

Regulations Governing Certification of Minority and Women-Owned Businesses

city of **Chicago**



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**CITY OF CHICAGO, ILLINOIS
REGULATIONS GOVERNING CERTIFICATION OF
MINORITY AND WOMEN-OWNED BUSINESSES**

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**CITY OF CHICAGO, ILLINOIS
REGULATIONS GOVERNING CERTIFICATION OF
MINORITY AND WOMEN-OWNED BUSINESSES**

I. PURPOSE AND APPLICABILITY

These regulations are implemented as a result of Chapter 2-92-420 et. seq. of the amended Municipal Code (hereinafter Ordinance) authorizing a Minority and Women-Owned Business Enterprise Procurement Program and, except as otherwise provided herein, shall be used by the Contract Compliance Administrator in all final actions with regard to determining the status of a firm as a "Minority Business Enterprise" (hereinafter referred to as "MBE") and a "Women Business Enterprise" (hereinafter referred to as "WBE") for City procurement purposes. The Ordinance mandates that the City of Chicago use its purchasing functions to provide and enhance competitive opportunities for minority and women-owned businesses located within the six county region of Cook, DuPage, Kane, Lake, McHenry and Will in the State of Illinois.

II. EFFECTIVE DATE

These regulations shall be effective as of March 1, 1993, and shall be applicable to all requests for Minority Business Enterprise and Women Business Enterprise certification and continued eligibility.

III. POLICY

It is the policy of the City of Chicago, Illinois (hereinafter City) that MBE's and WBE's, as those terms are defined in the Ordinance, and in these Regulations, shall have the maximum feasible opportunity to participate fully in all contracts financed in whole or in part with City funds, or funds over which the City has control. A major objective of that policy is the modification and/or elimination, within the confines of applicable law, of City procurement practices and policies which heretofore have denied legitimate businesses owned and controlled by women and racial/ethnic minorities, meaningful opportunities to participate in City awarded contracts. The denial of such opportunities has impeded the social progress and economic development of the City.

The Ordinance implements the City's policy to employ all lawful means to increase the participation of MBE's and WBE's in City contracts. However, the establishment of Section 2-92-420 et. seq. of the Municipal Code authorizing a City-initiated program to provide unique benefits historically denied MBE's and WBE's also requires the promulgation of regulations to permit identification, certification and continued eligibility of businesses legitimately entitled to be beneficiaries of MBE and/or WBE status for City contracting purposes. These regulations are intended to address the City's objectives in that regard.

Indications are that, as City procurement practices reflect more of the MBE and WBE participation objectives and requirements of the Ordinance, incentives for ineligible persons and businesses to devise schemes and business arrangements to illegally participate in the City's MBE/WBE program will increase. These certification regulations are intended to prevent the infiltration into that program of "front" firms, i.e., those not owned and controlled by minorities or women. However, this certification process is to be viewed as only a single component of an overall MBE/WBE program that shall include post-certification monitoring of firms certified as MBE's and/or WBE's to determine their entitlement to continued certification, and the imposition of appropriate penalties against persons or entities determined to have violated these regulations or provided assistance to those obtaining MBE and/or WBE certification by illegal means. The Small Business Act (15 U.S.C.A. 645(d)) provides that anyone who misrepresents the status of any

concern as a small business or a concern owned and controlled by socially and economically disadvantaged individuals to obtain a contract is subject to penalties including fines, imprisonment, suspension, debarment, and program ineligibility.

IV. AUTHORITY AND MBE/WBE CONTRACT REQUIREMENTS

The authority to issue these regulations is derived in part from the Ordinance which mandates in Section 2-92-550 the promulgation of regulations governing certification of MBE and WBE applicants, and initiation of investigatory proceedings incident to monitoring such firms' continued entitlement to MBE and/or WBE certification. The Ordinance also directs the Chief Procurement Officer to establish an overall goal of awarding not less than twenty-five percent (25%) and five percent (5%) of the annual dollar value of all City contracts to MBE's and WBE's, respectively.

The certification of Local Businesses owned by one or more members of a Minority Group which are certified by the City as MBE or WBE at the effective date of this Ordinance shall not be affected by the adoption of this Ordinance until certification expires, in accordance with Section 2-92-490(b). 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 Administrator. Further, as a means of ensuring compliance with that goal, the Ordinance provides generally that City contracts awarded for the provision of goods and/or services, whether awarded by competitive bidding or otherwise, shall contain contractor commitments for the expenditure of not less than twenty-five percent (25%) of the total dollar value of such contracts (including modifications and amendments) with MBE's, and not less than five percent (5%) of the total dollar value of such contracts with WBE's, or the applicable annual percentage as stated in the Ordinance.

Pursuant to Section 2-92-440(g) of the Ordinance, the Chief Procurement Officer is directed to award City contracts requiring the expenditure of funds not exceeding \$10,000 to MBE's and WBE's, to the extent practicable. In addition, all City departments have the responsibility for, and shall undertake, all feasible means to solicit and utilize MBE's and WBE's in their contracts. All actions by and decisions of the City with respect to certification, continued eligibility, denial of certification and de-certification of any Applicant as an MBE or WBE shall be made by the Contract Compliance Administrator, or in his/her name by his/her designee.

