

**City of Chicago Amendment of  
Municipal Code Chapter 26,  
Authorizing the Minority and  
Women Owned Business  
Enterprise Procurement  
Program**

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**ARTICLE IV.  
Minority-owned and Women owned Business  
Enterprise Procurement Program**

**2-92-420 DEFINITIONS.**

As used in Sections 2-92-420 through 2-92-570 of this chapter, the following terms shall have the following meanings:

- (a) **“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 specified.
- (b) **“Board”** means the affirmative action advisory board established in Section 2-92-510 of this chapter.
- (c) **“Broker”** means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.
- (d) **“Construction contract”** means a contract for the construction, repair or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure.
- (e) **“Construction project program”** means the program provided for in Section 2-92-470 of this chapter.
- (f) **“Contract”** means any contract, purchase order or agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement) awarded by any officer or agency of the city other than the city council, and whose cost is to be paid from funds belonging to or administered by the city of Chicago, regardless of source.
- (g) **“Contract compliance officer”** means the officer appointed pursuant to Section 2-92-490 of this chapter.
- (h) **“Contractor”** means any person or business entity that shall enter into a contract with the city, and includes all partners and all joint ventures of such person.
- (i) **“Credit program”** means the program provided for in Section 2-92-530 of this chapter.
- (j) **“Delegate agency contract”** means a contract with a not-for-profit or for-profit organization which provides social services (including but not limited to job training and placement, education, child day care, emergency shelter, home-delivery meals, and health care) to targeted communities under agreements with the city which are funded by federal or state grants and paid on a pass-through basis.
- (k) **“Disadvantaged business enterprise” or D.B.E.,** in connection with a contract which is funded in whole or in part from state or federal governmental sources, means a business entity which is a disadvantaged business enterprise pursuant to the rules and regulations of such governmental source.
- (l) **“Established business”** means a business entity which, by virtue of its size and capacity for competing in the markets in which it operates, does not need to be a participant in the program in order to effectuate the purposes of the program, as determined by the purchasing agent pursuant to regulations adopted by the purchasing department. On or prior to December 31, 1991, a business entity shall be presumed to be as established business if the business entity and its affiliates have had annual average gross receipts in excess of **\$17,000,000.00** over the previous three fiscal years.
- (m) **“Joint Venture”** means an association of two or more businesses formed to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skills and knowledge.
- (n) **“Local business”** means a business entity located within the counties of Cook, Du Page, Kane, Lake, McHenry or Will in the state of Illinois (the “Six-County Region”) which has the majority of its regular, full-time work force located within the Six-County Region.
- (o) **“Minority group”** means any of the following racial or ethnic groups:
  - (i) **African-Americans or Blacks** (persons having origins in any of the Black Racial groups of Africa);
  - (ii) **Hispanics** (persons of Spanish culture

with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race);

(iii) **Asian-Americans** (persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian Subcontinent, or the Pacific islands);

(iv) **Other groups**, or other individuals, found by the board to be socially and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in Chicago area markets or to do business with the city; and

(v) For purposes of contracts funded by state or federal governmental sources, groups found to be eligible for purposes of the designation of D.B.E.s by such governmental sources.

(p) **“Minority-owned business” or M.B.E.,**” means a local business which is at least 51% owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more members of one or more minority groups, whose management and daily business operations are controlled by one or more members of one or more minority groups, and which is not an established business.

(q) **“M.B.E. percentage”** means, from the effective date of this ordinance through December 31, 1990, 25 percent; from January 1, 1991, through December 31, 1991, 21.1 percent; from January 1, 1992, through December 31, 1992, 19.5 percent; from January 1, 1993, through December 31, 1993, 17.7 percent; and from and after January 1, 1994, 16.9 percent. For contracts procured by public solicitation is publicly advertised.

(r) **“M.B.E., target market percentage”** means, from January 1, 1991 through December 31, 1991, 5.0 percent; from January 1, 1992, through December 31, 1992, 7.0 percent; from January 1, 1993, through December 31, 1993, 9.0 percent; and from and after January 1, 1994, 10.0 percent.

(s) **“owned”** means having all the customary incidents of ownership, including the right of

disposition, and sharing in all risks and profits commensurate with the degree of ownership interest.

