



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Text

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PROPOSED ORDINANCE AMENDMENT

AMENDING PROVISIONS OF THE PROCUREMENT CODE CONCERNING PERSONS WITH DISABILITIES OWNED BUSINESS ENTERPRISE (PDBE)

BE IT ORDAINED, by the Cook County Board of Commissioners, that **Chapter 34 - FINANCE, ARTICLE IV. - PROCUREMENT CODE, DIVISION 1. - GENERAL PROVISIONS**, SECTION 34-121 of the Cook County Code is hereby amended as Follows:

Sec. 34-121. - Definitions

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

Certified or Certification means the granting of Minority Business Enterprise ("MBE"), Women's Business Enterprise ("WBE"), Veteran Business Enterprise ("VBE"), Persons with Disabilities Owned Business Enterprise (PDBE) or Service Disabled Veteran Business Enterprise ("SDVBE") status to a Person.

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that **Chapter 34 - FINANCE, ARTICLE IV. - PROCUREMENT CODE, DIVISION 4. - DISQUALIFICATION AND PENALTIES**, SECTION 34-176 of the Cook County Code is hereby amended as Follows:

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, PDBE, 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, PDBE, or SDVBE participation commitments pursuant to this Section shall be in the amount of the discrepancy between actual MBE, WBE, VBE, PDBE, 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.

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that **Chapter 34 - FINANCE, ARTICLE IV. - PROCUREMENT CODE, DIVISION 5. - PROCUREMENT PROCEDURES AND POLICIES FOR CERTAIN PROCUREMENTS**, SUBDIVISION I. and SECTION 34-201 of the Cook County Code are hereby amended as Follows:

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

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

(b) The RFQ for legal counsel shall request at least the following information:

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(3) Whether and by whom the law firm is certified as a MBE, WBE, VBE, PDBE, or SDVBE;

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that **Chapter 34 - FINANCE, ARTICLE IV. - PROCUREMENT CODE, DIVISION 6. - BID INCENTIVES AND PREFERENCES, SECTIONS 34-229, 34-236, 34-237 34-238, 34-242, and 34-243 and**

Sec. 34-229. - Definitions.

The following words, terms and phrases, when used in this Division shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning. Terms not defined in this section are defined in Division 1 of this Procurement Code, or in Section 1-3 of the Cook County Code.

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

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

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

Committee means Cook County Re-entry Employment Committee.

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

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

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

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

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

Economically Disadvantaged, with respect to an individual, means having a Personal Net Worth less than \$2,000,000.00, indexed annually for the Chicago Metro Area Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2008.

Eligible Veteran means a person who (i) has been either a member of the armed forces of the United States or, while a citizen of the United States, was a member of the armed forces of allies of the United States in time of hostilities with a foreign country and (ii) has served under one or more of the following conditions: (a) the veteran served a total of at least

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

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

Labor hours means the total hours of workers receiving an hourly wage who are directly employed at the work site. "Labor hours" shall include hours performed by workers employed by the contractor and all subcontractors working at the work site. "Labor hours" shall not include hours worked by nonworking foremen, superintendents, owners and workers who are not subject to prevailing wage requirements.

Nonprofit entity means an entity having tax exempt status under the United States Internal Revenue Code.

Persons with Disabilities Owned Business Enterprise (PDBE) means a small business (i) that is at least 51 percent owned, controlled and managed by one or more Persons with a Disability, or in the case of a corporation, at least 51 percent or more of the stock of which is owned, controlled, and managed by one or more Persons with a Disability; or (ii) a nonprofit entity that employs people with disabilities, pays at least minimum wage, whose management and daily business operations are controlled by one or more persons with disabilities, and that directly or indirectly serves persons with disabilities; and (iii) that has its home office in Illinois, as certified by the CCD under policies and procedures promulgated by the CCD.

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

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

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

Service-Disabled Veteran-owned Business Enterprise (SDVBE) means a small business (i) that is at least 51 percent owned, controlled, and managed by one or more qualified service-disabled veterans or, in the case of a corporation, at least 51 percent or more of the stock of which is owned, controlled, and managed by one or more Service Disabled Veterans; or (ii) a nonprofit entity that employs people with a service-connected disabilities, pays at least minimum wage, whose management and daily business operations are controlled by one or more persons with disabilities, and that directly or indirectly serves service-disabled veterans or other persons with disabilities; and (iii) that has its home office in Illinois, as certified by the CCD under policies and procedures promulgated by the CCD.

