluation of the Contractor, Person, or Business' Good Faith Effort Transparency Report and additional factors, the CCDCPO will draft and submit a report, pursuant to Section 34-283.

- (b) In determining whether a Bidder or Respondent has made Good Faith Efforts, the levels of participation by PCEs set forth in Utilization Plans submitted by other Persons for the same Procurement may be considered. For example, if the apparent successful Bidder or Respondent fails to meet the Contract Specific Goals, but meets or exceeds the average PCE participation obtained by other Bidders or Respondents, this may be evidence that the apparent successful Bidder or Respondent made Good Faith Efforts.
- (c) 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.
  - (1) A Utilization Plan shall be required, and if a waiver or partial waiver is requested, "good faith" efforts shall be demonstrated as set forth in Section 34-271; provided, however, that such Persons shall not be required to attempt to subcontract with PCEs if subcontractors would not typically be utilized for the type of Procurement. In such cases, the Person shall document the reasons for not subcontracting in a waiver request.
  - (2) The Contractor will endeavor to maximize use of PCEs for supplies, equipment, goods or services for such Contractor's business operations not specifically for the Procurement.
  - (3) If such Person is required to have or has an affirmative action plan and goals, such plan and goals shall be submitted with their Utilization Plan. The CCDCPO shall compare such plan and goals with the Person's actual affirmative action achievements and such achievements may be considered by the County in future Procurements.
- (d) Mentor/protégé agreements. Where a Contractor enters into or maintains a mentor/protege agreement with a PCE to improve or develop certain aspects of the business of the PCE, the CCDCPO shall evaluate the effect of such agreement as a factor in determining good faith efforts. The mentor/protégé agreement may provide for the Contractor to assist the PCE in such areas as technical aspects of the PCE's business, improving financial management, or providing on-the-job training. To constitute good faith efforts, the mentor/protégé agreement shall satisfy the following requirements.
  - (1) The PCE performs a Commercially Useful Function;
  - (2) The agreement shall be included in the Utilization Plan; and
  - (3) The agreement clearly defines the respective responsibilities of the Contractor and the PCE and includes specific, measurable goals to be attained by both parties through the performance of the agreement. In order to be a factor in establishing best efforts, the mentor/protégé agreement must be for a reasonable period of time.
- (e) The CCDCPO may grant a total or partial waiver based upon the following criteria:
  - (1) There are not sufficient PCEs capable of providing the supplies, equipment, goods or services required for the Procurement;

- (2) The Procurement cannot reasonably be divided;
- (3) The price required by potential PCEs is more than ten percent above competitive levels; and
- (4) Any other factor relating to good faith efforts as set forth in the Person's Utilization Plan.

**Sec. 34-272. Calculating PCE participation.**

In calculating a PCE's participation, only dollar amounts commensurate with a PCE's performance of a Commercially Useful Function may be counted.

- (a) The dollar value of that portion of a Procurement that is performed by the PCEs' own forces shall be counted, including the cost of supplies, materials and equipment furnished by the PCE for the Procurement, whether purchased or leased (except to the extent purchased or leased from the Contractor or the Contractor's Affiliate).
- (b) The dollar amount of fees or commissions charged by a PCE for providing a bona fide service, such as professional, technical, consultant, managerial, insurance brokerage or surety services, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
- (c) When a PCE is a Joint Venture partner, only the dollar value of the distinct, clearly defined work performed by the PCE with its own forces, shall be counted.
- (d) Only the dollar value must be commensurate with the work the PCE actually performs.
- (e) 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, unless otherwise provided pursuant to Section 34-279.
- (f) One hundred percent of the fees or transportation charges for the delivery of supplies, equipment, materials or goods shall be counted only if the payment of such fees is a customary industry practice and such fees are commensurate with fees customarily charged for similar services, unless otherwise provided pursuant to Section 34-279.
- (g) If a PCE ceases to be a certified for any other reason than graduation from the M/WBE 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 for the remaining term of the Contract.
- (h) Only the dollar amount actually paid to the PCE shall be counted toward the participation of a PCE.

**Sec. 34-273. Review of contract performance.**

- (a) *Compliance with Utilization Plan.* The ~~CCDCPO~~ shall review the Contractor and PCE's compliance with its Utilization Plan as necessary during the performance of the Contract. The ~~CCDCPO~~ may establish such requirements for periodic Contractor and PCE reporting on compliance with its Utilization Plan as the ~~CCDCPO~~ determines appropriate and necessary. A Contractor and PCE shall be required to provide any additional requested compliance documentation within 14 days of request by the ~~CCDCPO~~.
  - (1) If the ~~CCDCPO~~ determines that the Contractor has failed in good faith to comply with a Utilization Plan and has failed to provide an acceptable cure ~~accepted by the CCD in his or her discretion, the CCD shall notify the CPO of such failure. T~~ the CPO shall then send notice of default to the Contractor, and the Contractor shall have such time to cure the default as is provided in the Contract. If no such period is provided, the Contractor shall have ten days to



cure such default. For purposes of this section, providing a plan for bringing the Contract into compliance with the Utilization Plan may constitute a cure, if compliance cannot reasonably be achieved within the applicable cure period, and if compliance is achieved in accordance with such plan.

- (2) If a Contractor fails to provide any documentation required by the ~~CCDCPO~~, ~~the CCD shall notify the CPO of such failure.~~ The CPO shall then send notice of default to the Contractor, and the Contractor shall have such time to cure the default as is provided in the Contract. If no such period is provided, the Contractor shall have ten days to cure such default.
- (b) *Bid and target market programs.* To address more specifically the barriers to PCE participation as prime Contractors in County work, the ~~CCDCPO~~ may ~~recommend to the CPO to~~ institute the following special PCE bidding provisions, following determination of the appropriateness of such provisions.
- (1) In connection with the award of a Contract subject to competitive bidding on which a PCE has bid and where the PCE is bidding on the item in question for the first time; and has never successfully bid on a Cook County purchasing contract, the ~~Contract Compliance Director~~CPO may, at the opening of the bids on the item, compare the PCE Bid with the lowest Bid, and, if the PCE's Bid is closely competitive as defined by guidelines to be established by the ~~Contract Compliance Director~~CPO with that of lowest actual Bids, ~~direct the CPO to~~ declare the PCE the successful Bidder. A PCE may use this procedure only once to become the successful Bidder on any particular item. Thereafter, the PCE must be totally competitive in terms of price to be the successful Bidder.
  - (2) The ~~Contract Compliance Director~~CPO shall develop and coordinate a target market program as follows:
    - a. To ensure that the County receives a competitive price, the ~~Contract Compliance Director~~CPO shall review the availability of PCEs providing various supplies, equipment, goods and services, and shall identify areas with sufficient PCE availability for inclusion in a potential program for bidding, Requests for Qualifications, and Requests for Proposals among PCE Persons. The ~~Contract Compliance Director~~CPO shall report ~~his/her~~their findings and recommendations to the Contract Compliance Committee;
    - b. Upon a determination by the ~~CCDCPO~~ that such a program is advisable for any particular supplies, equipment, goods or services procurement, the ~~Contract Compliance Director~~CPO will institute the following procedures:
      1. ~~The Contract Compliance Director will notify the CPO of identification of~~Identify those supplies, equipment, goods, services, or North American Industry Classification Standard (NAICS) codes appropriate for a target market program;
      2. To the extent practicable, the CPO, ~~with the aid of the Contract Compliance Director,~~ shall divide procurement in the designated supplies, equipment, goods or services areas into economically feasible sizes to facilitate Bids, Requests for Qualifications, or Requests for Proposals from PCEs and shall designate contracts to be offered under the target market program;
      3. The CPO shall offer PCEs the opportunity to bid on such contracts, or submit responses or proposals, in a limited competition;
      4. All standard County procurement rules for bidding, Requests for Qualifications, or Requests for Proposals, will then become effective and, provided that at least three PCEs Bid or submit responses or proposals, the lowest Responsive and Responsible Bidder, Proposer, or Respondent among the PCEs will receive the contract;

5. In the event less than three PCEs Bid or submit responses or proposals pursuant to a Request for Qualifications or Request for Proposals, or in the event that there is no Responsive Bid or best and final Response or Proposal received from a Responsible PCE, the CPO shall rebid the Contract or reissue the Request for Qualifications or Request for Proposals not subject to the target market program.
- c. Participation in the target market program shall be limited to Minority Business Enterprises, Women's Business Enterprises and Joint Ventures consisting exclusively of Minority Business Enterprises or Women's Business Enterprises or both. The PCE Contractor on a target market Contract may subcontract up to 49 percent of the dollar value of the target market Contract to subcontractors who are not Minority Business Enterprises or Women's Business Enterprises.