It is the intent of the Ordinance and a requirement of these regulations that firms claiming status as MBE and/or WBE for City contracting purposes shall be recognized and entitled to continued recognition as such only following their satisfactory certification by the Contract Compliance Administrator in accordance with the Certification Guidelines and Eligibility Standards herein.

Certification shall be mandatory for all firms requesting MBE and/or WBE status on a City contract, whether as a prime contractor, subcontractor, joint venture partner, Target Market participant or otherwise. Until there has been a final determination regarding an Applicant's certification, participation by such business on City contracts as MBE and/or WBE shall not be counted toward the established goals. However, the absence of City MBE/WBE certification shall not prohibit any qualified certification applicant from competing for and participating in City contracts as non-MBE participants or non-WBE participants, except in cases of certification denials based upon misrepresentation or other unlawful conduct.

These regulations are intended to be consistent with the United States Department of Transportation (hereinafter referred to as "DOT") regulations governing DBE certification of businesses participating in DOT-funded contracts. DOT regulations are published in Title 49, Part 23 of the Code of Federal Regulations. In cases of conflict between City of Chicago regulations governing certification of minority and women-owned businesses and DOT regulations to determine DBE

eligibility for certification on DOT-funded contracts only, DOT regulations shall prevail. In all other situations, City of Chicago regulations shall prevail.

V. DEFINITIONS

1. "AFFILIATE" of an applicant 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.
2. "APPLICANT" means any person or firm who submits a Schedule A or No Change Affidavit (including documents or information associated therewith) to the Contract Compliance Administrator for determination of eligibility as an MBE or WBE.
3. "BOARD" means the Affirmative Action Advisory Board established in Section 2-92-510 of the Ordinance.
4. "CONTRACT COMPLIANCE ADMINISTRATOR" means the person appointed by the Mayor of the City pursuant to Section 2-92-490 of the Ordinance. In coordination with the Board and the Deputy Procurement Officer, is responsible for the implementation of the Program, establishing uniform policies governing the participation of qualified MBE's and WBE's in City contracts and promulgating regulations regarding the certification, continued eligibility and de-certification of Minority and Women Owned Business Enterprises.
5. "CONTRACTOR" means any person or business entity that shall enter into a contract with the City, and includes all partners and all joint venturers of such person or entity.
6. "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.
7. "GRADUATION" is the determination whether or not a certified MBE or WBE is an established business.
8. "JOINT VENTURE" means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skills and knowledge.
9. "LOCAL BUSINESS" means a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (hereinafter referred to as the "Six-County Region") which has the majority of its regular, full-time work force located within the Six-County Region.
10. "MAYOR" means the Mayor of the City of Chicago.
11. "MINORITY" or "MINORITY GROUP" means those individuals or groups who are citizens of the United States (or lawfully admitted permanent residents) who are in any of the following racial/ethnic groups:
 - i African-American or Black (persons having origins in any of the black racial groups of Africa);
 - ii Hispanic (persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race);
 - iii Asian American (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 Affirmative Action Advisory 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.

NOTE: Any member of an ethnic group not identified above who is seeking certification in the MBE/WBE program should submit, with the Schedule A application, a formal request to the Affirmative Action Advisory Board for consideration.

- 12. "MINORITY OWNED BUSINESS or MBE" means a Local Business which has been awarded certification by the City 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.
- 13. "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.
- 14. "Deputy Procurement Officer" means the Purchasing Agent of the City.
- 15. "TARGET MARKET" means a contract designated for competition limited to MBE's or WBE's by either a negotiated or competitive bid process pursuant to Section 2-92-460.
- 16. "WOMEN-OWNED BUSINESS or WBE" means a local business which has been awarded certification by the City and which is at least 51% owned by one or more women or, in the case of a publicly held corporation, 51% 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.

VI. ELIGIBILITY STANDARDS

The eligibility standards herein shall be used in determinations of Applicant eligibility for certification and continued eligibility as an MBE and/or WBE. Applicant eligibility shall be thoroughly investigated and reviewed annually. The investigative techniques that shall be employed by the Contract Compliance Administrator in determining the eligibility of Applicants will include some or all of the following, as appropriate: review of the application and supporting documentation; individual interviews of principal management officials and/or owners of Applicants; site visits of Applicant's facilities; and informational solicitations from individuals, organizations and agencies having knowledge of the Applicant, and its management, ownership and proffered areas of specialty or expertise.

Use of additional investigative techniques shall be made in appropriate cases to verify Applicant's Schedule A, or Continued eligibility Affidavit representations. In appropriate cases, consideration shall be given to publication by the Contract Compliance Administrator, in newspapers of general circulation in the locale of the Applicant's alleged place of business, of notice of Applicant's submission of a Schedule A, or No Change Affidavit, identities of alleged principal officers and/or owners, alleged ownership status (i.e., MBE or WBE), and principal area(s) of specialty or expertise. False, erroneous or misleading statements by any Applicant regarding its performance on contracts

with any person, or involvement in contracting or certification-related irregularities with any private or governmental entity, and non-compliance with reasonable requests of the City for information concerning MBE or WBE eligibility, shall be accorded substantial weight in determining the Applicant's entitlement to certification or continued certification as an MBE or WBE.

The certification process established by the City is intended to ensure that only small business firms independently owned and controlled in both substance and form by one or more socially and economically disadvantaged persons are certified. Firms who seek certification must be operational and in business for a profit. The minority and women owners of the firm must possess the resources and the expertise to operate in the firm's field of work.