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

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

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

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

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

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

(b) *Veteran-owned Business and Service Disabled Veteran-owned Business preference.* The CPO shall give a preference of five percent of the amount of the Contract to a Responsible and Responsive VBE ~~or~~ and ten percent of the amount of the Contract to a Responsible and Responsive SDVBE.

(c) *Subcontractor Preference.* The CPO shall give preferences to Bidders who commit to utilizing SDVBE subcontractors as provided in the following schedule:

- (1)If the commitment is 2-5%, the Incentive is 1% of the contract base bid;
- (2)If the commitment is 6-9%, the Incentive is 2% of the contract base bid;
- (3)If the commitment is 10-13%, the Incentive is 3% of the contract base bid;
- (4)If the commitment is 14% or more, the Incentive is 4% of the contract base bid.

(d) The CPO shall develop procedures for implementation of this Section.

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

(a) It is the goal of the County to award each year not less than three percent of its total expenditures for supplies, equipment, goods, and services to VBEs, SDVBEs, and PDBEs. The CCD may count toward its three-percent yearly goal that portion of all Contracts in which the Contractor subcontracts with a VBE, SDVBE, or PDBE. CCD shall submit an annual report to the County Board that shall include, at a minimum, the following for the preceding fiscal year:

- (1) The number of responsible VBEs, SDVBEs, and PDBEs that submitted a Bid or proposal;
- (2) The number of VBEs, SDVBEs, and PDBEs that entered into Contracts, the specific industry or category of goods, services, or supplies for each Contract, and the total value of those Contracts;
- (3) The participation of VBEs, SDVBEs, and PDBEs at both contractor and subcontractor levels;
- (4) The total number of the County's certified VBEs, SDVBEs, and PDBEs available for participation in procurement, by category or industry; and

- (5) Whether the County achieved the goal described in this subsection.
- (b) Each year, the CCD shall review the three-percent goal with input from the Cook County Chairman of Veterans Affairs, the Cook County Director of Veterans Affairs, countywide veterans' service organizations, countywide service organizations for people with disabilities and from the business community including VBEs, SDVBEs, and PDBEs, and shall make recommendations to the County Board regarding continuation, increases, or decreases in the percentage goal. The recommendations shall be based upon the number of VBEs, SDVBEs, and PDBEs and on the continued need to encourage and promote businesses owned by qualified veterans and people with disabilities.
- (c) The CPO will make best efforts to recruit and solicit bids and make procurements from VBEs, SDVBEs, and PDBEs.
- (d) The above-stated goal shall not be treated as a quota nor shall it be used to discriminate against any person or business enterprise on the basis of race, color, national origin, religion, sex or disability.
- (e) The CCD, in consultation with the Using Agency and the CPO, shall consider the size and complexity of the procurement before establishing contract specific goals and shall only be required to establish contract specific goals on procurements that have an available pool of certified VBEs, SDVBEs, and PDBEs for supplies, materials and equipment, or services.
- (f) The provisions of this Division 6, Section 34-237(a) shall be effective as of June 1, 2019. The Contract Compliance Director shall as soon as practicable develop and implement procedures and any corresponding regulations for certifying and monitoring utilization of VBEs, SDVBEs, and PDBEs.

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

- (a) The CCD shall certify a Person as a VBE when it is a small business:
- (1) That is at least 51 percent owned, controlled, and managed by one or more Eligible Veterans; and
 - (2) That has its home office in Illinois.
- (b) The CCD shall certify a Person as a SDVBE when it is a small business:
- (1) That is least 51 percent owned, controlled, and managed by one or more qualified service-disabled veterans;
~~and or~~
 - (2) That is a nonprofit entity that:
 - a. employs eligible service-disabled veterans; and
 - b. pays at least minimum wage; and
 - c. whose management and daily business operations are controlled by one or more eligible service-disabled veterans; and
 - d. that directly or indirectly serves eligible service-disabled veterans; or
 - (3) That is an eligible service-disabled veteran who is contracting with the City as a sole proprietorship or individually; and
 - ~~(2) (4)~~ 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. For purposes of this Chapter, CCD shall accept formal certification of VBEs and SDVBEs by the City of Chicago when evaluating bids.

- (c) In order to increase awareness and provide opportunities for VBEs and SDVBEs, the CCD shall provide education, outreach, and the dissemination of information to VBEs and SDVBEs regarding the County's certification program and available opportunities. The CCD, in collaboration with other departments, shall from time to time, by way of seminars, workshops, and internet-based communications, make available to the business community such information, documents, and personnel as well as:

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

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

- (a) *Preference for Businesses Owned by People with Disabilities.* The CPO shall recommend award to the lowest Responsible and Responsive Bidder who is a PDBE, provided that the Bid of such bidder does not exceed the Bid of the lowest Responsible and Responsive Bidder by more than five ten percent. ~~The preference created by this section may not be combined with any other earned credit or preference created by this Division.~~ The CPO shall develop procedures for implementation of this Section.