#### **Sec. 34-274. Prompt payment of PCEs.**

If an invoice from a Contractor includes payment for supplies, equipment, goods or services furnished by a PCE, Contractor shall pay such PCE for such supplies, equipment, goods or services within 15 days after receipt of payment from the County. The ~~CCDC~~CPO shall investigate any complaint or charge of excessive delay in payment, and shall report the results of such investigations to the Contract Compliance Committee and to the County Comptroller. Failure of Contractor to comply with this Section 34-388 shall constitute a material breach of the Contract.

#### **Sec. 34-275. Sanctions and penalties.**

- (a) In addition to such penalties as are provided in Section 34-175 and Section 34-176, the following violations of this Section may result in an imposition of penalties as provided herein:
  - (1) A PCE who violates Section 34-268(m) shall not be eligible for certification for a period of up to five years and shall be liable for a fine of \$2,500.00, and such sanctions shall apply jointly and individually to the PCE and the relevant PCE owner or owners.
  - (2) ~~The CCD may recommend to the County's Chief Procurement Officer~~CPO may determine that a Contractor, subcontractor, or PCE be disqualified from participation in a County contract for period of up to five years and contractually penalized in the manner and degree identified by the ~~CCDC~~CPO, pursuant to the Procurement Code, for a violation of this Section.
- (b) In the event a party wishes to pursue administrative review, under Section 34-178, of the ~~CCDC~~CPO's decision or determination relative to the denial or revocation of certification, or the ~~CCDC~~CPO's imposition of a penalty under Section 34-175, Section 34-176 or this Section, said party shall, within 60 days of the Final Notice issued by the ~~CCDC~~CPO, seek administrative review by submitting a written petition to both the Department of Administrative Hearings and the ~~CCDC~~CPO, which petition may be supported by information, documents, and arguments, provided that the information and documents so submitted were available to and in the possession of the ~~CCDC~~CPO at the time of the Final Notice, and the administrative hearing process shall be limited to such documents and information as were available to and in possession of the ~~CCDC~~CPO at the time of such Final Notice. In such administrative review, the petitioning party shall have the burden of proving, by a preponderance of evidence, that ~~CCDC~~CPO's decision or determination, as set forth in the Final Notice, is clearly erroneous.

#### **Sec. 34-276. Reporting and review.**

The ~~CCDC~~CPO shall report to the Board on an annual basis with respect to the following:

- (1) The percentage of the total dollar amount of Procurements for such year actually received by PCEs;
- (2) The number of MBEs and WBEs available for participation in Procurements, by category;
- (3) An evaluation of the effectiveness of this division in ensuring equitable participation by PCEs in Procurements;
- (4) An assessment of the continuing need for the Program;
- (5) Identification of any enforcement problems; and
- (6) Any recommendations with respect to modifying or improving the Program, including discontinuing or modifying Program Goals in those cases where Minority Business Enterprises and Women's Business Enterprises no longer are disadvantaged by the effects of discrimination in their participation in Procurements.

**Sec. 34-277. Prohibited provisions.**

Any agreement between a Contractor and a PCE in which the Contractor requires that the PCE not provide subcontracting quotations to other Contractors is prohibited.

**Sec. 34-278. Outreach and training.**

The CCDCPO shall from time to time, by way of seminars, workshops, and internet-based communications, make available to the business community such information, documents, and personnel as well as:

- (a) Assist otherwise eligible businesses in applying for, gaining, and maintaining certification.
- (b) Assist the business community in understanding the manner in which to properly complete a Utilization Plan including how a full or partial waiver may be requested, and the manner in which such a request may be supported.
- (c) Identify best practices by other governmental entities and private sector firms that may improve the Program.
- (d) Identify systemic or organizational problems and related solutions associated with certification and contract participation.

**Sec. 34-279. Established business participation in the Program.**

- (a) An Established Business may participate in the Program, as follows:
  - (1) For a one-year period after the business has become an established business, only 75 percent of such business's participation in a County contract shall account for the MBE or WBE, as applicable, program goals;
  - (2) For a one-year period starting on the one-year anniversary of the date the business became an established business, only 50 percent of such business's participation in a County contract shall account for the MBE or WBE, as applicable, program goals; and
  - (3) For a one-year period starting on the two-year anniversary of the date the business became an established business, only 25 percent of such business's participation in a County contract shall account for the MBE or WBE, as applicable, program goals.
- (b) An Established Business shall not be eligible to participate in the Program starting on the three-year anniversary of the date the business became an established business.

- (c) The ~~CCDCPO~~ shall provide notice to participating Established Businesses of the allowed level of participation by such businesses in the Program.

**Sec. 34-280. Program review and sunset.**

- (a) The President and the Board of Commissioners shall receive an annual report from the ~~CCDCPO~~ detailing the County's performance under the Program.
- (b) The President and the Board of Commissioners will review these reports, including the Annual Participation Goals and the County's progress towards meeting those Goals and eliminating discrimination in its contracting activities and marketplace.
- (c) Within five years after the effective date of this ordinance, the County will review the operation of the Program and the evidentiary basis for the Program in order to determine whether the County has a continuing compelling interest in remedying discrimination against MBEs and WBEs in its marketplace, and the permissible scope of any narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the County will not function as a passive participant in a discriminatory marketplace.
- (d) This subdivision shall sunset on or before March 31, 2028.

**Sec. 34-281. The good faith effort transparency report.**

Any Person who seeks a partial or full waiver request shall submit a Good Faith Effort Transparency Report upon its partial or full waiver request. The Good Faith Effort Transparency Report shall include:

- (1) A detailed list of any and all PCEs whom the Contractor, Person, or Business engaged, contacted, and/or reviewed, in the County's Marketplace, from the County's list of PCEs and/or other State and local government agencies, whom Cook County recognizes and/or has a reciprocity agreement with, which identify qualified PCEs for solicitation of bids, for the purposes of securing a bid with the County;
- (2) A detailed explanation of the Contractor, Person, or Business' proposed divided procurement requirements. This explanation will include, but not limited to:
  - a. How the Contractor, Person, or Business proposed to divide the procurement requirements into small tasks and/or quantities into economically feasible units to promote PCE participation; and
  - b. Whether the proposed procurement requirement divisions are consistent with availability of PCEs;
- (3) A detailed explanation of the Contractor, Person, or Business' negotiations in good faith with PCEs. If the Contractor, Person, or Business fails to contact a PCE, this explanation will include, but is not limited to:
  - a. The timeliness when the Contractor, Person, or Business knew of the bid, when the Contractor, Person, or Party formulated its bid and utilization plan, and the bid request due date;
  - b. A detailed explanation of timely attempts to contact PCEs providing the type of supplies, equipment, goods, and/or services required for the Procurement. This explanation will include, but is not limited to:
    - i. Dates of contact attempts;

