

PROPOSED SUBSTITUTE TO 14-1232

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Sponsored by: TONI PRECKWINKLE, President, Cook County Board of Commissioners, JERRY BUTLER, JOHN P. DALEY, JESÚS G. GARCÍA, GREGG GOSLIN, STANLEY MOORE, JOAN PATRICIA MURPHY, EDWIN REYES, PETER N. SILVESTRI, DEBORAH SIMS, ROBERT STEELE and JEFFREY R. TOBOLSKI, County Commissioners

PROPOSED ORDINANCE AMENDMENT REVISING 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, ~~capitalized~~ 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, 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 containing all Bid 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. ~~The term "Control", "is Controlled by", or is "under common Control with" shall mean a Person that has the power to directly or indirectly affect the management or the policies of the other through ownership of voting securities or voting rights, by contract or otherwise.~~ 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, Recorder of Deeds, 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.

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.

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.

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 of staff, equipment, and the ability to perform within the time frame required for the Procurement.

Responsive means a Bid, a Response or 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.

RFP means a Request for Proposals issued pursuant to this Procurement Code.

RFQ means a Request for Qualifications issued to obtain the qualifications of interested parties.

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.

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.

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 ~~for or~~ 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. 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 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 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 in any fiscal year. Notwithstanding, the CPO shall have the authority to execute 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 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 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.

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 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 implement innovative procurement methods and processes pursuant to this Procurement Code;
- (f) Have authority to 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 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) ~~Within the CPO's authority, a~~ Approve and execute Contracts within his or her authority, or as directed by the Board;
- (i) Ensure that all certifications, statements and affidavits required by this Procurement Code are submitted;
- (j) Determine when supplies, materials and equipment are obsolete or unusable, and trade in, sell or dispose of such property, except for such property which is the responsibility of the Cook County Health and Hospitals System;
- (k) Compile and maintain information for all Procurements, including those Procurements 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 and Procurement 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 name of the Vendor;
 - (2) A brief description of the product or service provided;
 - (3) The name of the Using Department and budgetary account from which the funds are being drawn; and
 - (4) The amount and term of the Procurement; and
 - (5) 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) ~~The CPO shall w~~ Work with the Comptroller to provide 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 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 and budgetary account from which the funds are being drawn; and
- (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 a record of any Person who has been disqualified under Division 4, Disqualification; Penalties, and shall provide such record to the Cook County Health and Hospitals System;
- (o) Have authority to terminate a Contract 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 that Contractors are not paid in advance of performance, unless such advance payment is provided for and properly justified in the Contract; ~~and~~
- (r) Have charge of such other Procurement activities as may be assigned by the President or the Board; and
- (s) Have the authority to require the CIO to review and approve all technology related Procurements, Contracts or Contract amendments in advance of CPO and/or Board approval; notice of the CIO's approval or disapproval 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 Procurement, Contract or Contract amendment; 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.

Secs. 34-126—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. 34-136. 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 Documents.* The Using Agency shall provide to the CPO all information required by the CPO to prepare the Bid 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 days before the date for the submission of Bids.
- (c) *Pre-Bid conference or site inspection.* The Bid 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 Documents. The CPO will notify all Persons recorded as having requested Bid 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 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. 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.
- (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 protester 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.

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 Sec. 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 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 Documents reserving the right to reject any and all Bids.
- (l) *Procurements Under \$150,000.00.* The competitive bidding process for procurements greater than \$5,000.00 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 \$5,000.00 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 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.

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 Sec. 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 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.

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.

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 Proposals from at least three Persons. The CPO shall report the basis for the emergency Procurement and reasons for the selection of the Contractor to the Finance Committee of the Board within five business days of making an emergency Procurement.

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, 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.

Secs. 34-147—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 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 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 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 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 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. 34-164~~6~~—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 determines 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 ~~ing~~ 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 ~~for~~ 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) ~~is~~ in default of any obligation to the County; or (iv) ~~is~~ 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~~Section 34-196~~ 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~~Section 34-196~~ 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.
- (d) 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 ~~for~~ 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 from every Person from whom the County seeks to make a Procurement that such Person meets the requirements of Subsection (a).
- ~~(b)~~(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 ~~of such Person or Substantial Owner~~ 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 ~~34-173.~~

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 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 who knowingly makes~~ 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, ~~including termination of any Contract or disqualification.~~ Any person determined by the CCD to have made a false statement of material fact to Cook County in writing regarding the status or contractual participation of a MBE, WBE, VBE or SDVBE is liable to the

County for a penalty of \$2,500.00, and may be subject to termination of any Contract and disqualification for a period of up to five years from the date of such finding in addition to any other remedy provided for in the Procurement Code or at law or in equity. No fine will be imposed on any Person except after any applicable proceeding pursuant to Chapter 2, Article IX, Administrative Hearings.

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

In the event that the CCD determines that a Person failed to fulfill in good faith a project specific goal, including but not limited to MBE, WBE, VBE, or SDVBE participation commitments reflected in a Utilization Plan, as may be amended through change orders or otherwise over the term of the Contract, the CPO may declare said Person to be in material breach of the Contract, and may withhold payments under the Contract, and recover contractual penalties, in addition to disqualification and any other remedy provided for in the 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. 34-176.~~ 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. 34-177.~~ 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 made pursuant to Part I, Chapter 2, Article IX, Administrative Hearings, and the Administrative Rules promulgated thereunder.
~~Secs. 34-178-179—34-189. Reserved.~~

DIVISION 5. PROCUREMENT PROCEDURES AND POLICIES FOR CERTAIN PROCUREMENTS

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 for Public Works Contracts budgeted for \$2,000,000.00 or more, the Bid Documents shall comply with the requirements of Chapter 30, Environment, Article IX, Green

Construction, Section 30-952, Emission Reduction, and any Contract resulting therefrom shall include all provisions required by Chapter 30, Article IX, Section 30-955.