- (b) *Subcontractor Preference.* The CPO shall give preferences to Bidders who commit to utilizing PDBE subcontractors as provided in the following schedule:

- (1) If the commitment is 2-5%, the Incentive is 1% of the contract base bid;
- (2) If the commitment is 6-9%, the Incentive is 2% of the contract base bid;
- (3) If the commitment is 10-13%, the Incentive is 3% of the contract base bid;
- (4) If the commitment is 14% or more, the Incentive is 4% of the contract base bid.

- (c) *Preference for Businesses that Commit to Hire People with Disabilities.* The CPO shall give a preference of one percent of the amount of the Contract to a Responsible and Responsive Contractor for a Contract when such Contractor has committed by affidavit to utilize People with Disabilities for at least five percent of the hours worked under such Contract. Failure to utilize People with Disabilities in accordance with the affidavit will result in breach of contract, in addition to any available sanctions or actions the CCD may, within its discretion, recommend that the CPO take with respect to the contractor or subcontractor as specified in Section 34-275. The CPO shall develop procedures for implementation of this Section.

- (d) *Certification.* The CCD shall certify a Person as a PDBE when it is a small business:

- (1) That is at least 51 percent owned, controlled, and managed by one or more qualified, economically disadvantaged Disabled Persons; or
- (2) That is a nonprofit entity that:

- a. employs people with disabilities; and
- b. pays at least minimum wage; and
- c. whose management and daily business operations are controlled by one or more people with disabilities; and
- d. that directly or indirectly serves persons with disabilities; or

(3) That is a person with a disability who is contracting with the City as a sole proprietorship or individually; and
(2) (4) That has its home office in Illinois.

~~(e)~~(e) 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. For purposes of this Chapter, CCD shall accept formal certification of a Person with Disability by the City of Chicago when evaluating bids.

(e) (f) In order to increase awareness and provide opportunities for PDBEs, the CCD shall provide education, outreach, and the dissemination of information to PDBEs regarding the County's certification program and available opportunities. The CCD, in collaboration with other departments, shall from time to time, by way of seminars, workshops, and internet-based communications, make available to the business community such information, documents, and personnel as well as:

- (1) Assist otherwise eligible businesses in applying for, gaining, and maintaining certification;
- (2) Identify best practices by other governmental entities and private sector firms that may improve the Program; and
- (3) Identify systemic or organizational problems and related solutions associated with certification and contract participation.

(f) The CPO shall develop procedures for implementation of this Section.

(e) (h) The Chief Procurement Officer may determine not to allocate a bid incentive under this section under the following circumstances:

- (1) For public works contracts, as defined by Section 34-122 of the Procurement Code; and
- (2) Where the Chief Procurement Officer otherwise concludes that the allocation of the bid would not be in the best interest of the County. The Chief Procurement Officer shall develop rules related to the administration of this provision.

Sec. 34-243. - Right to accumulate value of incentives

With the exception that veterans may only claim a preference as a VBE or SDVBE, persons who qualify for more than one bid incentive, or other work credits as defined in this Division shall be allowed to accumulate the value of those incentives and credits against the Contract Base Bid for purposes of calculating the bid price to be used to evaluate the bid on a competitively bid project.

Secs. 34-244-34-249. - Reserved.

BE IT FURTHER ORDAINED, by the Cook County Board of Commissioners, that **Chapter 34 - FINANCE, ARTICLE IV. - PROCUREMENT CODE, DIVISION 8. - MINORITY- AND WOMAN-OWNED BUSINESS ENTERPRISES, SECTION 34-263** of the Cook County Code is hereby amended as Follows:

Sec. 34-263. - Definitions.

Protected Class Enterprise or *PCE* means a business meeting the definition of Minority Business Enterprise, Women's Business Enterprise, or Established Business as set forth in this section, or meeting the definition of Persons with Disabilities Owned Business Enterprise or Service-Disabled Veteran Owned Business Enterprise, as set forth in Chapter 34, Sections 34-229.

- (a) Sec. 34-125. - Powers and duties of the Chief Procurement Officer.
- (b) The Chief Procurement Officer shall:
 - (c) (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;
 - (d) (b) Establish and maintain procurement policies and procedures, and standardized documents and forms to implement the Procurement Code;
 - (e) (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;

Effective date: This ordinance shall be in effect December 1, 2023.