The review of each application will involve scrutiny of the following evidence:

- A. Documents evidencing ethnicity and gender, e.g., birth certificates, naturalization papers or driver's license;
- B. Documents evidencing ownership of record include Articles of Incorporation, By-laws, Partnership agreements, copies of issued stock certificates, copies of shareholder agreements, minutes of initial and most recent Board of Directors' meetings and corporate income tax returns;
- C. Documentation of ownership that is demonstrated as acquired through real and substantial contributions of expertise, capital or other tangible personal assets;
- D. Documents establishing that the contributions are derived from the assets of the individual(s) include bank receipts, stock certificates, and corporate minutes;
- E. Where expertise is used as the contribution to acquire ownership interest, the applicant should demonstrate expertise in the firm's critical operations.

VII. ELIGIBILITY CRITERIA

- A. An Applicant for MBE certification must be a business entity 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 is owned by one or more members of one or more minority groups; and whose management and daily business operations are controlled by one or more such individuals.
- B. An Applicant for WBE certification must be a business entity which is at least 51% owned by one or more women, or in the case of a publicly held corporation, 51% of the stock is owned by one or more women; and whose management and daily business operations are controlled by one or more such women.
- C. Determinations of ownership in the Applicant firm by minorities and women shall be made without regard to community property laws of any state. It shall be the responsibility of all Applicants to establish, by clear and convincing evidence, that they are owned and controlled by minorities and/or women. The following criteria apply:
1. The principal of the applicant firm must demonstrate financial resources to acquire ownership and past experience that verifies demonstrated capability to engage in business in the area for which certification is sought. It is of no consequence that other partners/owners, spouses or employees have these abilities, or resources;
 2. Control is comprised of two parts: managerial and operational. The minority or women owner(s) must demonstrate responsibility for the critical areas of the operations and must be able to make independent and unilateral business decisions;
 3. The minority or women owner(s) must demonstrate that he/she independently makes basic decisions in daily operations;
 4. The minority or women owner(s) must have complete control of the Board of Directors;
 5. The minority or women owner(s) should possess adequate assets or resources to operate self-sufficiently in areas of finance, bonding, supervision, personnel, equipment, materials, and facilities; and
 6. Owners must share in risks and profits commensurate with their ownership interests, as well as receive at least 51% of any dividends paid upon liquidation.
- D. Ownership and control by such minorities and women shall be real, continuing and shall go beyond the pro forma ownership of the Applicant as reflected in ownership documents. Minority and/or women owners shall enjoy all customary incidents of ownership and shall share in all risks and profits commensurate with their ownership interests, as demonstrated by a detailed examination of the substance of their business arrangements with others. Ownership is demonstrated by:
1. An ability to transfer stock, title, and possession;
 2. Verifiable assets for acquisition derived from independently owned holdings without benefit of a transfer of assets or gift from non-minority person(s) by other means;
 3. Documentation should be found in the corporate records of the firm. The records must clearly show the contribution of such expertise and its value to the firm.
- E. Securities which represent ownership of the Applicant by minorities or women shall be directly and physically held by them, without limitation by non-minorities or men. Securities held in trust or by

any guardian for a minor or incompetent person or, in the appropriate case, pledged as collateral to secure any principal indebtedness of Applicant, shall be excluded from the determination of whether the Applicant is owned and controlled by minorities or women.

- F. Contributions of capital or expertise by minority or women owners to acquire their ownership interests in the Applicant shall be real and substantial, and be in proportion to the interest(s) acquired. Insufficient contributions shall include, but are not be limited to:
1. Promises to contribute capital or expertise in the future;
 2. Notes payable from minority or women owners to the Applicant or owners who are not minorities or women;
 3. Participation in Applicant firm by alleged minority or women owners as mere employees; and
 4. Provision by any alleged owner of goods, services, or equipment having an actual or estimated value based upon industry standards substantially less than the value attributed in Applicant's Schedule A, or No Change Affidavit.
- G. All MBE's and/or WBE's shall be viable businesses. "Viability" of the Applicant shall be examined with reference to its capital structure as determined from audited or auditable financial statements, or income projections when the Applicant is a new business. Viability will also be determined by review of the following criteria, although review may not be limited to these areas:
1. possession of insurance, bonds and/or licenses (e.g., sewer contractor, plumber, etc.) mandated by applicable governmental agencies to perform the work the Applicant represents as its principal area(s) of specialty/expertise;
 2. access to real properties and facilities from which to conduct day-to-day business operations;
 3. employment of and/or access to employment of persons in sufficient numbers and with expertise essential to satisfactory contract performance in its proffered area(s) of specialty/expertise; and,
 4. the Applicant's ownership of and/or access to equipment, goods, supplies, etc., essential to its satisfactory performance in its alleged area(s) of specialty/expertise.