- ii. With whom, if anyone, the Contractor, Person, or Business communicated and/or corresponded (including written, virtual, digital, electronic, and other feasible methods of communication); and
  - iii. The number of unsuccessful attempts to communicate or correspond with PCEs.
- (4) A detailed explanation of the Contractor, Person, or Business' negotiations in good faith with PCEs. If the Contractor, Person, or Business successfully contacts a PCE, this explanation will include, but is not limited to:
  - a. A detailed explanation regarding why the PCE was incapable of inclusion for the Contractor, Person, or Business' bid;
  - b. A description of the information provided regarding the plans and specifications for the work selected for subcontracting and why agreements were unreachable:
    - i. The Contractor, Person, or Business shall not determine and reject PCEs as unqualified without sound reasons. The Contractor, Person, or Business shall not consider some additional costs involved in finding and using PCEs as the sole reason for the Contractor, Person, or Business' failure to meet the Goals, as long as such costs are reasonable, as determined by the CCDCPO and Board.
  - c. A detailed explanation regarding a Contractor, Person, or Business' efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; and
  - d. A detailed explanation of any and all adjusted insurance requirements imposed by the Contractor, Person, or Business seeking PCEs, including, but not limited to:
    - i. Whether the Contractor, Person, or Business assisted PCEs in obtaining any required insurance, where economically feasible, to encourage participation by PCEs.
- (5) The Contractor, Person, or Business applying for a waiver shall sign the Good Faith Effort Transparency Report. If the Contractor, Person, or Business is a domestic business organization or authorized to conduct business in Illinois, the signee shall be any, employee, agent, and/or officer authorized to sign on behalf of the Contractor, Person, or Business. The Contractor, Person, or Business' attestation/signature will serve as confirmation the Contractor, Person, or Business provided accurate, complete, and truthful information. Any finding of false, omitted, fraudulent, and/or otherwise misleading information will lead to automatic rejection of the waiver request. The ~~Cook County Office of Contract Compliance~~ CPO reserves the right to pursue additional actions and/or remedies against the requesting Contractor, Person, or Business.
- (6) The Good Faith Effort Transparency Report shall be due at the time the bid or proposal is due. In the event a bid or proposal leads to a Contract with the County, the Good Faith Effort Transparency Report, as approved by the CCDCPO, shall be incorporated into the Contract. Failure to include a Good Faith Effort Transparency Report upon submission of a request for a partial or full waiver shall result in no consideration for waiver and render the bid or proposal not Responsive.
- (7) Once the CCDCPO approves a Good Faith Effort Transparency Report, the Contractor, Person, or Business may not change the Good Faith Effort Transparency Report without the prior written approval of the CCD, ~~in consultation with the~~ CPO and the Using Agency. Upon such written approval by the CCDCPO, the revised Good Faith Effort Transparency Report shall be incorporated into the Contract as an amendment by the CPO and made available to the Board for review no later than one week prior to the Bid appearing on the Board agenda for approval.

The ~~CCDCPO~~ shall promulgate policies and procedures with respect to changes to a Good Faith Effort Transparency Report.

**Sec. 34-282. Additional good faith effort factors for consideration.**

- (a) The ~~Contract Compliance Director~~CPO may also consider additional factors, if known, including, but not limited to:
- (1) Whether the Contractor, Person, or Business followed up with PCEs who it originally identified but were unable to include in the bid, based upon prior communication, but prior to submitting its bid;
  - (2) Whether the Contractor, Person, or Business established delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit;
  - (3) Whether the Contractor, Person, or Business used the services and assistance of the ~~CCDCPO~~'s staff, the Small Business Administration, and/or the Office of Minority Business Enterprises of the U.S. Department of Commerce;
  - (4) Whether the Contractor, Person, or Business timely notified appropriate community, minority, and/or women business organizations, identified as assist agencies, of the opportunity for participation in the Procurement;
  - (5) Whether the Contractor, Person, or Business maintains or commits to establish and maintain a mentor-protégé agreement with one or more PCEs that is enforceable and that, in the judgment of the ~~CCDCPO~~, has performance standards and outcomes that are clearly established and effective in terms of assisting the PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the PCE, consistent with the provisions of Subsection 34-271(d).
- (b) In determining whether a Contractor, Person, or Business made Good Faith Efforts, the levels of participation by PCEs set forth in Utilization Plans submitted by other Contractors, Persons, or Businesses for the same Procurement may be considered. For example, if the apparent successful Contractor, Person, or Business fails to meet the Contract Specific Goals, but meets or exceeds the average PCE participation obtained by other Contractors, Persons, or Businesses, this may be evidence that the apparent successful Contractors, Persons, or Businesses made Good Faith Efforts.
- (c) 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.
- (1) A Utilization Plan shall be required, and if a waiver or partial waiver is requested, "good faith" efforts shall be demonstrated by the submission of the Good Faith Effort Transparency Report, by the Contractor, Person, or Business, and ~~CCDCPO~~'s consideration of additional factors pursuant to Sections 34-271, 34-281, and 34-282; provided, however, such Contractors, Persons, or Businesses shall not be required to attempt to subcontract with PCEs if subcontractors would not typically be utilized for the type of Procurement. In such cases, the Contractor, Person, or Business shall also complete a Good Faith Effort Transparency Report detailing the reasons for not subcontracting the professional services for the specific bid.
  - (2) The Contractor, Person, or Business will endeavor to maximize use of PCEs for supplies, equipment, goods, or services for such Contractor, Person, or Business' business operations not specifically for the Procurement.
  - (3) If such Contractor, Person, or Business is required to have or has an affirmative action plan and goals, such plan and goals shall be submitted with their Utilization Plan. The ~~CCDCPO~~ shall compare such plan and goals with the Contractor, Person, or Business' actual affirmative action

achievements and such achievements may be considered by the County in future Procurements.

- (d) Mentor/protégé agreements. Where a Contractor, Person, or Business enters into or maintains a mentor/protégé agreement with a PCE to improve or develop certain aspects of the business of the PCE, the CCDCPO shall evaluate the effect of such agreement as a factor in determining good faith efforts. The mentor/protégé agreement may provide for the Contractor, Person, or Business to assist the PCE in such areas as technical aspects of the PCE's business, improving financial management, or providing on-the-job training. To constitute good faith efforts, the mentor/protégé agreement shall satisfy the following requirements.
  - (1) The PCE performs a Commercially Useful Function;
  - (2) The agreement shall be included in the Utilization Plan; and
  - (3) The agreement clearly defines the respective responsibilities of the Contractor, Person, or Business and the PCE and includes specific, measurable goals to be attained by both parties through the performance of the agreement. In order to be a factor in establishing best efforts, the mentor/protégé agreement must be for a reasonable period of time.
- (e) The CCDCPO may grant a total or partial waiver based upon the following criteria:
  - (1) There are not sufficient PCEs capable of providing the supplies, equipment, goods, or services required for the Procurement;
  - (2) The Procurement cannot reasonably be divided;
  - (3) The price required by potential PCEs is more than ten percent above competitive levels; and
  - (4) Any other factor relating to good faith efforts as set forth in the Contractor, Person, or Business' Utilization Plan and Good Faith Effort Transparency Report.
- (f) Should the CCDCPO grant any partial or full waiver, the CCDCPO shall report, in writing, its justification for granting the waiver, pursuant to Section 34-283.

**Sec. 34-283. ~~Contract compliance director~~ CPO waiver transparency reporting.**

The CCDCPO shall report to the Board, in writing, on a monthly basis, where such Contracts seek Board approval with a waiver request, a report which shall include:

- (1) The percentage of the total dollar amount of Procurements for such Contracts seeking approval by the Board, whereby the Person or Party, seeking Contract approval requested a partial or full waiver and submitted a Good Faith Effort Transparency Report.
- (2) The number of PCEs available for participation in Procurements, based on Contracts seeking approval by the Board and requesting a waiver, including:
  - a. PCE designation, and
  - b. Industry type and/or NAICS codes of the PCEs, where appropriate.
- (3) A summary regarding whether the CCDCPO approved or rejected the Good Faith Effort Transparency Report and why.
- (4) The CCDCPO report shall include Good Faith Transparency Reports for such Contracts seeking approval, attached to the CCDCPO report as an exhibit.

**Sec. 34-284. Reserved.**

## **Subdivision II. Participation in Cook County Public Works Contracts**

### **Sec. 34-285. Short title; incorporation of provisions.**

This Subdivision may be known and cited as the "Cook County Public Works Minority- and Women-Owned Business Enterprise Ordinance" and may be cited as such.