(t) **“Program”** means the minority-owned and women-owned business enterprise procurement program established in Sections 2-92-420 through 2-92-570 of this chapter.

(u) **“Purchasing agent”** means the purchasing agent of the city of Chicago.

(v) **“Purchasing department”** means the department of purchases, contracts and supplies of the city of Chicago.

(w) **“Target market contract”** means a contract designated for competition limited to M.B.E.s or W.B.E.s on either a negotiated or competitive bid process pursuant to Section 2-92-460 of this chapter.

(x) **“Women-owned business” or W.B.E..”** means a local business which is at least 51 percent owned by one or more women, or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women, whose management and daily business operations are controlled by one or more women, and which is not an established business.

(y) **“W.B.E. percentage”** means, from the effective date of this ordinance through December 31, 1991, 5.0 percent; from January 1, 1992, through December 31, 1992, 4.9 percent; from January 1, 1993, through December 31, 1994, 4.5 percent. For contracts procured by public solicitation, the W.B.E. percentage shall apply as of the date the solicitation is publicly advertised.

(z) **“W.B.E. target market percentage”** means, from January 1, 1991, through December 31, 1991, 0.25 percent; from January 1, 1992 through December 31, 1992, 0.5 percent; from January 1, 1993, through December 31, 1993, 0.75 percent; and from and after January 1, 1994, 1.0 percent. (Prior code 26.101; Added. Coun. J. 7-31-90, p. 19319)

### **2-92-430 Awarded goal - Established.**

The purchasing agent shall establish a goal of awarding not less than 25 percent of the annual dollar value of all contracts to qualified M.B.E.s and five percent of the annual dollar value of all contracts to qualified W.B.E.’s. (Prior code 26.102; Added Coun. J. 7-31-90, p.19319)

**2-92-440 Award goal - Implementation.**

In order to achieve the goal stated in Section 2-92-430 of this chapter, the purchasing agent shall undertake, in addition to the other measures provided herein, the following measures:

- (a) Insert within specifications for each contract let through competitive bidding with an estimated value in excess of \$10,000.00 a requirement that the contractor commit to the expenditure of at least the M.B.E. percentage of the dollar value of the contract with one or more M.B.E.'s and at least the W.B.E. percentage of the dollar value with one or more W.B.E.'s. This commitment may be met by the contractor's status as M.B.E. or W.B.E., or by joint venture with one or more M.B.E.'s or W.B.E.'s as prime contractor (to the extent of the M.B.E. or W.B.E. participation in such joint venture), or by subcontracting a portion of the work to one or more M.B.E.'s or W.B.E.'s, or by purchase of materials or services for the work from one or more M.B.E.'s or W.B.E.'s, or by the indirect participation of M.B.E.'s or W.B.E.'s in other aspects of the contractor's business (but no dollar of such indirect M.B.E. or W.B.E. participation shall be credited more than once against a contract's M.B.E. or W.B.E., commitment with respect to all contracts of such contractor), or by any combination of the foregoing;
- (b) Review each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by 10 percent of the initial contact value or \$50,000.00, whichever is greater, for opportunities to increase participation of M.B.E.'s or W.B.E.'s already involved in the contract;
- (c) Consider the extent of each bidder's commitment to M.B.E./W.B.E. participation as further evidence of the responsibility of the bidder;
- (d) Negotiate with any contractor whose contract is in excess of \$10,000.00 in value and is not awarded by competitive bidding a commitment, where practicable, to M.B.E. participation of at least M.B.E. percentage and W.B.E. participation of at least the W.B.E. percentage of the dollar value of the contract;
- (e) Insert in each contract containing a commitment to M.B.E. and/or W.B.E. participation:

- (i) A requirement of periodic reporting by the contractor to the contract compliance officer on all expenditures made to achieve compliance with the foregoing provisions. Such reports shall include the name and business address of each M.B.E. and W.B.E. solicited by the contractor to work as a subcontractor on the contract and the responses received by the contractor to such solicitation, the name and business address of each M.B.E. and W.B.E. actually involved in the contract, a description of the work performed and/or product or service supplied by each such M.B.E. or W.B.E., the date and amount of each expenditure, and such other information as may assist the contract compliance officer in determining the contractor's compliance with the foregoing provisions, and the status of any M.B.E. or W.B.E. performing any portion of the contract;
- (ii) Remedies for a contractor's noncompliance with the commitment to M.B.E./W.B.E. participation, including an agreement to pay damages to the M.B.E.'s and W.B.E.'s which were underutilized. The unexcused reduction of M.B.E. or W.B.E. contract participation in connection with a contract (including any modification thereof) shall entitle the affected M.B.E.'s and W.B.E.'s to damages pursuant to such agreement. Such provisions shall include an undertaking by the contractor to submit any dispute concerning such damages to binding arbitration by an independent arbitrator, other than any department or agency of the city, with reasonable expenses, including attorney's fees, being recoverable by a prevailing M.B.E. or W.B.E.. The purchasing department shall adopt rules and procedures governing such arbitrations. Nothing herein shall be construed to limit the rights of and remedies available to the city;
- (iii) Uniform provisions permitting the termination of the contract by the city upon the disqualification of the contractor as M.B.E. or W.B.E., if (a) the contractor's status as M.B.E. or W.B.E. was a factor in the award of the contract and (b) such status was misrepresented by the contractor.
- (iv) Uniform provisions permitting termination of the contract by the city upon the disqualification of any M.B.E. or W.B.E. subcontractor or supplier of goods or services if (a) the subcontractor's or supplier's status as M.B.E. or W.B.E. was a factor in the award of the contract and (b) the status of the subcontractor or supplier was misrepresented by the contractor. In the event

that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified M.B.E. or W.B.E. as its replacement.

(v) Uniform provisions allowing the contract compliance officer access to the contractor's books and records, including without limitation payroll records, tax returns and records, and books of account, on five business days' notice, to allow the officer to determine the contractor's compliance with its commitment to M.B.E./W.B.E. participation and the status of any M.B.E. or W.B.E. 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 city for any purpose;

- (f) Send notices to M.B.E.'s and W.B.E.'s who have been identified as subcontractors in accordance with Section 2-92-440(e) (i) of this chapter, including therein notification of this right of arbitration provided in section 2-92-440 (e)(ii) of this chapter,
- (g) To the extent practicable, award contracts requiring the expenditure of funds not exceeding \$10,000 to qualified M.B.E.'s and W.B.E.'s. Contracts so awarded to MBE's and WBE's shall be considered target market contracts for purposes of satisfying the requirements of Section 2-92-460(a) of this chapter,
- (h) Include M.B.E.'s and W.B.E.'s on solicitation mailing lists, and encourage that they be solicited for suitable contracts;
- (i) Include with the bid specifications for each competitively bid contract a list of certified M.B.E.'s and W.B.E.'s that are available to perform the work required by the specifications or otherwise make such a list available to potential bidders;
- (j) Working with the department of planning and development, review the bonding and insurance requirements applicable to M.B.E.'s and W.B.E.'s and evaluate methods for reducing the burden imposed by such requirements consistent with the protection of the city's interest;
- (k) To the extent practicable, ensure that M.B.E./W.B.E. invoices for payment are processed expeditiously by the relevant city user departments;

- (l) Working with the board, issue rules and regulations relating to the credit program;
- (m) Working with the law department, issue rules and regulations relating to appeals of the decisions for the purchasing agent under the program;
- (n) Issue rules and regulations to implement the procedures designed by the contract compliance officer. *(Prior code 26-103; Added. Coun. J. 7-31-90, p. 19319; Amend. 12-11-91, p. 10936)*