- H. "Independence" shall be examined with reference to the perceived ability of the Applicant to perform in its area(s) of specialty/expertise without substantial reliance upon finances, resources, expertise, manpower, facilities, or equipment of non-minority or non-women business enterprises to perform satisfactorily in its area(s) of specialty/expertise. Recognition of the Applicant as a separate and distinct entity by governmental taxing authorities shall not be dispositive of any Applicant's assertions of independence. Independence shall be established by reviewing the following criteria:
1. Date business was established;
 2. Degree to which financial, equipment leasing, business and other relationships with non-minority or non-women owned firms vary from normal industry practice;
 3. The determination of adequacy of expertise without the need to rely upon a non-minority or non-female individual.
- I. Minority and Women-Owned Businesses may be certified in more than one area of specialty or expertise, as long as the eligibility criteria are met. Applicants desiring to be certified in additional areas of competence may submit an expansion request in writing in accordance with Section VII. Until certification is awarded, participation on a contract in an uncertified area shall not count toward fulfillment of MBE/WBE contract goals.
- J. In the following and other appropriate cases, the Applicant shall be closely scrutinized to determine its true abilities to operate viably and independently of non-minorities or to otherwise meet the viability and/or independence criteria herein:
1. Applicant's status as a party to any long term (i.e., more than three years) contract, lease or lease agreements with non-minority/non-women persons or firms;
 2. Applicant's status as a party to any contract, lease, or lease agreements on terms at variance with industry standards or prudent business practices;
 3. Interlocking stock ownership of the Applicant and non-minority/non-women businesses in the same or related industry;
 4. Common directorates/officers between the Applicant and non-minority/non-women owned businesses;
 5. Applicant's use of employees, equipment, expertise or facilities "shared" with or obtained from non-minority/non-women businesses;
 6. The receipt by the Applicant's non-minority/non-women owners of financial benefits (e.g., dividends, loans, salaries, and distributions) from the Applicant which exceed their proportionate ownership interests;
 7. The Applicant's failure, after a reasonable period, to demonstrate an ability to operate as a viable entity without continuing substantial reliance upon equipment, facilities, leasing and/or creditor-debtor relationships with non-minorities/non-females;
 8. Newly established firms and firms whose ownership and/or control has changed since the date of the advertisement of a specification or the date its applicant has indicated that a bid response will be submitted;
 9. Any previous and/or continuing employer-employee relationship among or between present minority and/or women owners and those who are not minorities or women

to ensure that all minority/women owners actually have the independent ownership and management responsibilities and capabilities contemplated by these regulations.

- K. Minority or women owners shall, either collectively or individually, possess the power to direct or cause the direction of management, policies and objectives of the Applicant and to make all substantive day-to-day decisions on Applicant's major and essential operations. No formal or informal restrictions of any kind shall exist which limit the customary discretion necessary to actual business control by the minorities or women. Unless mandated by law, no restrictions in by-law provisions, partnership agreements, or charter requirements shall exist which limit minorities or women from effective and continuous control of the Applicant or which prevent minorities or women, without the cooperation of any owner who is not a minority or woman, from making any operational business decision for the Applicant. In all cases, any business relationship between Applicant and its minority/women owners and non-minorities and men shall be given close scrutiny to determine conflicts with the ownership and control requirements of these regulations.
- L. For purposes of these regulations, it shall be presumed, unless conclusively established otherwise, that the status of any minority or woman as an owner/manager of the Applicant shall require full-time participation by such person in the management of the Applicant's day-to-day activities. In addition, current employment histories of all owners and managers shall be requested, reviewed and verified to determine the administrative and business expertise and involvement by such persons in activities and employment which may contradict any representation of full-time management participation.
- M. Absentee management or ownership by any minority or woman owner who does not assume and exercise an active and substantial role in Applicant's day-to-day management shall be considered in the determination of whether Applicant is owned and controlled by minorities or women.
- N. Owners of the Applicant who are not minorities or women shall not be vested with the primary responsibility or ability to direct its day-to-day management operations. In cases where evidence indicates that major management activities (e.g., hiring and firing of management personnel, equipment/supply acquisitions and purchases, negotiating contracts, estimating contract costs and approval, and check signing) of the Applicant are performed by persons other than the minority/women owners, persons actually performing such duties shall be presumed to control those aspects of the Applicant's business.
- O. All information provided by Applicant on any Schedule A, or No Change Affidavit shall demonstrate an Applicant's ability to obligate itself contractually, without prior approval of non-minorities, to a prime contractor, joint venture and/or the City in the performance of a contract, subcontract or legally binding agreement, whichever is applicable, and to perform the majority of that which it is obligated to perform through the use of its own employees and/or equipment.
- P. Evidence of Applicant's certification as MBE/WBE (or Disadvantaged Business Enterprise, as that term is defined in 49 CFR Part 23) by another governmental body or agency shall be a factor, but is not dispositive in the determination of Applicant's eligibility for certification by the City.