### **Sec. 34-286. Preface and findings.**

- (a) The findings set forth in Subdivision I, Section 34-261 of this Division 8 are incorporated herein by this reference;
- (b) After the requirement in Subdivision I that Minority- and Women-Owned Businesses (M/WBEs) be allotted certain percentages of County construction contracts was ruled unconstitutional, the County witnessed a drastic reduction in M/WBE construction prime contract and subcontract participation;
- (c) The President and the Board of ~~Commissioners of the County of Cook~~, after considering:
  - (1) Evidence presented at trial in Builders Association of Greater Chicago v. City of Chicago, 298 F.Supp.2d 725 (N.D. Ill. 2003) and Northern Contracting, Inc. v. Illinois Department of Transportation, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005);
  - (2) County statistical evidence of continuing discrimination against Blacks, Hispanics, Asians and women in the County's Procurements;
  - (3) The Report title, "Review of Compelling Evidence of Discrimination Against Minority- and Women-Owned Business Enterprise in the Chicago Area Construction Industry and Recommendations for Narrowly Tailored Remedies for Cook County, Illinois;" as well as;
  - (4) Anecdotal evidence of discrimination against minorities and women in the County's Public Works Contracts; and
  - (5) Receiving and considering written reports, adopts the following findings as a strong basis in evidence supporting a narrowly tailored, remedial affirmative action program in Public Works Contracts;
- (d) The County seeks to provide a level playing field and equal access for all prime contractors and subcontractors to participate in Public Works Contracts;
- (e) The County continues to be committed to implementing an affirmative action program associated with local small businesses owned by economically disadvantaged minorities and women in conformance with the United States Supreme Court's decision in City of Richmond v. Croson and other relevant law;
- (f) In furtherance of this commitment, the Board and the President of the Board, supported by County staff, professionals, and consultants, conducted an investigation to determine whether and to what degree:
  - (1) There continues to be discrimination in County Procurements, and in the award of and participation in contracts in the metropolitan County economy;
  - (2) Such discrimination or the effects thereof has denied and continues to deny small and economically disadvantaged minority and women's business enterprises equal opportunity to participate in such Procurements and contracts;



- (3) Small businesses owned and controlled by economically disadvantaged minorities and women in the County Marketplace experience disparate negative impacts in terms of participating in public and private transactions, including, but not limited to, transactions with the County, those private enterprises with whom it does business, and other private enterprises;
  - (4) Small, economically disadvantaged businesses owned and controlled by minorities and women in the County Marketplace experience reduced earnings;
  - (5) The formation of businesses owned and managed by minorities and women in the County Marketplace is disproportionately low;
  - (6) There continues to be a chronic lack of wealth, business loans, and financial liquidity among the County's minority communities and among minorities who own and operate their own small businesses;
  - (7) The disproportionate levels of poverty among minorities in the County and any of the foregoing elements detrimentally affect the County's efforts to protect and promote public safety, health and welfare, and to identify the appropriate affirmative action steps to be taken to eliminate any such discrimination, obstacles, and poverty and their continuing effects;
- (g) The County has collected and analyzed data, conducted interviews with stakeholders, and otherwise conducted a study of its Program to determine whether and to what degree disparities exist relative to the participation of minority and woman-owned businesses in County and non-County contracts "Cook County, Illinois Disparity Study " (the "Disparity Study"); and
  - (h) The Disparity Study entails recommendations for an improved Minority- and Women-owned business program, emphasizing the utilization of contract-specific goals, implementation of race- and gender-neutral measures, and enhancements to data gathering, implementation and performance monitoring of the program;
  - (i) The County has a compelling interest in preventing discrimination and desires to reaffirm its commitment to full and fair opportunities for all firms to participate in its construction contracts.

**Sec. 34-287. Policy and purpose.**

It is hereby found, determined and declared that the purpose of this Ordinance [Division] is to ensure the full and equitable participation of local small businesses owned by economically disadvantaged minorities and women in the County's procurement process as both prime and subcontractors in the County's Public Works contracts. The County is committed to a policy of preventing discrimination in the award of or participation in Public Works contracts and has recommended appropriate narrowly tailored remedies to eliminate any such discrimination.

**Sec. 34-288. Applicability.**

This subdivision shall apply to all Public Works contracts, regardless of the sources of other funds; provided that any Public Works contract with respect to which a goal for Minority-Owned Business Enterprise or Women-Owned Business Enterprise participation is inconsistent with or prohibited by State or Federal law shall be exempt from the goals included in this subdivision.

**Sec. 34-289. Severability.**

If any section, subsection, clause or provision of this subdivision is held to be invalid by a court of competent jurisdiction, the remainder of the subdivision shall not be affected by such invalidity.

## **Sec. 34-290. Definitions.**

The following terms shall have the following meanings:

*Affiliate.* An "Affiliate" of or a Person "Affiliated" with, a specified Person shall mean any Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the Person Specified. Affiliates shall be considered together in determining whether a firm is a small business.

*Annual Participation Goals* means the targeted levels established by the County for the annual aggregate participation of MBEs and WBEs in County construction contracts.

*Applicant* means a person who submits documents and information seeking certification, or continued certification, as a PCE to the ~~Office of Contract Compliance~~ CPO.

*Broker* means a Person who 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~~ their supplier and ~~his or her~~ their customer.

*Business* means a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity.

*Certified firm* means a firm that has been accepted by the County as a certified MBE or WBE or Established Business.

*Contract* means any Procurement or Contract (as defined in Section 34-121) in an amount exceeding \$25,000.00.

*Contractor* means any Business that seeks to enter into a construction contract with the County, other than for professional services, and includes all partners and Affiliates Business.

*Commercially Useful Function* means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling such responsibilities as a Joint Venture partner.

~~*Compliance Contract Director or CCD* means the Contract Compliance Director.~~

*County* means the County of Cook and its participating User Agencies.

*Contract Specific Goals* means the aspirational goals established under Section 34-267(b) that are based upon relevant factors, including, but not limited to, the availability of MBEs or WBEs relative to the scope of work of the Project.

*County's Marketplace* means the six-county region, currently the counties of Cook, DuPage, Kane, Lake, McHenry and Will.

*Disparity Study* means the stringent review examining Cook County's M/WBE Program for contracts issues by Cook County Government and Cook County Health and Hospital System.

*Economically Disadvantaged* means, with respect to an individual, having 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.

*Established Business* means a Local Business that is not a Small Business and was certificated as an MBE or WBE within the past 12 months:

- (1) Which is at least 51 percent owned by one or more Minority Individuals or 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 such Minority Individuals or Women;
- (2) Whose management, policies, major decisions and daily business operations are independently owned and controlled by one or more such Minority Individuals or Women; and
- (3) Which has its principal place of business located within the County's Marketplace.

*Expertise* means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the Business, as defined by normal industry practices, including licensure where required.

*Good Faith Efforts* means actions undertaken by a Contractor pursuant to Section 34-271.

*Joint Venture* means an association of two or more Businesses 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 partners and their relationship and responsibility to the contract.

*Local Business* means a Business located within the County's Marketplace which has the majority of its regular, full-time work force located within the County's Marketplace.

*Local Small Business* means a Local Business which is also a Small Business.

*Manufacturer* means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

*Minority Business Enterprise* or *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 who are economically disadvantaged, 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 such 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 within the County's Marketplace.

*Minority Individual* means an individual in 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 and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in the County's Marketplace or to do business with the County.

*Owned* means having all of the customary incidents of ownership, including the right of disposition, and the sharing in all of the risks profits, and responsibilities commensurate with the degree of ownership interest.

*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 business that is not publicly held, or the individual's equity in any real estate and any related fixtures or furnishings. In addition, the classes of assets not subject to the calculation would also include the market value of goods such as art, furnishings, jewelry, vehicles and other non-monetary assets. 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 net worth also does not include the value of the individual's interest in any pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs.

*Program* means the means the Minority- and Women-Owned Businesses Enterprise Program established in subdivision I.

*Project Specific Goals* means the aspirational contract-specific Goals (as set forth in Section 34-295) established for a particular project or contract based upon the availability of MBEs or WBEs in the scopes of work of the Project.

*Protected Class Enterprise* or *PCE* means an business meeting the definition of Minority Business Enterprise, Women's Business Enterprise, or Established Business as set forth in this section.

*Public Works* means all fixed works constructed or demolished by the County, or paid for wholly or in part out of public funds administered by the County, or funds or financing derived from assets owned or controlled by the County. "Public Works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through federal or State government, or the County. "Public Works" does not include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multifamily residence. "Public Works" includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

*Regular Dealer* means a Person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the Person must be an established, regular Business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. 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 firm both owns and operates distribution equipment for the products. Any supplementing of a Person's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

*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 seven fiscal years, exceed 150 percent of the applicable size standards of 13 CFR Part 121.

*Socially Disadvantaged* means having been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of ~~his or her~~ their identity as a member of a group, and without regard to individual qualities, stemming from circumstances beyond the relevant person's control.

*Using Agency* or *User Agency* means the departments or agencies within Cook County government, including Elected Officials.

*Utilization Plan* means the document, submitted to the County as part of a bid or proposal, in which one or more bidders or proposers commit to a level of PCE participation in the subject contract, identify the associated responsibilities and scope of the work, and dollar value or the percentages of the work to be performed.

