

**PROPOSED SUBSTITUTE TO FILE ID 17-4245
(Finance Committee 10/11/2017)**

Sponsored by: JESÚS G. GARCÍA, Cook County Board of Commissioners

PROPOSED ORDINANCE

THE COOK COUNTY SOCIAL ENTERPRISE ORDINANCE

BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 34 Finance, Article IV Procurement Code, Division 6 Bid Incentives and Preferences, sections 34-229 and 34-241 of the Cook County Code, be amended as follows:

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.

Committee means Cook County Re-entry Employment Committee.

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

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.

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

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.

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.

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.

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 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 CCD under policies and procedures promulgated by the CCD.

Social Enterprise means a 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 the 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 180/1-26); or (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 CCD under policies and procedures promulgated by the CCD. 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.

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;
 - (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 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
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 a 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.

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 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 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 and SDVBEs. The CCD may count toward its three-percent yearly goal that portion of all Contracts in which the Contractor subcontracts with a VBE or

SDVBE. CCD 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 and SDVBEs that submitted a Bid or proposal;
 - (2) The number of VBEs and SDVBEs 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 and SDVBE's at both contractor and subcontractor levels;
 - (4) The total number of the County's certified VBEs and SDVBEs 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 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, and from the business community including VBEs and SDVBEs, 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 and SDVBEs and on the continued need to encourage and promote businesses owned by qualified veterans.
- (c) The CPO will make best efforts to recruit and solicit bids and make procurements from VBEs and SDVBEs.
- (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 or sex.
- (e) The CCD, 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 and SDVBEs for supplies, materials and equipment, or services.
- (f) The provisions of this Division 6, Section 34-237(a) shall be effective as of July 1, 2013. The Contract Compliance Director shall as soon as practicable develop and implement procedures and any corresponding regulations for certifying and monitoring utilization of VBEs and SDVBEs.

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

- (a) The CCD 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 CCD 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 CCD 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 CCD shall provide education, outreach, and the dissemination of information to VBEs and SDVBEs regarding

the County's certification program and available opportunities. The CCD, 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 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 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 shall include the bid incentive provision in all such advertisements.
- (f) As part of the contract close-out procedure, if the chief procurement officer determines that the bidder has successfully met his or her apprentice utilization goals, the chief procurement officer

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, 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, or the commissioner of the supervising department.
- (j) Full access to the contractor's and subcontractors' records shall be granted to the chief procurement officer, the commissioner of the using Agency or any duly authorized representative thereof 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 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 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 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 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 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 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, 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, or the commissioner of the supervising department.
- (j) Full access to the contractor's and subcontractors' records shall be granted to the chief procurement officer, the commissioner of the using Agency or any duly authorized representative thereof 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 is authorized to adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement of this section.

Secs. 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.

34-242 - 34-249. - Reserved.

Effective date: This ordinance amendment shall be in effect on January 1, 2018.