VIII. APPLICATION FOR CERTIFICATION AND CONTINUED ELIGIBILITY

- A. All prospective applicants requesting initial certification as an MBE and/or WBE shall file with the Contract Compliance Administrator a completed Schedule A - Certification Declaration Affidavit for Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE) and/or Women Business Enterprise (WBE). Minority Business Enterprise and Women Business Enterprise certification awarded any Applicant by the City shall be valid for one year from the effective date of the certification and only as to the area of specialty/expertise specified therein. Failure to request continued eligibility annually as required by these regulations shall result in the lapse of an Applicant's certification, and ineligibility of that Applicant to participate in any contract as an MBE/WBE.
- B. Any Firm currently certified as MBE/WBE and requesting MBE/WBE continued eligibility shall file with the Contract Compliance Administrator a completed No Change Affidavit prior to the firm's certification expiration date. All subsequent submittals may be made in the form of a No Change Affidavit provided no changes in ownership, management or control have occurred and the certification area remains the same. The No Change Affidavit should be filed no later than the end of the tenth calendar month following the effective date of the Applicant's last MBE/WBE certification.
- C. Certified MBE/WBE's who fail to file the No Change Affidavit before the expiration of their current certification period shall be deemed to have had their certification lapse as of the end of the certification period and will be ineligible to participate as an MBE/WBE until further certification is issued by the Contract Compliance Administrator. Applicants who have allowed certification to lapse over thirty (30) days must reapply by completing a Schedule A.
- D. All Schedule A's, or No Change Affidavits (inclusive of pertinent documents) shall be executed under oath by the owner or duly authorized officer of the Applicant, and notarized. If such forms are signed by any party other than the President and Secretary of a corporation, the General Partner(s) of a Partnership, or Sole Owner of a Sole Proprietorship, such party must also submit evidence of his/her authority to execute the form(s). Material factual representations in such form(s) shall be based upon the personal knowledge of the person executing the form(s). As a condition of certification or continued certification, however, the Contract Compliance Administrator shall be authorized to request at any time from any Applicant such additional information as may be deemed relevant to any Applicant's status as an MBE/WBE, including an updated Schedule A.
- E. All Applicants submitting a Schedule A, or No Change Affidavit shall affirm, as a pre-condition to consideration for MBE/WBE certification that:
- i) No principal, officer, owner, or any other person having decision-making authority in the Applicant has, within one calendar year of the date of such form, been convicted of a crime involving dishonesty or false statement (e.g., bribery, theft, collusion, or anti-competitive activity) in connection with any contract or bidding irregularities involving any person, or breach of the public trust;
 - ii) No principal, officer, owner or any person having decision-making authority or any direct or indirect interest in the Applicant has, within one year of the date of such form, owned a direct or indirect interest in, or been financially affiliated with, any firm to which MBE/WBE/DBE certification has been denied or withdrawn by any governmental entity where such denial or withdrawal was based, in whole or in part, upon false information contained in application for MBE/WBE/DBE certification that was filed with any governmental agency and was signed by such person; and
 - iii) During any periods that an MBE/WBE certification is effective, all books and records in the Applicant's and its agent's possession, which may prove or disprove MBE/WBE eligibility,

shall be open for inspection and examination by the Contract Compliance Administrator upon reasonable notice.

- F. Schedule A, or No Change Affidavit forms filed by any Applicant for MBE/WBE certification shall include sufficient written authorizations or shall permit the Contract Compliance Administrator to obtain from third persons (e.g., banks, utility companies, business references, and lessors/lessees) such information as may be deemed relevant to any Applicant's eligibility for MBE/WBE certification.
- G. Until certification of an Applicant by the City as an MBE/WBE, participation by such Applicant as an MBE/WBE in City awarded contracts shall not be counted toward fulfillment of established goals. The absence of certification, however, shall in no way affect any Applicant's right to bid or submit a proposal for any City contract as a non-MBE/WBE.
- H. Changes during the pendency of the application in the Applicant's ownership, management, officers or financial relationships which may impact on the Applicant's eligibility as an MBE/WBE under these regulations must be communicated by the Applicant in writing to the Contract Compliance Administrator within ten (10) days of such change(s). Failure to communicate such changes as required herein shall constitute grounds for the denial for certification of such Applicant, or de-certification.
- I. Following the effective date of these regulations, certification as MBE/WBE shall be limited to the:
(a) status (e.g., MBE and/or WBE) requested by the Applicant; and (b) area(s) of specialty or expertise which is determined by the Contract Compliance Administrator to be most reflective of the Applicant's claimed specialty or expertise. Applicants seeking participation in City contracts in a status or in an area of specialty or expertise different from that for which MBE/WBE certification was initially awarded shall request certification in such new status or additional area(s). The request shall contain information sufficient to establish that a change in status or area(s) of specialty or expertise is warranted. Until certification, participation as MBE/WBE in any City contract in a different status or additional area shall be denied. The listing used by the City in categorizing areas of specialty or expertise is a part of the application and must be used by the Applicant in submitting an application for certification.

It is the responsibility of the applicant to provide the information deemed necessary by the certifying agency to determine eligibility. The burden of proof of eligibility is upon the applicant. The following guidelines will help to clarify the application process:

1. The City's process shall secure all necessary information from applicants through a well-defined application procedure and review process. It is emphasized that certification by the City is not binding on another governmental entity.
2. The applicant is required to provide evidence in support of fulfilling all DBE/MBE/WBE eligibility standards set forth within 49 CFR 23, and the City's MBE/WBE Certification Regulations. Also, the files shall contain all appropriate documentation in support of the certification of the firm. The following is a list of those materials which may be requested as a part of the application of Minority and Women Business Enterprises:

Fiscal Control

- Financial records (tax returns) for at least three previous years;
- Copy of loan agreements (past and present);
- Evidence of capital contribution to start-up or to acquire ownership;
- Titles to equipment and/or vehicles;
- Copies of bank signature authorization cards;
- Cancelled checks;

Ownership

- Copies of partnership agreements;
- Work history of the firm;
- Resumes of principals;
- Evidence of capital contribution to start-up or to acquire ownership;
- Articles of Incorporation and by-laws;
- Copy of Minutes of Board of Directors' and/or stockholders' meeting
- Copy of stock certificates and/or ledgers;
- Interviews with references and on-site visit;
- Titles to equipment and/or vehicles;
- Income tax returns;

Proof of Ethnicity/Gender/Citizenship

- Birth certificate;
- Naturalization papers;
- Passport;
- Driver's license

Expertise

- Resumes of principals;
- Work history of the firm;
- Interviews and on-site visit;
- Evidence of contract negotiation and execution.