*Woman* means a person of the female gender.

*Woman-owned Business Enterprise* or *WBE* 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 economically disadvantaged 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 such Women;
- (2) Whose management, policies, major decisions and daily business operations are independently managed and Controlled by one or more such Women; and
- (3) Which has its principal place of business and a majority of its regular, full-time work force located within the County's Marketplace.

#### **Sec. 34-291. Program administration.**

- (a) The ~~CCDCPO~~, who shall report to the President of the Board of Commissioners of Cook County, shall administer the Program, and whose duties shall include:
  - (1) Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program, certification process, and no-change affidavits, including time limitations for the submission of documents and information regarding certification applications and contract participation. The ~~CCDCPO~~ is authorized to collect certification in the amount of \$250.00 per Application; the collection of said processing fees shall be transacted by the ~~CCDCPO~~ through the Bureau of Finance.
  - (2) Providing information and assistance to PCEs relating to County procurement practices and procedures, and bid specifications, requirements, goals and prerequisites.
  - (3) Establishing uniform procedures and criteria for certifying, and decertifying Businesses as PCEs, accepting certifications by other agencies, and maintaining a directory of Certified Firms. Such procedures and criteria shall include non-certification or decertification the willful submission of false or inaccurate material information, the failure to submit complete and accurate material information to the ~~CCDCPO~~ regarding certification, or a Procurement on a timely basis, and shall relate individually and jointly to both PCEs and PCE owners.
  - (4) Establishing Project Specific Goals, in collaboration with the User Agency, based upon the availability of PCEs to provide the supplies, materials and equipment or services required by the Contract.
  - (5) Evaluating Contractors' achievement of Project Specific Goals and/or Good Faith Efforts to meet Project Specific Goals.
  - (6) Working with User Agencies to monitor contracts to ensure prompt payments to PCEs and compliance with Project Specific Goals and commitments, including gathering data to facilitate such monitoring.
  - (7) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.

- (8) Collecting data to evaluate the Program and other County contracting initiatives.
  - (9) Monitoring the Program and the County's progress towards the Annual Participation Goals. The CCDCPO shall report on a quarterly and annual basis to the President on the administration and operations of the Program.
- (b) The User Agencies that receive appropriate delegation for project management, contract management, and/or construction and/or design contract responsibility shall have the following duties and responsibilities with regard to the Program:
- (1) Assisting the CCDCPO with setting Project Specific Goals.
  - (2) Assisting in the identification of available PCEs, and providing other assistance in meeting the Project Specific Goals.
  - (3) Performing other activities to support the Program.
  - (4) Gathering and maintaining prime contracting and subcontracting data for those contracts which they manage.
  - (5) Submitting subcontracting data as required to the CCDCPO.

**Sec. 34-292. Race- and gender-neutral measures to ensure equal opportunities for all contractors and subcontractors.**

The County shall develop and use measures to facilitate the participation of all firms in County construction contracting activities. These measures shall include, but are not limited to:

- (a) Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms;
- (b) Segmenting, structuring or issuing contracts to facilitate the participation of PCEs and other Small Businesses;
- (c) Providing timely information on contracting procedures, bid preparation and specific contracting opportunities;
- (d) Providing assistance to Business in overcoming barriers such as difficulty in obtaining bonding and financing;
- (e) Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available qualified firms as subcontractors;
- (f) Adopting prompt payment procedures, including, requiring by contract that prime Contractors promptly pay subcontractors within 15 days in accordance with Section 34-165;
- (g) Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the County;
- (h) Collecting information from all prime Contractors on County construction contracts detailing the bids received from all subcontractors for County construction contracts and the expenditures to subcontractors utilized by prime Contractors on County construction contracts.
- (i) At the discretion of the CCDCPO, letting a representative sample of County construction contracts without goals, to determine MBE and WBE utilization in the absence of goals;
- (j) Maintaining information on all firms bidding on County prime contracts and subcontracts; and
- (k) Referring complaints of discrimination to Cook County's Commission on Human Relations, or other appropriate authority, for investigation.

**Sec. 34-293. Certification criteria and process.**

- (a) Only Businesses that meet the criteria for certification as a PCE may participate in the Program. The applicant has the burden of proof by a preponderance of the evidence.
- (b) Only a firm owned by a Socially and Economically Disadvantaged person(s) may be certified as an MBE or WBE.
  - (1) The firm's ownership by a Socially and Economically Disadvantaged person must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.
  - (2) The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner(s) to acquire the ownership interest must be real and substantial, direct and in accord with generally accepted industry standards. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the firm's records. The individual whose Expertise is relied upon must have a commensurate financial investment in the firm.
- (c) Only a firm that is managed and controlled by a Socially and Economically Disadvantaged person(s) may be certified as an MBE or WBE.
  - (1) A firm must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged person, from making any business decision of the firm, including the making of obligations or the disbursing of funds.
  - (2) The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on management, policy, operations and work.
  - (3) The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially and Economically Disadvantaged owner(s) must actually exercise control over the firm's operations, work, management and policy.
  - (4) The Socially and Economically Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise directly related to, the firm's operations and work. The Socially and Economically Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.
  - (5) If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially and Economically Disadvantaged owner(s) must possess the required license or credential. If state law, County ordinance or other law regulations or statute does not require

that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner(s) actually controls the firm.

- (6) A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day-to-day activities.
- (d) Only an independent firm may be certified as an MBE or WBE. An independent Person is one whose viability does not depend on its relationship with another Person, and who has the capacity or ability to successfully undertake and complete the relevant work. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent Business, the CCDCPO will:
  - (1) Scrutinize relationships with non-Certified Firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - (2) Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner(s) of the applicant and non-Certified Firms or persons associated with non-Certified Firms compromise the applicant's independence.
  - (3) Examine the applicant's relationships with non-Certified Firms to determine whether a pattern of exclusive or primary dealings with non-Certified Firm compromises the applicant's independence.
  - (4) Consider the consistency of relationships between the applicant and non-Certified Firms with normal industry practice.
- (e) The CCDCPO shall certify only Persons that meet all the above criteria. An applicant shall be certified only for specific types of work in which the Socially and Economically Disadvantaged owner(s) has the ability and Expertise to manage and control the person's operations and work.
- (f) The County shall certify the eligibility of Joint Ventures involving PCEs and non-Certified Firms, provided that the Joint Venture meets the criteria for certification as an PCEs. To be considered an eligible Joint Venture, at least one partner of the Joint Venture must be a Certified Firm, with a share in the capital contribution, control, management, risks, and profits of the Joint Venture which is equal to its ownership interest. Each Certified Firm partner must contribute property, capital, efforts, skill and knowledge and be responsible for a distinct, clearly defined portion of the work of the contract. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.
- (g) In lieu of conducting its own certifications, the CCDCPO by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the CCDCPO determines that the certification standards of such entities are comparable to those of the County.
- (h) The certification status of all PCEs shall be reviewed periodically by the ~~Office of Contract Compliance~~CPO. Failure of the firm to file the necessary documentation with the CCDCPO as provided by rule may result in decertification.
- (i) It is the responsibility of the Certified Firm to notify the CCDCPO of any change in its circumstances affecting its continued eligibility for the Program, including decertification by another agency. Failure to do so may result in the firm's decertification.
- (j) The CCDCPO shall decertify a firm that does not continuously meet the eligibility criteria.



- (k) Disqualification pursuant to Division 4 of the Procurement Code shall create a prima facie case for decertification by the County. The challenged PCE shall have the burden of proving that its County certification should be maintained.
- (l) Decertification by another agency shall create a prima facie case for decertification by the County. The challenged firm shall have the burden of proving that its County certification should be maintained.
- (m) PCEs shall submit to the ~~CCDCPO~~ complete and accurate material information, and shall not submit to the ~~CCDCPO~~ false, deceptive, fraudulent, or inaccurate material information, relative to:
  - (1) Its status as a PCE;
  - (2) Certification or continued certification;
  - (3) Proposed or actual contract participation; and
  - (4) Any other matter that arises during an investigation by the ~~CCDCPO~~ or another County official, and shall be subject to the penalties set forth in Section 34-175 and 34-299 for a violation of this subsection.
- (n) A firm that has been denied certification or has been decertified may protest the denial or decertification by submitting a petition for review in a proceeding made pursuant to Part I, Chapter 2, Article IX, Administrative Hearings, and the Administrative Rules promulgated thereunder.
- (o) A firm found to be ineligible for certification or continuing certification for reasons other than those referenced in Section 34-299 may not apply for certification for one year after the effective date of the final decision.
- (p) A third party may challenge the eligibility of an applicant for certification, or a Certified Firm as provided by rule. Such challenges shall be signed and sworn by the individual challenging the eligibility of an applicant for certification or a certified firm. The burden of proof shall rest with the complainant. Such challenges to eligibility shall be subject to an appeal. The ~~CC Director~~CPO shall be the final arbiter of all challenges. The presumption that the challenged firm is eligible shall remain in effect until the ~~CCDCPO~~ renders a final decision.