Sec. 34-192. Predatory lenders.

With each Bid or Response 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, and none of them 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 consulting services 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 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.

Secs. 34-194—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.

~~Co-managers means underwriting firms responsible for participating in the underwriting and the marketing of bonds issued by the County.~~

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.

~~Senior managers means underwriting firms responsible for assisting with the development of the financial plan and managing the underwriting and the marketing of the bonds.~~

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

(a) ~~The Chief Financial Officer or may request that 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~~ each firm, including the experience of the attorneys within the law firm having expertise in the areas of municipal finance law and or Federal tax law pertaining to tax exempt bonds;
- (2) ~~The manner in and degree to which the law firm operates or is otherwise present in the County or State;~~
- (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, or female woman, or veteran attorneys;~~
- (5) ~~The manner in and degree to which the law firm employs minority, or female woman, or veteran attorneys and promotes or incubates the participation of minority, or female 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.~~

~~A "qualified" list shall be developed by the Chief Financial Officer for each type of financing.~~

(c) The RFQ for investment banks underwriters and other professionals 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, and tax anticipation notes, and other debt instruments being contemplated by the County, and including examples of similar financings on which the ~~firm~~investment bank has been senior manager or co-manager;
- (2) Financial strength of the ~~firm~~investment bank, particularly its capital allocated to underwriting ~~governmental~~municipal bonds;
- (3) Degree of corporate investment or "presence" in the County ~~and State~~, 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) ~~(4)~~ The manner in and degree to which the ~~firm~~investment bank is owned by minorities, ~~or females~~women, or veterans;
- (7) The manner and degree to which the ~~firm~~investment bank employs minority, ~~or female~~woman, or veteran finance professionals;
- (8) The manner in and degree to which the ~~firm~~investment bank promotes or incubates the participation of minority ~~or female~~woman, or veteran finance professionals in public finance initiatives; ~~and~~
- (9) The ~~firm~~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, underwriters and financial advisors and other professionals 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.

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, ~~co-bond counsel~~, underwriter and ~~co-underwriter~~counsel, special tax counsel, ~~pension-disclosure counsel~~, ~~senior manager and co-manager~~and financial advisor. The Chief Financial Officer shall request that each of the firms under consideration submit a Proposal which shall include at least the following, as applicable: experience with the particular type of financing; a recommended strategy for identifying and targeting Procurers of the bonds experience with tax issues; knowledge of the County; the key personnel to be assigned for the engagement, including their qualifications and experience; the proposed fees for the engagement; and the manner in and degree to which female and minority professionals will provide services in connection with the transaction.

(b) The Chief Financial Officer shall recommend to the President the selection of counsel, professionals and underwriters based upon the Proposals. In making the recommendation the Chief Financial Officer shall consider a rotation to give each firm a fair opportunity to 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 President shall report to the County Board the reasons for selection of the firm assigned the work. The Proposals shall be available for review by members of the County Board. The President shall report to the County Board the reasons for making the selections. 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 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) 35 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 ~~a rotation~~ to give ~~each~~ 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 54.

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. 34-2054—34-214. Reserved.

Subdivision II. Recycled Products

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.
- (2) Compost products.
- (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) 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.

- (f) The CPO may enter into joint purchasing with other local and State agencies to reduce the cost of recycled paper product Procurements.
- (g) All Bids for new equipment and services shall include language that will encourage the use of recycled paper and paper products, wherever practicable.
- (h) 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 Documents and contract language where necessary to implement this division.
- (2) Working with Using Agencies and the Department of Environmental Control, 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—34-2289. 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 I of this Procurement Code, or in Section 1-3 of the Cook County Code.:

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.

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.

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 6 months; (b) the veteran served for the duration of hostilities regardless of the length of the engagement; (c) the veteran was discharged on the basis of hardship; or (d) the veteran was released from active duty because of a service connected disability and was discharged under honorable conditions.

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 10 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.

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.

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 ~~bid incentive~~ program established; public works contracts only.

~~For all Public Works Contracts with an estimated Bid Price of \$100,000.00 or more, t~~There is hereby established the Cook County Re-entry Employment ~~Program~~Bid Incentive Ordinance, with the goal of ~~working in conjunction with the Cook County Re-entry Employment Project to~~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. ~~This Ordinance is intended to increase public safety and reduce recidivism. For all Public Works Contracts with an estimated Bid Price of \$100,000.00 or more, advertised after the effective date of this Ordinance, the CPO shall include the Bid Incentive provision in all such advertisements.~~

Sec. 34-232. Definitions.

For purposes of this division only, the following definitions apply:

~~Committee means Cook County Re-entry Employment Committee.~~

~~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.~~

~~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 in excess of \$100,000.00, for which the Contractor is eligible for Earned Credits.~~

Sec. 34-233. 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; ~~President's Office of Employment Training~~;
- (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) ~~Two representatives appointed by the President, one of whom shall be a~~A representative of organized labor; and
- (6) ~~one of whom shall be a~~A Cook County Commissioner.

- (b) The Committee shall work with appropriate organizations to identify Former Offenders for participation in this program.

Sec. 34-2343. Re-entry eEmployment 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. 34-2354. Re-entry employment eEarned 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. 34-2365. Re-entry employment cContractor'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. 34-2376. Eligible Veterans' preference established, definitions.

~~It is the policy of the County to provide an incentive for Contractors for Public Works Contracts when such Contractors utilize veterans for at least five percent of the hours worked under such Contract, as hereinafter set forth. For purposes of this Division, "Eligible Veterans" shall mean persons (a) who have been either members of the armed forces of the United States or while citizens of the United States, have been members of the armed forces of allies of the United States, (b) were members of such armed forces in time of hostilities occurring after September 11, 2001, and (c) have served (i) a total of at least six months; or (ii) for the duration of hostilities regardless of the length of engagement; or (iii) in the theater of operations for less than six months but was discharged on the basis of a hardship; or the veteran was released from active duty because of a service-connected disability and was honorably discharged. The preference provided for in this section will be one percent.~~

- ~~(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.~~
- ~~(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. This Section shall take effect six months after the date of adoption.~~

Sec. 34-2387. Qualified v Veteran-owned businesses incentive.