IX. CERTIFICATION AND NO CHANGE AFFIDAVIT PROCEDURES

- A. Upon receipt by the Contract Compliance Administrator of any Schedule A, or No Change Affidavit, the form shall be dated and time stamped. The date and time stamp shall conclusively establish the receipt date of such form.
- B. With the Contract Compliance Administrator's receipt of any Schedule A, or No Change Affidavit, whichever is applicable, such form shall be thoroughly reviewed for material omissions of, or deficiencies with respect to information requested to be submitted on the Certification Checklist of forms Schedule A, or No Change Affidavit. Forms containing such omissions or deficiencies shall be returned to the Applicant, along with notice from the Contract Compliance Administrator delineating the nature of the omissions or deficiencies. Forms returned because of material omissions or deficiencies shall not be subject to the ninety (90) day decision requirement referred to in Subsection E herein until such forms are resubmitted and determined to be complete by the Contract Compliance Administrator. The date and time stamp on a resubmitted completed form shall conclusively establish the receipt date of such form for purpose of the ninety (90) day decision requirement of subsection E herein.
- C. **Staff Review.** Upon receipt of the completed Schedule A, or No Change Affidavit and written acknowledgment of receipt being sent to the Applicant, the application for certification or No Change Affidavit will be reviewed by the Contract Compliance Administrator's staff assigned to the Certification Unit. This review may include, among other things, site visits, personal interviews with the Applicant, and review of specific additional information in support of the application as requested by the staff.

Any request for additional information shall be in writing and will specify that the Applicant must respond to the request generally within thirty (30) calendar days. If the Applicant is unable to respond to the request for additional information within the time specified, the Applicant may request that additional time to respond be granted, provided that Applicant consents to a corresponding extension of time of the ninety (90) day decision requirement of subsection E herein. If the Applicant fails to respond to the staff's request for additional information within the thirty (30) calendar day period and does not request an extension of time to respond, the staff will close the file and notify the applicant that the application is no longer being considered.

- D. **MBE/WBE Certification Review Committee.** The Contract Compliance Administrator shall refer the completed Schedule A with the staff summary and all other information obtained in connection with the application, to the MBE/WBE Certification Review Committee for their review and recommendation. During its review, the MBE/WBE Certification Review Committee may request additional information or interviews from the Applicant.
- E. The Contract Compliance Administrator shall issue his/her determination granting the certification or continued eligibility of the Applicant as an MBE or WBE, or an initial determination denying such certification or continued eligibility, in a time timely manner following the Contract Compliance Administrator's receipt of a complete Schedule A, or No Change Affidavit from the Applicant.
- F. An initial determination denying certification or continued eligibility (Preliminary Denial) shall inform the Applicant of all material facts and conclusions upon which the decision of the MBE/WBE Certification Review Committee or the Contract Compliance Administrator was based. It shall also afford the Applicant at least fifteen (15) calendar days from the date of the initial determination within which to present, in writing, such evidence as the Applicant deems appropriate to respond to the initial determination. All Applicant responses to a Preliminary Denial for certification or continued eligibility should contain sufficient facts and/or documentation to clearly establish eligibility. Any alterations to material facts or restructuring of Applicant subsequent to issuance of the initial determination will be considered pro forma only.

- G. All final actions and/or decisions of the Contract Compliance Administrator with respect to the denial of certification or continued eligibility of any Applicant or MBE/WBE shall be communicated in writing to such Applicant or MBE/WBE within thirty (30) business days of the date that a final determination has been made. The decision of the Contract Compliance Administrator shall be final and cannot be appealed.
- H. Changes in an MBE/WBE's ownership, management, officers or financial relationships which may impact on the MBE/WBE's eligibility under these regulations must be communicated by the firm in writing within ten (10) business days of such change(s). Failure to communicate such changes as required herein shall constitute grounds for the denial of continued eligibility or de-certification of the business.
- I. If the Contract Compliance Administrator has reason to believe that the information contained on an MBE/WBE's Schedule A, or No Change Affidavit is inaccurate or incomplete, the Contract Compliance Administrator may request the submission of a new form Schedule A, or No Change Affidavit from any MBE/WBE. Non-compliance with such request shall constitute grounds to deny certification of the Applicant, deny continued eligibility of an MBE/WBE or to de-certify such an MBE/WBE.
- J. A final order or finding by a court of competent jurisdiction or administrative tribunal that any Applicant, MBE/WBE, or owner, officer or agent thereof, had committed a crime in connection with performance on any contract with any private or governmental entity shall constitute grounds to deny certification of the Applicant, or deny continued eligibility of an MBE/WBE.
- K. Nothing in these regulations shall be construed to limit or in any way prohibit the City from requesting and giving due consideration to any information obtained from any source relative to any Applicant's eligibility for certification as MBE/WBE.
- L. On applications for continued eligibility, the Contract Compliance Administrator shall consider all relevant factors in determining the Applicant's eligibility for continued eligibility, including, but not limited to, the Applicant's involvement in contracting and/or bidding irregularities with any private or governmental entity; non-compliance with reasonable requests by the City for information concerning MBE/WBE eligibility or performance on any City contract; and submission of false, erroneous or misleading information to any private or governmental entity regarding Applicant's business activities.
- M. In the event a request for certification or continued eligibility of a business entity has been denied three (3) or more times in a five-year (5) period the Contract Compliance Administrator may not consider an application from such business entity or its successors for a period of four (4) years from the date of the most recent denial.
- N. Any decision by the Contract Compliance Administrator with respect to denial of continued eligibility shall not affect the MBE/WBE certification status of any contractor on any City contract where the MBE/WBE's performance was commenced prior to the effective date of final denial.