**Sec. 34-294. Annual aspirational goals.**

The annual aspirational goals for the utilization of MBEs and WBEs on County Public Works contracts and subcontracts shall be 24 percent for MBEs and ten percent for WBEs. Notwithstanding the above, Established Businesses may participate in the Program as authorized under Section 34-300.1.

**Sec. 34-295. Project specific goals.**

The ~~CCDCPO~~, following the compilation of the Main Final Contract Data File ("MFCDF") and the Hospital Final Contract Data File ("HDCDF") review of the most current data that is feasibly and practicably available relative to the availability of MBEs and WBEs who have the capacity to successfully supply the relevant goods and services, and in consultation with the User Agency, shall establish Project Specific Goals for construction, which shall be incorporated into each bid and RFP. Using study data to set legally defensible contract goals will provide transparency and defensibility, as well as reduce requests for goal reductions or full waivers. Goal setting involves four steps:

- (1) Weight the estimated dollar value of the scopes of the contract by six-digit NAICS codes, as determined during the process of creating the solicitation.
- (2) Determine the unweighted availability of MBEs and WBEs in those scopes, as estimated in the Disparity Study.

- (3) Calculate a weighted goal based upon the scopes and the availability of at least three available firms in each scope.
- (4) Adjust the resulting percentage based on current market conditions and progress towards the annual goals.

Notwithstanding the above, Established Businesses may participate in the Program as authorized under Section 34-300.1.

**Sec. 34-296. Counting MBE and WBE participation.**

- (a) The entire amount of that portion of a contract that is performed by the PCE's own forces shall be counted, including the cost of supplies and materials obtained by the PCE for the work on the contract, and supplies purchased or equipment leased by the PCE (except supplies and equipment the PCE purchases or leases from the prime Contractor or the prime Contractor's Affiliate), unless otherwise provided pursuant to Section 34-300.1.
- (b) The entire 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, unless otherwise provided pursuant to Section 34-300.1.
- (c) When a PCE 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 PCE with its own forces and for which it is separately at risk, shall be counted, unless otherwise provided pursuant to Section 34-300.1.
- (d) Only expenditures to a PCE that is performing a Commercially Useful Function shall be counted. To determine whether a PCE is performing a Commercially Useful Function, the County will evaluate the amount of work subcontracted, industry practices, whether the amount the PCE is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors. To perform a Commercially Useful Function, the PCE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. 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. If a PCE subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a PCE is presumed not to be performing a Commercially Useful Function, the Certified Firm may present evidence to rebut this presumption.
- (e) 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, unless otherwise provided pursuant to Section 34-300.1.
- (f) One hundred percent of the cost of the supplies, equipment or goods obtained from a PCE Manufacturer shall be counted, unless otherwise provided pursuant to Section 34-300.1.
- (g) Sixty percent of the cost of the supplies, equipment or goods obtained from a PCE Distributor or Regular Dealer shall be counted, unless otherwise provided pursuant to Section 34-300.1.
- (h) If a PCE ceases to be certified for any other reason than graduation from the 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 for the remaining term of the Contract.

- (i) In determining achievement of Project Specific Goals, the participation of a PCE shall not be counted until that amount has been paid to the PCE.

**Sec. 34-297. Contract pre-award compliance procedures.**

- (a) For all solicitations, the Contractor, Person, or Business shall submit a Utilization Plan detailing all subcontractors from which the Contractor, Person, or Business solicited bids or quotations, and if Project Specific Goals have been established, its achievement of the Goals or its Good Faith Efforts to do so. The Utilization Plan shall be due at the time the bid/proposal is due. Any Contractor, Person, or Business requesting a partial or full waiver shall submit a Good Faith Effort Transparency Report with its Utilization Plan when the Utilization Plan is due. In the event a bid or proposal leads to a Contract with the County, the Utilization Plan as approved, and any Good Faith Effort Transparency Report as approved and applicable, by the ~~CCDC~~CPO shall be incorporated as a material commitment on the part of the Contractor, Person, or Business to each relevant PCE, and the Contractor, Person, or Business, and the County. Failure to include a Utilization Plan, and Good Faith Effort Transparency Report, where applicable, shall render the bid or proposal not Responsive.
- (b) Any agreement between a Contractor, Person, or Business and a PCE in which the Contractor requires that the PCE not provide subcontracting quotations to other Contractors is prohibited.
- (c) Where the Contractor, Person, or Business cannot achieve the Project Specific Goal(s), the ~~CCDC~~CPO will determine whether the Contractor, Person, or Business has made Good Faith Efforts to meet the Goal(s), based upon the submission of a Good Faith Effort Transparency Report by the bidding Contractor, Person, or Business and consideration of additional factors by the ~~CCDC~~CPO, pursuant to Sections 34-281 and 34-282. A Contractor, Person, or Business submitting bids or proposals for Procurements may in all instances request a partial or full waiver of one or more established Project Specific Goal for PCE participation. In making this determination, the ~~Contract Compliance Director~~CPO will consider, at a minimum, the Good Faith Effort Transparency Report, pursuant to Section 34-281 and additional factors, pursuant to Section 34-282.
- (d) In determining whether a Contractor, Person, or Business has made Good Faith Efforts, the performance of other Contractors, Persons, or Businesses in meeting the Project Specific Goals may be considered. For example, when the apparent successful Contractor, Person, or Business fails to meet the Project Specific Goals but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Contractor, Person, or Business could have met the Project Specific Goals. Similarly, if the apparent successful Contractor, Person, or Business fails to meet the Project Specific Goals, but meets or exceeds the average PCE participation obtained by other Contractors, Persons, or Businesses, this may be evidence that the apparent successful Contractor, Person, or Business made Good Faith Efforts.
- (e) A signed letter of intent from each listed PCE, describing the work, materials, equipment or services to be performed or provided by the PCE and the agreed upon dollar value shall be due at the time of bid proposal or within three days after such submission.
- (f) The ~~CCDC~~CPO shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from PCEs. The ~~CCDC~~CPO may request clarification in writing of items listed in the Utilization Plan and/or the Good Faith Effort Transparency Report.
- (g) If the ~~CCDC~~CPO determines that the Utilization Plan demonstrates that the Project Specific Goals have been achieved or accepts the Good Faith Effort Transparency Report, the ~~CCD and User Agency~~ shall recommend award to the Procurement Office. The ~~CCDC~~CPO must issue a report to the Board pursuant to Section 34-283 upon acceptance of the Contractor's Good Faith Effort Transparency Report no later than three days prior to the Board meeting where the Contract seeks approval by the Board.

- (h) If the ~~CCDCPO~~ rejects the Contractor, Person, or Business' Good Faith Effort Transparency Report, the ~~CCDCPO shall communicate this finding to the Procurement Department and recommend that the bid/proposal be rejected~~ may reject the bid/proposal. A Contractor may protest this determination pursuant to the County's bid protest procedures.