- ~~(a) Qualified Veteran Owned Business means a business entity that is 51 percent or more owned by one or more Eligible Veterans as defined in Section 34-237~~
- ~~(b) The CPO shall give a preference of five percent of the amount of the Contract to a Responsible and Responsive Qualified Veteran Owned Business. The CPO shall develop procedures for implementation of this section 34-238(b). This section shall take effect six months after adoption.~~
- ~~(c) It is the goal of the County to award each year not less than fivethree percent of its total expenditures for supplies, ~~materials~~, equipment, goods, and services to Qualified Veteran Owned Businesses~~VBEs~~ and SDVBEs. The ~~Contract Compliance Director~~CCD may count toward its fivethree percent yearly goal that portion of all Contracts in which the Contractor subcontracts with a Qualified Veteran Owned Business~~VBE~~ or SDVBE. Each year, the CCD shall report to the County Board on all of the following for the immediately preceding 12-month period:
 - (1) The number of Qualified Veteran Owned Businesses VBEs and SDVBEs that ~~who~~ submitted a Bid.
 - (2) The number of Qualified Veteran Owned Businesses VBEs and SDVBEs that ~~who~~ entered into Contracts and the total value of those Contracts.~~

(3) Whether the County achieved the goal described in this subsection.

~~(b)(4)~~—Each year, the CCD shall review the ~~five~~three percent goal with input from countywide veterans' service organizations and from the business community including ~~Qualified Veteran Owned Businesses~~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 ~~Qualified Veteran Owned Businesses~~ VBEs and SDVBEs and on the continued need to encourage and promote businesses owned by qualified veterans.

~~(c)(5)~~—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, shall establish contract specific goals for each contract. In establishing a contract specific goal, the CCD shall consider the availability of sufficient certified VBEs and SDVBEs for supplies, materials and equipment, or services required as part of the procurement.

~~(f)~~ The provisions of this Division 6, Section 34-238(c) shall be effective as of July 1, 2013. The Contract Compliance Director shall ~~by such date~~as soon as practicable develop and implement procedures and any corresponding regulations for certifying and monitoring utilization of VBEs and SDVBEs determining the availability of eligible veteran owned businesses and shall report back to the County Board on the appropriateness of the five percent goal, based on such availability.

Sec. 34-2398. VBE/SDVBE Certification. ~~Qualified service-disabled veteran businesses incentive.~~

~~(a)~~ The CCD shall certify a Person as a VBE when it is a small business (i) that is at least 51 percent owned, controlled, and managed by one or more Eligible Veterans; and (ii) that has its home office in Illinois.

~~(b)~~ The CCD shall certify Person as a SDVBE when it is a small business (i) that is at least 51 percent owned, controlled, and managed by one or more qualified service-disabled veterans; and (ii) 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.

~~(a)~~ *Definitions.* ~~For the purposes of this section the following terms are defined below:~~

~~Service Disabled Veteran~~ means an Eligible Veteran who became disabled in the line of duty while serving the United States Armed Forces, and who received an other than dishonorable discharge.

~~Service Disabled Veteran Business~~ means a Small Business (as defined in Division 8):

~~(1)~~ Not less than 51 percent of which is owned by one or more Service Disabled Veterans; and

~~(2)~~ The management and daily business operations of which are controlled by one or more Service Disabled Veterans or, in the case of an Eligible Veteran with permanent and severe disability, the spouse of such veteran.

~~(b)~~ In addition to the goals established pursuant to Section 34-238, it is the goal of the County to award each year not less than three percent of its total expenditures for supplies, materials, equipment and services to qualified Service Disabled Veteran Owned Businesses.

- ~~(c) The CPO will make best efforts to recruit and solicit bids and make procurements from qualified Service Disabled Veteran Owned Businesses.~~
- ~~(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 provisions of this Division 6, Section 34-239 shall be effective as of July 1, 2013. The Contract Compliance Director shall by such date develop procedures for determining the availability of Service Disabled Veteran Owned Businesses and shall report back to the County Board on the appropriateness of the three percent goal, based on such availability.~~

Secs. 34-240~~39~~—34-249. Reserved.

DIVISION 7. INTEGRITY IN THE PROCUREMENT PROCESS

Sec. 34-250. Reporting ~~irregularities~~ suspected or known fraudulent activity.

~~The Board encourages~~ Any Person involved in the Cook County Procurement process, including employees, contractors, and those seeking to do business with the County, shall to report directly and without any undue delay, any suspected or known irregularities fraudulent activity in the County's procurement process to the ~~County Compliance Officer of the~~ Office of the Cook County 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 Procurements, the CPO shall establish procedures to ensure that communications from individuals outside the County regarding a Procurement shall be memorialized and maintained in the procurement file. Communications about a Procurement from or on behalf of an Elected Official or a Using Agency shall also be memorialized and maintained in the Procurement file.

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. Findings.

- (a) The County has heretofore adopted a Minority Business Enterprise Ordinance to ensure that minority and women's businesses 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 is committed to implementing its affirmative action program in conformance with the United States Supreme Court's decision in *City of Richmond v. Croson*.
- (d) In furtherance of this commitment, and at the direction of the Board, County staff and consultants conducted an investigation into the scope of any discrimination in County Procurements, and in the award of and participation in contracts in the metropolitan Chicago economy, the extent to which such discrimination or the effects thereof has denied and continues to deny minority and women's business enterprises equal opportunity to participate in Procurements and to recommend the appropriate affirmative action steps to be taken to eliminate any such discrimination and its continuing effects.
- (e) Minority and women's 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's businesses on Contracts.
- (g) Minority and women's 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's businesses by entering into contracts with such businesses.
- (i) Despite its good faith efforts and implementation of previous affirmative action programs, minority and women's 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's 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's businesses willing and able to perform County work.