### **2-92-450 Reduction or waiver of commitment**

If, in connection with a particular contract, either before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract, the purchasing agent determines that it is impracticable or excessively costly to obtain qualified MBE's or WBE's to perform sufficient work to fulfill the commitment stated in Section 2-92-440 hereof, the purchasing agent shall reduce or waive the commitment to MBE/WBE participation in the contract, as may be appropriate. The purchasing agent shall issue rules and regulations setting forth the standards to be used in determining whether or not such a reduction or waiver is appropriate. Except as otherwise provided in such rules and regulations, a waiver or reduction shall be deemed appropriate if a contractor has unsuccessfully solicited 50 percent or more of the appropriate M.B.E.'s or W.B.E.'s to perform the work identified in the bid solicitation in accordance with Section 2-92-440(i) hereof and has documented such effort to the satisfaction of the purchasing agent. In addition, such rules and regulations shall require that a contractor seeking a waiver or reduction shall have provided timely notice of the need for subcontractors to an appropriate association of M.B.E.'s or W.B.E.'s, which association or associations shall be entitled to comment on any waiver or reduction application. If the purchasing agent determines that a lesser percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, such bid solicitations shall include a statement of such revised standards. *(Prior code 26-104; Added. Coun. J. 7-31-90, p. 19319)*

### **2-92-460 Target market program.**

In order to achieve the goal stated in Section 2-92-430 of this chapter, the purchasing agent shall develop and coordinate a target market program including the following elements:

- (a) In January of each year the purchasing agent shall estimate the dollar value of all contracts to

be awarded by the city during that year and shall multiply that total by the M.B.E. target market percentage and the W.B.E. target market percentage for that year. Contracts with an estimated dollar value equal to such products shall be set aside (prior to advertisement in the case of contracts to be awarded by bid) to be let only to qualified M.B.E.'s and qualified W.B.E.'s, respectively.

(b) The purchasing agent shall work with the officers, departments and agencies of the city and the board to determine the appropriate designation of contracts as target market contracts. To the extent practicable, the purchasing agent shall divide the procurements so designated into contact award units of economically feasible production runs in order to facilitate offers or bids from M.B.E.'s and W.B.E.'s. In making this annual designation of target market contracts, the purchasing agent shall attempt to vary the included procurements so that a variety of goods and services produced by different M.B.E.'s and W.B.E.'s shall be set aside each year. MBE's and WBE's shall remain eligible to seek the procurement award of contracts which have not been designated as target market contracts.

(c) The purchasing department shall develop a list of M.B.E.'s and W.B.E.'s who are interested in participating in the target market program, including the type of contract in which each M.B.E. and W.B.E. is interested in participating. The purchasing department may make participation in the target market program dependent upon submission to stricter compliance audits than are generally applicable to participants in the program. No contract shall be eligible for inclusion in the target market program unless the list developed by the purchasing department indicates that there are at least three qualified M.B.E.'s or W.B.E.'s interested in participating in that type of contract. The purchasing department may develop guidelines to regulate the level of participation of individual M.B.E.'s and W.B.E.'s in the target market program in order to prevent the domination of the target market program by a small number of such entities. Where necessary or useful, the purchasing department may require M.B.E.'s and W.B.E.'s to participate in training programs offered by the department of planning and development or other city departments or agencies as a condition to

participation in the target market program.

- (d) Participation in the target market program shall be limited to M.B.E.'s, W.B.E.'s and joint ventures consisting exclusively of M.B.E.'s, or W.B.E.'s or both. The prime contractor on a target market contract may subcontract up to 50 percent of the dollar value of the target market contract to subcontractors who are not M.B.E.'s or W.B.E.'s.
- (e) The purchasing departments may include in the target market program contracts which are funded by the state or federal government and may vary the standards of eligibility of the target market program (for example, by allowing the participation of D.B.E.'s,) to the extent necessary to comply with the requirements of the government agency supplying the funding.
- (f) If no satisfactory bid or response is received with respect to a contract which has been designated as part of the target market program, the purchasing department may delete such contract from target market program, in which case the contract shall be subject to the requirements of Section 2-92-440 of this chapter. In addition, the purchasing agent shall thereupon designate and set aside for the target market program additional contracts corresponding in approximate value to the contract which was deleted from the target market program, to the extent feasible.
- (g) In order to facilitate the performance of target market contracts by M.B.E.'s and W.B.E.'s, the purchasing agent may expedite payments under target market contracts, may reduce retainages under target market contracts where appropriate and may pay the contractor a portion of the value of a target market contract at the time of award as an advance to cover start-up and mobilization costs. *(Prior code 26-105; Added. Coun. J. 7-31-90, p. 19319; Amend. 12-111-91, p. 10-936)*