**Sec. 34-298. Contract administration procedures.**

- (a) Upon award of a contract by the County that includes Project Specific Goals, the Project Specific Goals become covenants of performance by the Contractors and incorporated in the contract.
- (b) The Contractor shall provide a listing of all subcontractors to be used in the performance of the contract, and detailed subcontractor information to the County with each request for payment submitted to the County or as otherwise directed by the County. The ~~CCDCPO~~ and the User Agency shall monitor subcontractor participation 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 its commitment to MBE and WBE participation and the status of any PCEs 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) The Contractor cannot make changes to the Utilization Plan or substitute PCEs named in the Utilization Plan without the prior written approval of the ~~CCDCPO~~, in consultation with the ~~CPO~~ and the User Agency. Unauthorized changes or substitutions shall be a violation of this subdivision and a breach of contract and may constitute grounds for rejection of the bid or proposal or cause termination of the executed contract for breach, the withholding of payment and/or subject the Contractor to contract penalties or other sanctions. Upon such written approval by the ~~CCDCPO~~, the revised Utilization Plan shall be incorporated into the Contract as an amendment by the CPO. The ~~CCDCPO~~ shall promulgate policies and procedures with respect to changes to a Utilization Plan.
- (1) All requests for changes or substitutions of a PCE Subcontractor(s) named in the Utilization Plan shall be made to the ~~CCD~~, CPO and the User Agency in writing, and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a PCE subcontractor or perform the work designated for a PCE subcontractor with its own forces unless and until the ~~CCDCPO~~, in consultation with the ~~CPO~~ and the User Agency, approves such substitution in writing. A Contractor shall not allow a substituted subcontractor to begin work until the ~~CCD~~, CPO and the User Agency have approved the substitution.
- (2) The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Utilization Plan. Bid shopping is prohibited. The Contractor must negotiate with the PCE subcontractor to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the PCE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- (3) Substitutions of the subcontractor shall be permitted only on the following bases:
- (i) Unavailability after receipt of reasonable notice to proceed.
  - (ii) Failure of performance.
  - (iii) Financial incapacity.
  - (iv) Refusal by the subcontractor to honor the bid or proposal price.

- (v) 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.
  - (vi) Failure of the subcontractor to meet insurance, licensing or bonding requirements; or
  - (vii) The subcontractor's withdrawal of its bid or proposal.
- (4) The final decision whether to permit or deny the proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the CCDCPO.
  - (5) Where the Contractor has established the basis for the substitution to the satisfaction of the County, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the ~~Office of Contract Compliance~~CPO in obtaining a new PCE. If the Project Specific Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.
  - (6) If the County requires the substitution of a PCE subcontractor listed in the Utilization Plan, the Contractor shall undertake Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the ~~Office of Contract Compliance~~CPO in obtaining a new PCE subcontractor. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.
- (d) If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of the CCDCPO to modify the Utilization Plan and must make Good Faith Efforts to ensure that PCEs have a fair opportunity to bid on the new scope of work.
  - (e) Changes to the scopes of work shall be documented by the User Agency at the time they arise to establish the reasons for the change and the effect on achievement of the PCE goal.
  - (f) Prior to contract closeout, the CCDCPO shall evaluate the Contractor's fulfillment of the contracted goals, taking into account all approved substitutions, terminations and changes to the contract's scope of work. If the County determines that Good Faith Efforts to meet the PCE commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the contract or violation of this subdivision, a remedy or sanction may be imposed, as provided in the contract.

**Sec. 34-299. Sanctions and penalties.**

- (a) In addition to such penalties as are provided in Section 34-175 and Section 34-176, the following violations of this Section may result in an imposition of penalties as provided herein:
  - (1) A PCE who violates Section 34-293(m) shall not be eligible for certification for a period of up to five years and shall be liable for a fine of \$2,500.00, and such sanctions shall apply jointly and individually to the PCE and the relevant PCE owner or owners.
  - (2) ~~The CCD may recommend to the County's Chief Procurement Officer~~The CPO may determine that a contractor, subcontractor, or PCE be disqualified from participation in a County contract for period of up to five years and contractually penalized in the manner and degree identified by the CCDCPO, pursuant to the Procurement Code, for a violation of this Section.
- (b) In the event a party wishes to pursue administrative review, under Section 34-178, of the CCDCPO's decision or determination relative to the denial or revocation of certification, or the CCDCPO's imposition of a penalty under Section 34-175, Section 34-176 or this Section, said party shall, within 60 days of the Final Notice issued by the CCDCPO, seek administrative review by submitting a written petition to both the Department of Administrative Hearings and the CCDCPO, which petition may be supported by information, documents, and arguments, provided that the information and documents so submitted were available to and in the possession of the CCDCPO at the time of

the Final Notice, and the administrative hearing process shall be limited to such documents and information as were available to and in possession of the CCDCPO at the time of such Final Notice, In such administrative review, the petitioning party shall have the burden of proving, by a preponderance of evidence, that CCDCPO's decision or determination, as set forth in the Final Notice, is clearly erroneous.

**Sec. 34-300. Outreach and training.**

The CCDCPO shall from time to time, by way of seminars, workshops, and internet-based communications, make available to the business community such information, documents, and personnel as well as:

- (a) Assist otherwise eligible businesses in applying for, gaining, and maintaining certification.
- (b) Assist the business community in understanding the manner in which to properly complete a Utilization Plan including how a full or partial waiver may be requested, and the manner in which such a request may be supported.
- (c) Identify best practices by other governmental entities and private sector firms that may improve the Program.
- (d) Identify systemic or organizational problems and related solutions associated with certification and contract participation.

**Sec. 34-300.1. Established business participation in the program.**

- (a) An Established Business may participate in the Program, as follows:
  - (1) For a one-year period after the business has become an established business, only 75 percent of such business's participation in a County contract shall account for the MBE or WBE, as applicable, program goals;
  - (2) For a one-year period starting on the one-year anniversary of the date the business became an established business, only 50 percent of such business's participation in a County contract shall account for the MBE or WBE, as applicable, program goals; and
  - (3) For a one-year period starting on the two-year anniversary of the date the business became an established business, only 25 percent of such business's participation in a County contract shall account for the MBE or WBE, as applicable, program goals.
- (b) An Established Business shall not be eligible to participate in the Program starting on the three-year anniversary of the date the business became an established business.
- (c) The CCDCPO shall provide notice to participating Established Businesses of the allowed level of participation by such businesses in the Program.

**Sec. 34-300.2. Program review and sunset.**

- (a) The President and the Board of Commissioners shall receive an annual report from the CCDCPO detailing the County's performance under the Program.
- (b) The President and the Board of Commissioners will review these reports, including the Annual Participation Goals and the County's progress towards meeting those Goals and eliminating discrimination in its contracting activities and marketplace.
- (c) Within five years after the effective date of this ordinance, the County will review the operation of the Program and the evidentiary basis for the Program in order to determine whether the County has

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a continuing compelling interest in remedying discrimination against MBEs and WBEs in its construction marketplace, and the permissible scope of any narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the County will not function as a passive participant in a discriminatory marketplace.

- (d) This subdivision shall sunset on or before March 31, 2028.

## **DIVISION 9. CONTRACT MANAGEMENT**

### **Sec. 34-301. Contracts.**

- (a) *Purpose.* The purpose of this Division is to ensure that Contracts in an amount of \$1,000,000.00 or more are performed in accordance with the Contract terms.
- ~~(b) *Applicability.* This Division shall only apply to Contracts of \$1,000,000.00 or more.~~
- ~~(c) *Funding.* The extent to which this division shall be implemented shall be limited to the availability of funding. The Board encourages the County to seek out any available grant funding for this initiative.~~

### **Sec. 34-302. Information to be contained in contracts.**

All Contracts over \$1,000,000.00 should contain, but not be limited to, the following information, as applicable:

- ~~(a) Clearly state the specifications, contract period, allowable renewals or extension periods, and procedures for amendments or changes;~~
- ~~(b) Provide for specific measurable deliverables and reporting requirements, including due dates;~~
- ~~(c) Describe any payment schedules and escalation factors;~~
- ~~(d) Contain performance standards;~~
- ~~(e) Tie payments to the acceptance of deliverables or the final product;~~
- ~~(f) Contain all standard or required clauses as published in an RFP. Order of precedence should be addressed in case of a discrepancy between the RFP and the Contract;~~
- ~~(g) Contain appropriate signatures, approvals, acknowledgements, or witnesses; and~~
- ~~(h) Be reviewed and approved as to form by an attorney from the Cook County State's Attorney's Office prior to execution.~~

### **Sec. 34-303. Management of contracts.**

- (a) Using Agency responsibilities are as follows:
- (1) ~~Designate one or more individuals as the "Contract Manager"~~Assign Using Agency personnel with the knowledge, skills, ability and ~~time ability to monitor~~manage the Contract;
- ~~(2) The CPO may provide staff to assist the Using Agency in complying with this division.~~
- ~~(b) Contract Manager's duties:~~
- ~~(1) Monitor performance of the Contract in accordance with its terms;~~