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 public policy of the County to strive to achieve the full and equitable participation of minority- and ~~female~~woman-owned businesses in the County's procurement process as both prime and subcontractors.
- (b) The County is committed to a policy of preventing discrimination in making Procurements, and eliminating arbitrary barriers to participation in Procurements by all persons, regardless of race, sex, or ethnicity.
- (c) 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 ~~Subdivision I~~Division, shall have the meanings ascribed to them in this section, ~~except where the context clearly indicates a different meaning.~~ ~~Capitalized~~ 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.

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, ~~materials or supplies~~ required for performance of the Contract for sale in the normal course of business. A Broker provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.

~~*Certified or Certification* means registration of the Minority Business Enterprises or Women's Business Enterprise status of a business in the County's Directory of Minority Business Enterprises, Women's Business Enterprises and Disadvantaged Business Enterprises ("PCE Directory").~~

~~*Commercially Useful Function* means the performance of a distinct element of work required for the Procurement, with the requisite skill and expertise shall have the meaning set forth in Section 34-383.~~

~~*Contract* means, for purposes of this Division 8, any Procurement or Contract (as defined in Section 34-121) in an amount exceeding \$25,000.00.~~

Contract Specific Goals means the goals established under Section 34-267 that are based upon relevant factors, including, but not limited to, the availability of MBEs or WBEs in the scopes of work of the Project.

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

Economically Disadvantaged means an individual with a Personal Net Worth less than \$2,000,000.00 indexed annually for the Chicago Metro Area Consumer Price Index for Urban Wage

Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2014~~08~~.

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 formed by two or more Persons to carry out a single business enterprise, for which purpose they combine their expertise, property, capital, efforts, and skills.~~

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* mean a Local Small Business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:

- (1) Which is at least 51 percent owned by one or more Minority Individuals, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals;
- (2) Whose management, policies, major decisions and daily business operations are independently managed and Controlled by one or more such Minority Individuals; and
- (3) Which has its principal place of business and a majority of its regular, full-time workforce located within the County's Marketplace.

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 ~~of~~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 disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in-decreased opportunities to compete in the County's Marketplace.

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.

Personal Net Worth means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other Certified MBE or WBE, provided that the other Person is certified by a governmental agency that meets the County's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with a spouse, an individual's Personal Net Worth includes only that individual's share of such assets. An individual's Personal Net Worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

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 goals set forth in Section 34-267.

Protected Class Enterprise or *PCE* shall mean those Persons qualifying under the definitions of *Minority Business Enterprise* and *Women's Business Enterprise* contained 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 ~~materials, supplies, articles~~ 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, relevant to the scope(s) of 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.~~

Socially Disadvantaged means an individual who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

~~*Utilization Plan* means a plan for utilization of PCEs described in Section 34-383.~~

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 Women, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is Owned by one or more Women;
- (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. 34-264. 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 CCD, in cooperation with the CPO, periodically entering into a procurement process without Program Goals or Project Specific Goals in order to determine MBE and WBE utilization in the absence of such goals;
- (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 CCD, who shall report to the President, shall administer the Program. The duties of the CCD shall include:
 - (1) Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program, certification process, recertification process,

and no-change affidavits, including time limitations for the submission of documents and information regarding certification applications and contract participation. The CCD is authorized to collect certification and recertification processing fees in the amount of \$250.00 per Application; the collection of said processing fees shall be transacted by the CCD through the Bureau of Finance.

- (2) Providing information and assistance to PCEs and Small Businesses relating to the Program, and serve as a liaison to community, contractor, professional and supplier groups, and associations and organizations.
 - (3) Establishing uniform procedures and criteria for certifying, recertifying 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 and the failure to submit complete and accurate material information to the CCD regarding certification or a Procurement on a timely basis, and shall relate to both PCEs and PCE owners.
 - (4) Establishing Contract Specific Goals 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 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 CCD shall report on a quarterly and annual basis to the President on the Program.
 - (12) ~~The CCD shall~~ 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 CCD in the administration of the Program, specifically including assisting the CCD with setting Contract Specific Goals and assisting in the identification of available MBEs and WBEs.

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 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 sets an annual "best efforts" goal of 35 percent PCE participation for the total professional services and consulting services utilized by the County.
- (b) The CCD, in consultation with the CPO and the Using Agency shall establish Contract Specific Goals for each Contract. In establishing a Contract Specific Goal, the CCD shall consider the availability of sufficient Certified MBEs and WBEs for the supplies, ~~materials and~~ equipment, goods, or services and the CCD shall consider the availability of sufficient Certified PCEs for the ~~or~~ services required as part of the Procurement.
- (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.

Sec. 34-268. Certification Criteria.

~~The CCD shall Certify only Persons that meet all the following criteria:~~

- (a) ~~The Person must be either an MBE or a WBE, or must establish that such Person has individually suffered bias such that his or her opportunities to form and operate a successful business have been substantially diminished because of race, ethnicity, culture or disability. Only Persons that meet the criteria for certification as an MBE or WBE 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.
 - (2) The contributions to acquire the Ownership interest must be real and substantial, and in accord with generally accepted industry standards. If ~~e~~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 managed and cControlled 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 CCD will:
- (1) Scrutinize relationships with non-Certified Persons 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 Person~~The CCD 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 ~~C~~control the Person's operations and work.
- (f) The County shall certify the eligibility of Joint Ventures involving MBEs or WBEs and non-Certified Firms, provided that the Joint Venture meets the criteria for certification as an MBE or WBE. 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~~g) 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~~In lieu of conducting its own certifications, the CCD by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the CCD determines that the certification standards of such entities are comparable to those set forth herein.~~
- (~~g~~h) The certification status of all MBEs and WBEs shall be reviewed periodically by the Office of Contract Compliance. Failure of the Person to seek recertification by filing the necessary documentation with the CCD as provided by rule may result in decertification.
- (~~h~~i) It is the responsibility of the Certified PCE to notify the CCD of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the PCE's decertification.
- (~~i~~j) The CCD 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.
- (~~j~~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.
- (~~k~~m) A Person that has been denied certification or recertification or has been decertified may protest the denial or decertification ~~as provided by rule~~, 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.
- (~~l~~n) A Person found to be ineligible may not apply for certification for ~~six months~~one year after the effective date of the final decision.