X. DE-CERTIFICATION PROCEDURES

Upon receipt of information believed by the Contract Compliance Administrator, in good faith, to be reliable and which indicates any Applicant's eligibility for continued certification as MBE/WBE may be in doubt, such information shall, following appropriate investigation, be referred to the MBE/WBE Certification Review Committee for reconsideration of the Applicant's certification eligibility.

- A. If, after consideration of such information, the MBE/WBE Certification Review Committee recommends, based upon majority vote of those members present, that the Applicant should be de-certified as MBE/WBE, the Contract Compliance Administrator shall issue a "Preliminary Notice of Intent to De-Certify" (hereinafter referred to as "Preliminary Notice") to the Applicant within ten (10) days of such determination. The Preliminary Notice shall inform the Applicant of all material facts upon which the decision of the MBE/WBE Certification Review Committee and the Contract Compliance Administrator was based. It shall also afford the Applicant at least fifteen (15) calendar days within which to present written evidence to establish that the determination of the MBE/WBE Certification Review Committee was erroneous.
- B. All MBE/WBE responses to a Preliminary Notice should contain sufficient facts to clearly establish that the material facts and/or conclusions upon which the Preliminary Notice was based were erroneous. The MBE/WBE's response shall be under oath, notarized and signed by all persons having personal knowledge of the facts contained therein. Pro forma changes to comply with these regulations will be closely scrutinized. Upon request, properly authenticated original documents in support of the MBE/WBE's response shall be provided to the Contract Compliance Administrator. Failure of the MBE/WBE to submit such written evidence within the required fifteen (15) days shall cause the Contract Compliance Administrator to accept the facts upon which the Preliminary Notice was based as admitted and to issue a "Notice of De-certification" to the Applicant.
- C. The Contract Compliance Administrator shall forward the responsive statement to the MBE/WBE Certification Review Committee for reconsideration of the Preliminary Notice. The MBE/WBE Certification Review Committee shall recommend to the Contract Compliance Administrator, by majority vote of those members present, that either a "Notice of Rescission" of the Preliminary Notice or a "Notice of De-certification" be sent to the MBE/WBE.
- D. All final actions and/or decisions of the Contract Compliance Administrator with respect to the de-certification of an MBE/WBE shall be communicated in writing to the MBE/WBE. The communication shall inform the MBE/WBE of all material facts upon which such action and/or decision was based.
- E. Following the de-certification of any MBE/WBE, the name of such MBE/WBE shall be removed from the Master Directory of Certified Minority Business Enterprises and Women Business Enterprises maintained by the Contract Compliance Administrator.
- F. Any decision by the Contract Compliance Administrator with respect to de-certification shall not affect the MBE/WBE certification status of any contractor on any City contract where the MBE/WBE's performance was commenced prior to the effective date of de-certification.

The City may de-certify an MBE/WBE if the Contract Compliance Administrator determines after a hearing and upon receipt of a recommendation from the Board that any of the following are true:

- i. the MBE/WBE no longer satisfies the applicable certification requirements;

- ii the MBE or WBE or an owner, officer or agent thereof, has made fraudulent misrepresentations to the City regarding utilization of MBE's and WBE's or colluded with another making such misrepresentation in the preceding three years;
- iii the MBE/WBE is no longer eligible for City contracts; or
- iv the MBE/WBE, or any owner, officer or agent thereof, in the preceding three years has committed a crime in connection with the execution or performance of any contract or a crime involving moral turpitude.

XI. MBE/WBE CERTIFICATION REVIEW COMMITTEE

The MBE/WBE Certification Review Committee shall meet within the Office of the Contract Compliance Administrator. The MBE/WBE Certification Review Committee shall consist of five (5) persons. The Deputy Procurement Officer shall have the authority to appoint all members. The MBE/WBE Certification Review Committee shall have a quorum of three (3) and shall act by a majority vote of members present. Appointments to the MBE/WBE Certification Review Committee shall be made without regard to race, age, religion, gender, national origin, or disability.

No Applicant or MBE/WBE, or any representative thereof, shall communicate or attempt to communicate with any member of the MBE/WBE Certification Review Committee with respect to any Applicant's or MBE/WBE's eligibility for certification, continued eligibility, or de-certification, except as provided in these regulations. Absent good cause, non-compliance with this section shall result in immediate denial of certification/continued eligibility, or de-certification of such Applicant or MBE/WBE. There may be, from time to time, more than one "MBE/WBE Certification Review Committee" established by the Contract Compliance Administrator as needed to accommodate the number of pending applications.