### **2-92-470 Construction project program.**

In order to achieve the goal stated in Section 2-92-430 of this chapter, the purchasing agent, together with the department of transportation, shall develop a construction project program to encourage the use of M.B.E.'s and W.B.E.'s on large construction contracts at levels in excess of those required by Section 2-92-440 of this chapter in order to help offset the effect that waivers granted pursuant to Section 2-92-450 of this chapter have upon the attainment of the goals set forth in Section 2-92-430. The construction project program shall include the following elements:

- (a) All departments and agencies contemplating a

construction contract in excess of \$10,000,000.00 shall notify the purchasing department prior to creating contract specifications. The purchasing department shall notify the board upon receipt of such notice, and the board shall thereafter designate a project task force to form a working group with the purchasing department, the department of planning and development and the user department or agency with respect to such construction contract. In consultation with the working group, the purchasing department shall set project-specific mandatory subcontracting goals in excess of the goals set forth in Section 2-92-440 of this chapter and commensurate with the projected availability of qualified M.B.E.'s and W.B.E.'s.

- (b) The purchasing department and the project task force shall host one or more pre-bid conferences to acquaint potential prime contractors and M.B.E. and W.B.E. subcontractors with the project and to acquaint prime contractors with potential M.B.E. and W.B.E. subcontractors.
- (c) The project task force and the department of planning and development may offer general assistance to M.B.E.'s and W.B.E.'s concerning the subcontracting process and financial planning related to participation in the construction project program.
- (d) The cost of funding the project task force shall be included in the bid specifications, based upon a reasonable per diem fee and a stipend for pre-bid services established by the board. No board member shall receive any fee or compensation for participating in the project task force, but each member may be reimbursed for expenses reasonable incurred in the performance of official duties (*Prior code 26-106; Added. Coun. J. 7-31-90, p. 19319; Amend. 12-11-91, p. 10925*)

**2-92-480 Determination of compliance**

For purposes of determining compliance with any of the requirements for M.B.E. or W.B.E. participation in contracts under the several programs which constitute the program, contracts with M.B.E.'s or W.B.E.'s that involve performing the duties of a broker shall only be taken into account to the following extent: from the effective date of this ordinance through December 31, 1990, 20 percent; from January 1, 1991, through December 31, 1991, 10 percent; from January 1, 1992,

through December 31, 1992, five percent; and thereafter, zero percent. (*Prior code 26-107; Added. Coun. J. 7-31-90, p. 19319*)

**2-92-490 Contract compliance officer.**

A contract compliance officer shall be appointed by the mayor within 30 days of the effective date of this ordinance. The contract compliance officer shall, in coordination with the board and the purchasing agent, perform the following duties:

- (a) Supervise the implementation of the program and report to the mayor and to the board on a quarterly basis the extent of achievement of the goal stated in Section 2-92-430 of this chapter, along with any recommendations for modification of the goal or of the measures contained herein;
- (b) Establish uniform procedures to apply for certification as a M.B.E. or W.B.E. The certification of local businesses owned by one or more members of a minority group which are certified by the city as M.B.E.'s or W.B.E.'s at the effective date of this ordinance shall not be affected by the adoption of this ordinance until their current certification period expired or until they are decertified in accordance with subsection (g) of this section. Each application for certification shall be in writing, and executed under oath by an officer or owner of the applicant, and shall contain such information as may assist the contract compliance officer in determining the status of the applicant. If certification or recertification of a business entity has been denied three or more times in a five-year period, then the contract compliance officer may not consider an application from such business entity or its successors for a period of four years from the date of the most recent denial;
- (c) Recruit M.B.E.'s and W.B.E.'s to apply for certification. Recruitment may be done through contact with other governments, governmental agencies, community organizations or business associations, advertising or any other suitable means;
- (d) Maintain a directory of certified M.B.E.'s or W.B.E.'s, describing them by name, business address, classification and type of business. This directory shall be made available to any interested person during normal business hours. A local business which meets all the requirements to be certified as a M.B.E. or W.B.E. under this chapter except for the fact that it has

become an established business since its initial certification may request to be listed in the directory, although it will remain ineligible for participation in the program;