(~~no~~) A third party may challenge the eligibility of an applicant for Certification or a Certified PCE pursuant to procedures established by the CCD. 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 CCD shall be the final arbiter of all challenges. The presumption that the challenged PCE is eligible shall remain in effect until the CCD renders a final decision.

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

- (a) *Utilization Plan*~~required~~. 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 Program Goals or Contract Specific Goals, or (ii) requests a waiver of all or a portion of a Program Goal or Contract Specific Goal.
- (1) The Utilization Plan shall be in such form and contain such information as is required by the CCD, 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/proposal is due. Failure to include a Utilization Plan will render the submission not Responsive.
 - (3) The CCD shall review and either approve or reject the Utilization Plan. For purposes of evaluation 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 cannot make changes to the Utilization Plan, including substituting PCEs named in the Utilization Plan, without the prior written approval of the CCD, CPO and the Using Agency. The CCD shall promulgate procedures for changes to the Utilization Plan.
- (b) *Commercially Useful Function*. To be considered in meeting Goals, a PCE must perform a Commercially Useful Function,~~as determined pursuant to this Subsection 34-269(b).~~ "~~Commercially Useful Function~~" means the performance of a distinct element of work required for the Procurement,~~with the requisite skill and Expertise.~~
- (1) In the case of a Procurement of supplies, equipment, or goods~~or equipment~~, placing an ordering from a manufacturer or distributor 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. ~~A Broker does not fulfill a Commercially Useful Function.~~ In the case of a Joint Venture partner, each Joint Venture partner must perform a Commercially Useful Function.

(e3) 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.

(e4) 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.

~~(e) Once a Utilization Plan has been approved, the Contractor cannot make changes to the Utilization Plan, including substituting PCEs named in the Utilization Plan, without the prior written approval of the CCD, CPO and the Using Agency. The CCD shall promulgate procedures for changes to the Utilization Plan.~~

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, cannot be utilized as both a 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 WBE is also a MBE, such WBE's participation may count toward either the MBE or WBE Goal but not both.
- (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 at least the information set forth in Subsection 34-384(ii)1 through 4 [(2)a. through d.] below. The CCD 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 the PCE's proposed participation in the performance of the Contract constitutes a Commercially Useful Function;
 - c. Whether the PCE's share in the risks and profits of the Joint Venture is proportional to their ownership interest;
 - d. Whether the 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 total or partial waiver; good faith efforts.

- (a) In reviewing a partial or total request for waiver of a Goal, the CCD shall determine whether a Person has made good faith efforts to meet the applicable Goals and to what extent the waiver request should be granted. In determining whether a Person has made Good faith efforts, the CCD will consider whether the Person has taken the following actions:
 - (1) Review lists of PCEs maintained by the County and other State and local governments and agencies to identify qualified PCEs for solicitation for Bids;

- (2) Divide Procurement requirements into small tasks or quantities. This shall include, where appropriate, breaking out Contract work items into economically feasible units, consistent with the availability of PCEs, to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces;
 - (3) Adjust any insurance requirements imposed by the Person seeking PCEs, or otherwise assist PCEs in obtaining any required insurance, where economically feasible, to encourage participation by PCEs;
 - (4) Make timely attempts to contact PCEs providing the type of supplies, equipment, goods or services required for the Procurement; and provide them with a convenient and timely opportunity to obtain and review all information concerning the Procurement necessary to enable such PCE to respond;
 - (5) Follow up initial contacts of PCEs to determine if they are interested participating in the Procurement;
 - (6) Negotiate in good faith and on a timely basis with PCEs to enable them to participate in the Procurement. Evidence of such negotiation includes the names, addresses, and telephone numbers of PCEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached. The Contractor may not reject PCEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using PCEs is not in itself sufficient reason for a Contractor's failure to meet the Goals, as long as such costs are reasonable;
 - (7) Make efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that such efforts shall not be inconsistent with the requirement that the PCE be responsible for actually obtaining and paying for such items;
 - (8) Establish delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit;
 - (9) Use the services and assistance of the CCD's staff, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce;
 - (10) Timely notify appropriate community and minority and women's business organizations identified as assist agencies of the opportunity for participation in the Procurement;
 - (11) Demonstrate to the CCD that no PCE exists with which a mentor/protege relationship could be established, as described in Section 34-271
- (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) ~~The County sets an annual "best efforts" goal of 35 percent PCE participation for the total professional services and consulting services utilized by the County.~~
 - (2) 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.
 - (32) 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.
 - (43) 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 CCD 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/protege agreements.* Where a Contractor enters into mentor/protege agreement with a PCE to improve or develop certain aspects of the business of the PCE, the CCD shall evaluate the effect of such agreement as a factor in determining good faith efforts. The mentor/protege 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/protege 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/protege agreement must be for a reasonable period of time.
- (e) The CCD 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.
- (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.
- (g) If a PCE ceases to be Certified during its performance on a Procurement, the dollar value of work performed under a Contract with that Person after it has ceased to be Certified shall not be counted.
- (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 CCD shall review the Contractor's compliance with its Utilization Plan as necessary during the performance of the Contract. The CCD may establish such requirements for periodic Contractor reporting on compliance with its Utilization Plan as the CCD determines appropriate and necessary. A Contractor shall be required to provide any additional requested compliance documentation within 14 days of request by the CCD.
 - (1) If the CCD determines that the Contractor has failed to comply with its Utilization Plan, 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. 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 CCD, 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 CCD 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 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 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 shall develop and coordinate a target market program as follows:

a. ~~The Contract Compliance Director shall review the availability of PCEs providing various goods and services and shall identify for inclusion in a potential program for bidding among PCE Persons certain commodity areas with sufficient PCE availability to ensure that the County receives a competitive price. The Contract Compliance Director shall report his/her findings and recommendations to the Contract Compliance Committee;~~