- (23) Track Contract budgets and expenditures and ~~compare~~ review invoices and charges to ~~contract terms and conditions~~ ensure compliance with the Contract and the County's Code Part 1, Chapter 2, Article IV, Division 10;
  - (34) Document the timeliness and acceptance or rejection of deliverables and initiate appropriate action to enforce the Contract terms; ~~and~~
  - (45) For Contracts over \$1,000,000.00, Evaluate and document compliance with Contract requirements on a periodic basis during the term of the Contract and submit to the CPO-; and
  - (6) Track Contract expiration dates and extension options and, where applicable and necessary, make timely requests to the CPO to exercise extension options or to initiate a new Procurement.
- (eb) CPO's duties:
- (1) Create ~~uniform~~ evaluation forms for use by ~~Contract Managers~~ Using Agencies, to evaluate the extent to which the Contractor satisfied the Contract terms;
  - (2) Establish appropriate procedures to ensure that evaluations ~~are made within the past three years~~ may be utilized in determining whether a ~~Bidder or Proposer~~ Person is Responsible; ~~provided, however, that evaluations made only within the past three years shall be considered;~~
  - (3) Assist Using Agencies in obtaining contract management training ~~through the National Contract Managers Association, Institute of Supply Management or National Institute of Government Purchasing standards, for Contract Managers.~~

**Secs. 34-3043—34-309. Reserved.**

**DIVISION 10. INVOICES FOR SERVICES RENDERED**



**Sec. 34-310. Invoices required for all service contracts.**

- (a) ~~*Work-Invoice Documentation for Services Performed.*~~ All Contracts for services, regardless of compensation structure, shall contain a provision requiring the Contractor to maintain and submit for review upon request by the Using Agency, itemized records indicating the dates that services were provided, a detailed description of the work performed on each such date, and the amount of time spent performing work on each such date.
- (b) *Expenses.* Contracts for services shall also require Contractors to submit documentation of the types and amounts of expenses incurred related to the work performed if the Contractor seeks reimbursement for any such expenses incurred.
- (c) *Invoice Documentation.* All Contracts for services, regardless of compensation structure, shall contain a provision requiring the Contractor to submit itemized records indicating the dates or time period in which the services being invoiced were provided, a detailed description of the work performed for the time period being invoiced and the amount of time spent performing work for the time period in question. ~~In addition, all Contracts for services that are procured as Sole Source must also contain a provision requiring the Contractor to submit itemized records indicating the dates that services were provided, a detailed description of the work performed on each such date, and the amount of time spent performing work on each such date.~~
- (d) *Payment.* All Contracts for services shall further require that the itemized work and expense records required in Section 34-310(b) and (c) be submitted to the Using Agency with the Contractor's invoice as a condition of payment for any services rendered.
- (e) *Waivers.* Notwithstanding anything to the contrary in this Section, the CPO may waive the requirements of this Section if they determine that such waiver is in the best interests of the County.

**Sec. 34-311. No payment prior to submission of invoice.**

The Comptroller shall not issue a payment to any Contractor providing services who has not submitted the requisite invoice with work and expense records unless the Contractor has been approved for advance payment per the Contract. The Comptroller shall not issue an advance payment to any Contractor providing services unless the invoice includes written authorization from the Using Agency documenting the contractual basis for the advance payment. Contractors approved for advance payment shall be required to submit invoices providing work and expense records as described above in Section 34-310 on at least a monthly basis.

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**NOW THEREFORE, BE IT FURTHER ORDAINED**, by the Cook County Board of Commissioners, that Chapter 2 ADMINISTRATION, Article IV OFFICERS AND EMPLOYEES, Division 8 INTERNET ADVERTISING AND ASSET MARKETING, Section 2-321 Asset marketing of the Cook County Code, is hereby amended as follows:

**Sec. 2-321. Asset marketing.**

- (a) *Purpose.* The purpose of this Section is to derive additional revenue or value from assets that are under the authority and control of the President and, in the event that a separately elected official opts to take part in the program, one or more assets under the authority and control of said separately elected official, through commercially and legally available means. This Section establishes minimum standards for asset marketing programs, and will apply to County property, including its website, provided that the proposed use is consistent with the character of County-owned property,

serves the public interest, and takes into account the possibility that potential revenue opportunities may increase through the collective or bundled use of particular assets.

(b) *Definitions.* The following terms used in this Section shall have the meanings set forth below:

*Asset* means tangible and intangible property, information, data, name, mark, space, slogan or other thing which the County owns or has a property interest in and which is legally and commercially capable of being utilized, marketed, or leveraged to yield additional revenue or value for the County.

*Advertising Restrictions* means the Inappropriate Advertising Examples set forth in the Internet Advertising Guidelines attached to Ordinance No. 07-O-10.

*Asset Marketing Committee* means a committee comprised of:

- (1) The Chief Financial Officer;
- (2) A representative of the Cook County Health and Hospitals System (CCHHS) appointed by the Cook County Health and Hospitals System (CCHHS) CCHHS Chief Executive Officer;
- (3) No less than two other persons appointed by the Cook County Board President of the County Board;
- (4) In the event another separately elected official chooses through a Memorandum of Understanding with the Office of the President to participate in the Asset Marketing Program, one person shall be appointed by said separately elected official; and
- (5) In the event the Forest Preserve District chooses to participate through an intergovernmental agreement with the County accordingly, a person designated by the Superintendent of the Forest Preserve District shall participate on the committee. The Chief Financial Officer or designee shall serve as Chair of the committee.

*Asset marketing program* means a program through which the County, without relinquishing its ownership interest in any asset, directly or pursuant to a written contract with one or more Program Managers as approved by the County Board, derives additional revenue or value from assets that are under the authority and control of the County and/or President, offices of the separately elected officials or Forest Preserve District, through commercially and legally available means, including affinity programs, product or service tie-ins, points of purchase, franchises, concessions, signage, advertising, corporate sponsorship and the like.

*Chief Financial Officer* or *CFO* means the Chief Financial Officer of the County.

*Person* means any natural or legal person, or any combination thereof.

*Program Manager* means a person selected under the provisions of the Cook County Procurement Code and which, pursuant to contract approved by the County Board, develops, implements, and manages one or more asset marketing programs developed pursuant to this Section.

*Program Participant* means a County entity or agency that participates by agreement in any aspect of an asset marketing program and receives revenue or other value as a result participation in the asset marketing program.

(c) The Chief Financial Officer may directly or with the support of a Program Manager, develop and implement one or more Asset Marketing Programs, provided that each program:

- (i) Is developed, implemented, and managed at no or de minimus cost and financial risk to the County;
  - (ii) Ensures that the County derives the greatest possible financial and reputational benefit from the program;
  - (iii) Complies with Advertising Restrictions, relevant legal requirements, and such written rules, guidelines, principles, policies, procedures, and additional restrictions on advertising as are promulgated by the Asset Marketing Committee, in accord with best practices.
  - (iv) With respect to an asset under the control or authority of the County or President or another separately elected official, is subject to the approval of the Asset Marketing Committee as to assets utilized, messaging, content, form, location, materials and such other requirements as are established in written policies and procedures promulgated by the Asset Marketing Committee;
  - (v) Is subject to certain and strict controls and oversight regarding timely disbursement of proceeds to the County, auditing and accounting, quality assurance, customer service, public relations, programmatic reporting, and such other controls as are identified by the Chief Financial Officer; and
  - (vi) Is subject to procedures established by the ~~Director of Contract Compliance~~ Chief Procurement Officer or their designee to ensure, to the fullest extent possible, the participation of MBEs, WBEs and VBEs as program participants.
- (d) Any proposal to utilize an asset to gain revenue or value for the County outside of the Asset Marketing Program shall be presented to the Asset Marketing Committee for review and recommendation no less than 90 days prior to submission to the County Board or the relevant official for approval.
- (e) The Asset Marketing Committee is authorized to promulgate rules, policies, procedures, restrictions and guidelines relating to the administration of this Section.
- (f) The Chief Financial Officer shall file with the County Board a report on the status and results of the corresponding asset marketing programs, which report shall include detailed information regarding revenue receipts and disbursements, audits, customer and taxpayer response and the participation of MBEs, WBEs, and VBEs/SDVBEs on an annual basis.

**Effective date:** This ordinance shall be effective December 1, 2024.