- (e) Direct certified M.B.E.'s and W.B.E.'s to notify him or her of any change in ownership, officers or management within 10 days after such change occurs;
- (f) Investigate the status of certified M.B.E.'s and W.B.E.'s to determine whether they should retain certification;
- (g) Establish uniform procedures, consistent with the principles of due process of law, for the decertification of M.B.E.'s and W.B.E.'s which have been improperly certified or no longer qualify for certification, and for appeal from decertification;
- (h) Notify the purchasing agent and all city agencies and departments which request information on certified M.B.E.'s and W.B.E.'s of any decertification made in accordance with subsection (g) of this section. If certification or recertification of a business entity has been denied by the contract compliance officer, then the contract compliance officer shall also inform other Chicago area governmental agencies with affirmative action plans containing similar certification criteria of such denial if such agencies have agreed to provide similar information to the contract compliance officer;
- (i) Publicize the program through appropriate means, in order to attract qualified M.B.E.'s and W.B.E.'s (*Prior code 26-108; Added. Coun. J. 7-31-90, p. 19319*)

### **2-92-500 City officers - Consultation and cooperation**

The head of any executive department or agency of city government who exercises any contracting power on behalf of the city beyond the scope of the Purchasing Act shall consult and cooperate with the purchasing agent and the contract compliance officer in achieving the goal stated in Section 2-92-430 of this chapter through his or her exercise of the contracting power and shall, to the extent practicable, implement procedures described in subsections (a) through (e) of Sections 2-92-440 and 2-92-460. (*Prior code 26-109; Added. Coun. J. 7-31-90. p. 10319*)

### **2-92-510 Affirmative action advisory board - Membership, appointment, term and compensation.**

There is hereby established for the city of Chicago an affirmative action advisory board to monitor and report on the participation of minority - and women-owned businesses in public contracting. The board shall consist of 11 members appointed by the mayor within 90 days of the effective date of this ordinance for two-year terms, who shall serve at the pleasure of the mayor. All members of the board who are not employees of the city shall be subject to confirmation by the city council. Members shall hold office until their successors are appointed.

Whenever a vacancy shall occur by reason of death, resignation, expiration of term or other reason, the mayor shall appoint a new member for the balance of the unexpired term. The mayor shall designate a member to serve as chair of the board, who shall serve in such capacity at the pleasure of the mayor. All members of the board shall be residents of the city of Chicago. Two of the members shall be representatives of the purchasing department, one member shall be a representative of the department of transportation, four members shall be representatives of M.B.E.'s, one member shall be a representative of a W.B.E. and three members shall be representatives of contractors that are neither MBE's nor WBE's. The mayor may appoint representatives of appropriate associations of M.B.E.'s, W.B.E.'s or contractors that are neither M.B.E.'s nor W.B.E.'s as members of the board. Members of the board who are not employees of the city may not be appointed to more than two consecutive terms. Members of the board who are not employees of the city shall disclose to the board any financial or economic interest, as defined in the governmental ethics ordinance, they, a relative as defined in the governmental ethics ordinance, or any M.B.E., W.B.E. or contractor they represent may have in matters coming before the board and shall abstain from participation in such matters. Members of the board who are not employees of the city shall be exempt from Sections 2-156-020, 2-156-030(b) and (c) of the governmental ethics ordinance as these sections pertain to their board membership. No member of the board shall be compensated for membership, but each member may be reimbursed for expenses reasonable incurred in the performance of official duties. The board may accept offers of gifts or grants from the United States, the state of Illinois, their agencies or officers, or from any person, firm or corporation of services, equipment, supplies, materials or funds and, with the consent of the purchasing agent, may expend such receipts on projects which facilitate the performance of its duties. The mayor shall appoint a staff director and such additional staff as may be necessary to carry out the business of the board in cooperation with the purchasing department. (*Prior code 26-110; Added. Coun. J. 7-31-90, p. 19319; Amend. 12-11-91, p. 10925*)

**2-92-520 Affirmative action advisory board - Duties and responsibilities**

The board and its staff shall meet regularly with representatives of the purchasing department and the department of transportation to review the implementation of the program. In addition, the board shall:

- (a) Assist the purchasing department in the adoption of regulations and guidelines for the implementation of the program, including the target market program;
- (b) Recommend to the purchasing department contract areas appropriate for inclusion in the target market program;
- (c) Appoint project task forces consisting of members of the board to assist the purchasing department in the implementation of the construction project program provided for in Section 2-92-470 of this chapter.
- (d) Refer charges that city employees have engaged in discrimination against members of minority groups or women in the purchasing function to the city inspector general, the city commission on human relations or the Illinois Department of Human Rights;
- (e) Administer the credit program;
- (f) Make recommendations to the purchasing agent concerning the suspension of contractors, M.B.E.'s and W.B.E.'s that are charged with making fraudulent misrepresentations concerning M.B.E. and W.B.E. utilization pursuant to Section 2-92-540 of this chapter.
- (g) On or before September 30, 1991, issue a report to the mayor and to the purchasing agent setting forth proposed standards for the determination of when an M.B.E. or W.B.E. has become self-sufficient and capable of competing in the market with nondisadvantaged firms and thus should be treated as an established business under the program;
- (h) Submit a report on or before March 1<sup>st</sup> of each year to the mayor and to the city council reviewing the performance of city departments in meeting the goals established in the program, and recommend amendments to the program which the board believes are necessary to accomplish its purposes.
- (i) Perform such other affirmative action related duties as the mayor may require (*Prior code 26-111; Added. Coun. J. 7-31-90, p.19319; Amend. 12-11-91, p.10925*)

**2-92-530 Credit Program**

The purchasing department and the board shall establish by January 1, 1991, a program (the "credit program") whereby contractors may receive credit applicable to meeting the requirements set forth in subsections (a) and (d) of Section 2-92-440, based on their utilization of M.B.E.'s and W.B.E.'s in projects not involving governmental funding. The credit program shall be reviewed annually by the board and the purchasing department and may be suspended by the board upon a finding of substantial evidence of fraud in connection with application for credits. The credit program shall include the following features:

- (a) Credits shall be awarded by the board only for the use of M.B.E.'s or W.B.E.'s in projects which do not have affirmative action goals mandated by law or contract or to the extent of use in excess of such mandated affirmative action goals.
- (b) One dollar of credit shall be earned for each three dollars of eligible use.
- (c) Credits shall be awarded only to the party responsible for hiring the M.B.E. or W.B.E. and if there is more than one responsible party, credits shall be allocated ratably among such parties in order to prevent duplication
- (d) Credits may be applied at the time a contract is awarded against the requirements set forth in subsections (a) and (d) of Section 2-92-440 to reduce the requirements, dollar of requirement for dollar of credit, up to a maximum credit of five percent of the dollar value of the contract.
- (e) Credits may not be applied more than one year after being awarded by the board. (*Prior code 26.112; Added. Coun. J. 7-31-90, p. 19319*)

**2-92-540 Fraudulent misrepresentation.**

If the purchasing agent determines, after notice and a hearing before the purchasing agent and upon receipt of a nonbinding recommendation from the board, that a contract or, M.B.E. or W.B.E. has made fraudulent misrepresentations to the purchasing department regarding the utilization of M.B.E.'s, or W.B.E.'s, or has colluded with another making such fraudulent misrepresentations, the contractor, M.B.E. or W.B.E., as the case may be, shall be disqualified from contracting or subcontracting on additional contracts for a period of three years. No M.B.E. or W.B.E. shall be disqualified for collusive misrepresentations unless all parties with which the M.B.E. or W.B.E. was found to have colluded are also disqualified. The city shall regard as nonresponsive any bid submitted during such three-year period which includes a disqualified entity as a contractor, subcontractor or member of a joint venture. In the event

that a contractor submitting a bid is determined by the purchasing department not to have been involved in any misrepresentation of the status of a disqualified subcontractor included in the bid, the purchasing department may allow the contractor to discharge the disqualified subcontractor and, if possible, identify and engage a qualified subcontractor as its replacement for inclusion in the bid. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject. The purchasing department shall inform the State's Attorney of Cook County of instances of fraudulent misrepresentation and collusion (*Prior code 26-113; Added. Coun. J. 7-31-90, p. 19319*)

**2-92-550                    Administrative rules and regulations**

The purchasing department may promulgate administrative rules and regulations implementing Sections 2-92-420 through 2-92-570 of this chapter. The rules and regulations may prescribe time delays.