To ensure that the County receives a competitive price, the Contract Compliance Director 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 shall report his/her findings and recommendations to the Contract Compliance Committee;

b. Upon a determination by the CCD that such a program is advisable for any particular ~~commodity~~supplies, equipment, goods or services procurement, the Contract Compliance Director will institute the following procedures:

1. The Contract Compliance Director will notify the CPO of identification of those ~~commodity~~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 ~~commodity~~supplies, equipment, goods or services areas into economically feasible sizes to facilitate Bids, Requests for Qualifications, or Requests for Proposals ~~or offers~~ 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 ~~make an offer on the contract~~, 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 ~~make an offer on the Contract~~, or in the event that if there is no Responsive Bid or best and final Response or Proposal offer 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, 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 ~~30~~15 days after receipt of payment from the County. The CCD 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. Reporting and review.

The CCD 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. 34-276. Prohibited provisions.

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

Secs. 24-277. —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. 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 (i) 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); (ii) County statistical evidence of continuing discrimination against Blacks, Hispanics, Asians and women in the County's Procurements; (iii) 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 (iv) anecdotal evidence of discrimination against minorities and women in the County's Public Works Contracts; and (v) 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 has engaged in committee hearings in which the County has heard anecdotal evidence of discrimination in the construction industry, has commissioned and reviewed the study entitled "The Status of Minority- and Women-Owned Business Enterprises Relevant to Construction Activity In and Around Cook County, Illinois" (the "NERA Study") on the levels of PCE participation in Public Works Contracts, and has considered the evidence in relevant case law; and
- (f) The NERA Study made recommendations for a revised Minority- and Women-owned business program for construction contracting, emphasizing the establishment of Project-specific goals, implementation of race- and gender-neutral measures, and enhancements to data gathering, implementation and performance monitoring of the program;
- (g) 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.

It is hereby found, determined and declared that the purpose of this Ordinance is to ensure the full and equitable participation of Minority- and Women-Owned Business Enterprises 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 of a person or entity* means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the County shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates shall be considered together in determining whether a firm is a Small Business.~~ *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 mean 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, continued certification, or re-certification as an MBE, WBE, VBE, or SDVBE to the Office of Contract Compliance.

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. *Certified* or *Certification* means the granting of Minority Business Enterprises, or Women's Business Enterprise status to an Applicant.

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 "CC Director" means the Contract Compliance Director.

County means the County of Cook and its participating User Departments.

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

Doing Business means having a physical location from which to engage in for-profit activities in the scope(s) of expertise of the Business.

Economically Disadvantaged means an individual with a Personal Net Worth less than \$2,000,000.00 indexed annually for the Chicago Metro Area Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 201408.

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 Sec. 34-271 to achieve an MBE or WBE goal, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's goals.

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 (MBE) means a Business:

- ~~(1) Which is at least 51 percent owned by one or more Minority Individuals, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals;~~
- ~~(2) Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more Minority Individuals;~~
- ~~(3) Which performs a Commercially Useful Function;~~

- ~~(4) Which is a Certified Firm; and~~
- ~~(5) Which is a Local Small Business.~~

~~Minority Individual means:~~

- ~~(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 of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American [sic];~~
- ~~(3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or~~
- ~~(4) Asian Americans, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent; or~~
- ~~(5) Individual members of other groups, including, but not limited to, Arab Americans, found by the County to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the County's marketplace or to do business with the County.~~

Minority Business Enterprise or MBE mean a Local Small Business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:

- (1) Which is at least 51 percent owned by one or more Minority Individuals, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals;
- (2) Whose management, policies, major decisions and daily business operations are independently managed and Controlled by one or more such Minority Individuals; and
- (3) Which has its principal place of business and a majority of its regular, full-time workforce located within the County's Marketplace.

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 disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in-decreased opportunities to compete in the County's Marketplace.

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

~~*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 County certified MBE or WBE or the individual's equity in his or her primary place or residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.~~ *Personal Net Worth* means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other Certified MBE or WBE, provided that the other Person is certified by a governmental agency that meets the County's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with a spouse, an individual's Personal Net Worth includes only that individual's share of such assets. An individual's Personal Net Worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

Program means the Program established by the Minority- and Women-Owned Business Enterprise Interim Ordinance.

Project Specific Goals means the Goals established for a particular project or contract based upon the availability of MBEs or WBEs in the scopes of work of the Project.

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.

Regular Dealer means a firm 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 firm 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 firm 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 Regular Dealer'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, relevant to the scope(s) of work the firm seeks to perform on County contracts. A firm is not an eligible small business enterprise in any calendar fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 CFR Part 121.~~

Socially Disadvantaged means a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

User Department means the department of the County or elected official responsible for initiating the procurement process.

Utilization Plan means the list of MBEs and WBEs that the Bidder/Proposer commits will be utilized, the scopes of the work and the dollar values or the percentages of the work to be performed.

Woman means a person of the female gender.

~~*Woman-Owned Business Enterprise (WBE)* means a Business:~~

- ~~(1) Which is at least 51 percent owned by one or more Women, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Women;~~
- ~~(2) Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Women;~~
- ~~(3) Which performs a Commercially Useful Function;~~
- ~~(4) Which is a Certified Firm; and~~
- ~~(5) Which is a Local Small Business.~~

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 Women, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is Owned by one or more Women;
- (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 CC Director, 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, recertification process, and no-change affidavits, including time limitations for the submission of documents and information regarding certification applications and contract participation. The CCD is authorized to collect certification and recertification processing fees in the amount of \$250.00

per Application; the collection of said processing fees shall be transacted by the CCD through the Bureau of Finance.

- (2) Providing information and assistance to MBEs and WBEs relating to County procurement practices and procedures, and bid specifications, requirements, goals and prerequisites.
 - (3) Establishing uniform procedures and criteria for certifying, recertifying and decertifying Businesses as MBEs and WBEs, accepting certifications by other agencies, and maintaining a directory of Certified Firms. Such procedures and criteria shall include non-certification or decertification for the willful submission of false or inaccurate material information and the failure to submit complete and accurate material information to the CCD regarding certification or a Procurement on a timely basis, and shall relate to both PCEs and PCE owners.
 - (4) Establishing Project Specific Goals, in collaboration with the User Department.
 - (5) Evaluating Contractors' achievement of Project Specific Goals and/or Good Faith Efforts to meet Project Specific Goals.
 - (6) Working with User Departments to monitor contracts to ensure prompt payments to MBEs and WBEs 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 CC Director shall report on a quarterly and annual basis to the President on the administration and operations of the Program.
- (b) The User Departments 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 CC Director with setting Project Specific Goals.
 - (2) Assisting in the identification of available MBEs and WBEs, 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 CC Director.

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 MBEs, WBEs 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 CC Director, 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. ~~Program eligibility~~ Certification Criteria.

- (a) Only Businesses that meet the criteria for certification as an MBE or WBE may participate in the Program. The applicant has the burden of ~~persuasion~~ 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 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 ~~firm~~Person is one whose viability does not depend on its relationship with another ~~firm~~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 CC Director 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 CCD 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 ~~firm~~person's operations and work.
- (f) The County shall certify the eligibility of Joint Ventures involving MBEs or WBEs and non-Certified Firms, provided that the Joint Venture meets the criteria for certification as an MBE or WBE. 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 CC Director by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the CC Director determines that the certification standards of such entities are comparable to those of the County.
- (h) The certification status of all MBEs and WBEs shall be reviewed periodically by the Office of Contract Compliance. Failure of the firm to seek recertification by filing the necessary documentation with the CC Director as provided by rule may result in decertification.
- (i) It is the responsibility of the Certified Firm to notify the CC Director 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 CC Director 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) A firm that has been denied certification or recertification or has been decertified may protest the denial or decertification ~~as provided by rule.~~ 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.
- (nn) A firm found to be ineligible may not apply for certification for ~~six months~~ one year after the effective date of the final decision.
- (oo) 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 shall be the final arbiter of all challenges. The presumption that the challenged firm is eligible shall remain in effect until the CC Director 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~~ 10 percent for WBEs.

Sec. 34-295. Project specific goals.

The CC Director, in consultation with the User Department, shall establish Project Specific Goals for construction Contracts based upon the availability of at least three MBEs and three WBEs to perform the anticipated subcontracting functions of the project and the County's utilization of MBEs and WBEs to date.

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

- (a) The entire amount of that portion of a contract that is performed by the MBE's or WBE's own forces shall be counted, including the cost of supplies and materials obtained by the MBE or WBE for the work on the contract, and supplies purchased or equipment leased by the MBE or WBE (except supplies and equipment the MBE or WBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate).
- (b) The entire amount of fees or commissions charged by an MBE or WBE 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.
- (c) When an MBE or WBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the Joint

Venture's contract that is performed by the MBE or WBE with its own forces and for which it is separately at risk, shall be counted.

- (d) Only expenditures to an MBE or WBE that is performing a Commercially Useful Function shall be counted. To determine whether an MBE or WBE is performing a Commercially Useful Function, the County will evaluate the amount of work subcontracted, industry practices, whether the amount the MBE or WBE 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 MBE or WBE 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. An MBE or WBE 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 MBE or WBE participation. If an MBE or WBE 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 an MBE or WBE 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 cost of the materials or supplies obtained from an MBE or WBE Manufacturer or Regular Dealer shall be counted.~~ 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.
- (f) One hundred percent of the cost of the supplies, equipment or goods obtained from a PCE Manufacturer shall be counted.
- (~~g~~) Sixty percent of the cost of the supplies, equipment or goods obtained from a PCE Distributor or Regular Dealer shall be counted.
- (~~h~~) If a firm ceases to be a Certified Firm for any other reason than graduation from the M/WBE Construction Program during its performance on a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted.
- (~~g~~) In determining achievement of Project Specific Goals, the participation of an MBE or WBE shall not be counted until that amount has been paid to the MBE or WBE.

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

- (a) For all solicitations, the bidder/proposer shall submit a Utilization Plan detailing all subcontractors from which the Contractor 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.
- (b) Any agreement between a Contractor and an MBE or WBE in which the Contractor requires that the MBE or WBE not provide subcontracting quotations to other Contractors is prohibited.
- (c) Where the Contractor cannot achieve the Project Specific Goal(s), the CC Director will determine whether the Contractor has made Good Faith Efforts to meet the Goal(s). In making this determination, the Director will consider, at a minimum, the Contractor's efforts to:

- (1) Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all MBEs and WBEs certified in the scopes of work of the contract. The Contractor shall provide interested MBEs and WBEs with timely, adequate information about the plans, specifications, and requirements of the contract to allow MBEs and WBEs to respond to the solicitation. The Contractor must follow up initial solicitations with interested MBEs and WBEs.
 - (2) Select portions of the work to be performed by MBEs and WBEs in order to increase the likelihood that the Project Specific Goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE and WBE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces. It is the Contractor's responsibility to make a portion of the work available to MBEs and WBEs and to select those portions of the work or material needs consistent with the availability [of] MBEs and WBEs to facilitate their participation.
 - (3) Negotiate in good faith with interested MBEs and WBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs and WBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with MBEs and WBEs. The Contractor may not reject MBEs and WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself sufficient reason for a Contractor's failure to meet the Project Specific Goals, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all scopes of work that could be subcontracted.
 - (4) Make efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the County or the prime Contractor, where appropriate.
 - (5) Make efforts to assist interested MBEs and WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.
 - (6) Use the services of the Office of Contract Compliance, available minority/women community organizations, minority/women contractors' groups, government-sponsored minority/women business assistance offices and other appropriate organizations to provide assistance in the recruitment and placement of MBEs and WBEs.
- (d) In determining whether a Contractor has made Good Faith Efforts, the performance of other Contractors in meeting the Project Specific Goals may be considered. For example, when the apparent successful Contractor 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 could have met the Project Specific Goals. Similarly, if the apparent successful Contractor fails to meet the Project Specific Goals, but meets or exceeds the average MBE or WBE participation obtained by other Contractors, this may be evidence that the apparent successful Contractor made Good Faith Efforts.
- (e) A signed letter of intent from each listed MBE or WBE, describing the work, materials, equipment or services to be performed or provided by the MBE or WBE and the agreed upon dollar value shall be due at the time of bid proposal or within three days after such submission.

- (f) The CC Director shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from MBEs and WBEs. The CC Director may request clarification in writing of items listed in the Utilization Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.
- (g) If the CC Director determines that the Utilization Plan demonstrates that the Project Specific Goals have been achieved or Good Faith Efforts made, with the concurrence of the User Department, the CC Director and User Department shall recommend award to Purchasing Agent.
- (h) If the CC Director finds that a Contractor did not make sufficient Good Faith Efforts, the CC Director shall communicate this finding to the Purchasing Department and recommend that the bid/proposal be rejected. 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 CC Director and the User Department 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 MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the County for any purpose.
- (c) The Contractor cannot make changes to the Utilization Plan or substitute MBEs or WBEs named in the Utilization Plan without the prior written approval of the CC Director, Purchasing Agent and the User Department. 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.
 - (1) All requests for changes or substitutions of an MBE or WBE Subcontractor(s) named in the Utilization Plan shall be made to the CC Director, Purchasing Agent and the User Department in writing, and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute an MBE or WBE subcontractor or perform the work designated for an MBE or WBE subcontractor with its own forces unless and until the CC Director, Purchasing Agent in consultation with the User Department, approves such substitution in writing. A Contractor shall not allow a substituted subcontractor to begin work until the Director, Purchasing Agent and the User Department 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 MBE or WBE subcontractor to resolve the problem.

Where there has been a mistake or disagreement about the scope of work, the MBE or WBE 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 CC Director.
- (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 in obtaining a new MBE or WBE. 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 an MBE or WBE 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 in obtaining a new MBE or WBE 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 CC Director to modify the Utilization Plan and must make Good Faith Efforts to ensure that MBEs and WBEs 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 Department at the time they arise to establish the reasons for the change and the effect on achievement of the MBE or WBE goal.
- (f) Prior to contract closeout, the CC Director 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 MBE or WBE 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) The following violations of this subdivision may result in a breach of contract:

- (1) Providing false or misleading information to the County in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations.
 - (2) Committing any other violations of this subdivision.
- (b) A Contractor or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, or being barred or deemed nonresponsive in future County solicitations and contracts as determined by the County's Purchasing Agent, if it is found to have:
- (1) Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;
 - (2) Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations or colluded with others to do so;
 - (3) Failed in bad faith to fulfill Project Specific Goals, thereby materially breaching the contract; or
 - (4) Failed to comply in good faith with substantive provisions of this subdivision.

Sec. 34-300. Program review and sunset.

- (a) The President and the Board of Commissioners shall receive quarterly and annual reports from the CC Director 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 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 June 30, 2016.

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. ~~Contract m~~Management ~~for~~of contracts.

- (a) Using Agency responsibilities are as follows:
 - (1) Designate one or more individuals as the "Contract Manager" with the knowledge, skills, ability and time to monitor 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;
 - (2) Track budgets and compare invoices and charges to contract terms and conditions;
 - (3) Document the timeliness and acceptance or rejection of deliverables and initiate appropriate action to enforce the Contract terms; and
 - (4) Evaluate and document compliance with Contract requirements on a periodic basis during the term of the Contract and submit to the CPO.
- (c) CPO's duties:

- (1) Create uniform evaluation forms for use by Contract Managers, to evaluate the extent to which the Contractor satisfied the Contract terms;
- (2) Establish appropriate procedures to ensure that evaluations are utilized in determining whether a Bidder or Proposer is Responsible; provided, however, that evaluations made only within the past three years shall be considered;
- (3) Assist Using Agencies in obtaining training through the National Contract Managers Association, Institute of Supply Management or National Institute of Government Purchasing standards, for Contract Managers.

Secs. 34-304—34-309. Reserved.

DIVISION 10. INVOICES FOR SERVICES RENDERED

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

- (a) *Work 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.

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.

Secs. 34-312—34-365. Reserved.

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that Chapter 32 FEES, Section 32.1 FEE SCHEDULE, of the Cook County Code, is hereby amended as follows:

Sec. 32.1. Fee Schedule.

The fees or charges provided for or required by the below-listed sections shall be as shown below:

Code Section	Description	Fees, Rates, Charges (in dollars)
CHAPTER 34, FINANCE		
34-283(a) 34-265	M/WBE Certification/ <u>Recertification</u> Fee	250.00
34-283(b) 34-291	M/WBE Certification/ <u>Recertification</u> Fee	100.00 250.00

Effective date: This ordinance amendment shall be in effect immediately upon adoption.