XII. MBE/WBE CERTIFICATION DIRECTORY

The Contract Compliance Administrator shall issue an updated "Directory of Certified Minority and Women-Owned Business Enterprises". The Directory shall identify, at a minimum, all certified MBE/WBE's by name, business address, principal contact person, certification status (e.g., MBE or WBE), area(s) of specialty and/or expertise and date of certification/continued eligibility. The Directory shall be updated at least quarterly and shall be available to all interested persons. The Contract Compliance Administrator shall maintain a Master Directory which shall be updated on a current, ongoing basis to include any informational changes made to the Directory during the intervening months.

XIII. REFERRAL TO CORPORATION COUNSEL

If at any time following appropriate investigation, the Contract Compliance Administrator has reason to believe that any person or firm has knowingly and willfully provided incorrect information related to, or made false statements in a Schedule A, or No Change Affidavit such matter shall be immediately referred to the Corporation Counsel. Such referral, however, shall be construed as a complement to, and not a limitation upon, the rights afforded the Contract Compliance Administrator.

XIV. REFERRAL TO INSPECTOR GENERAL

If, at any time the Contract Compliance Administrator has reason to believe that any Applicant or MBE/WBE has committed a crime involving bribery, theft, collusion, anti-competitive activity, or made false statements in connection with any City contract, proposed City contract or bidding irregularities, the Contract Compliance Administrator shall immediately notify the office of the Inspector General, City of Chicago. Upon completion of investigation, should the Inspector General determine that the allegations are founded, the Contract Compliance Administrator may take any action deemed appropriate.

XV. DISCLOSURE TO OTHER GOVERNMENTAL ENTITIES

Upon reasonable request from any governmental entity during the course of any legitimate and lawful inquiry, the Contract Compliance Administrator may disclose the contents of any Schedule A, or No Change Affidavit or such other information as may be relevant to any Applicant's eligibility for certification as an MBE/WBE.

XVI. NON-DISCLOSURE OF CERTIFICATION INFORMATION

Unless otherwise mandated by law, no City employee acquiring knowledge or vested with any responsibilities with respect to MBE/WBE certifications shall disclose to any person, other than the Deputy Procurement Officer, Contract Compliance Administrator, MBE/WBE Certification Review Committee, Corporation Counsel, Inspector General or other persons duly authorized to receive MBE/WBE certification information, the content of any MBE/WBE application or document filed in support thereof.

Nor shall such employee disclose to, or discuss with any unauthorized person, information regarding deliberations by the Contract Compliance Administrator or the MBE/WBE Certification Review Committee with respect to MBE/WBE certification, continued eligibility and/or de-certification of any Applicant. Non-compliance with this section shall subject the employee to applicable City disciplinary sanctions.

XVII. DEPOSITORY OF RECORDS

Records of all applications for certification as MBE/WBE shall be maintained within the Contract Compliance Administrator's Office.

XVIII. ESTABLISHED BUSINESS PRESUMPTION

The Ordinance established a presumption as to what constitutes an "established business". Specifically, Section 2-92-420(l) of the Code provided that "on or prior to December 31, 1991, a business entity shall be presumed to be an Established Business if the business entity and its affiliates have had annual average receipts in excess of \$27 million over the previous three fiscal years." This interim regulation establishes guidelines under which the presumption that an entity seeking status as an MBE or WBE is an established business may be rebutted. This regulation governs only the certification of MBE's and WBE's, while certification of DBE's will be governed by applicable federal law.

The Contract Compliance Administrator is responsible for determining each entity's eligibility for certification or continued eligibility as an MBE or a WBE. As a portion of that examination, the Contract Compliance Administrator must decide whether an entity is an established business. Pursuant to Section 2-92-420 (l) of the Code, and the factual findings made by the City at this time in support thereof, an entity is presumed to be an established business if the business entity and its affiliates have had annual receipts in excess of 27 million dollars over the previous three fiscal years. The City will increase the twenty-seven million dollar size standard presumption when deemed appropriate to reflect inflation in the six-county region.

For those industries for which SBA has defined an established business based upon the number of persons employed, an entity will be presumed to be established if it employs a number in excess of the applicable number of employees specified by the SBA. These standards accurately reflect business conditions in the six-county region, and will be used to establish the presumption of what constitutes an established business to the extent applicable, while the dollar size standard will be used for the presumption of what constitutes an established business in all other circumstances.

XIX. REBUTTING THE ESTABLISHED BUSINESS PRESUMPTION

In those cases in which an Applicant and its affiliates are presumed, pursuant to the test described above, to constitute an established business, the Contract Compliance Administrator shall examine the relevant circumstances to determine if the firm, based upon its size and capacity to compete in the markets in which it participates, is in fact an established business. The Contract Compliance Administrator shall analyze the attributes of an established business in the industry or industries in which the entity participates and develop an industry standard. If it is deemed appropriate to attempt to obtain further information from the entity, the Contract Compliance Administrator may notify the firm of the investigation into its status as an established business and shall allow the firm ninety (90) days to submit any evidence it has to rebut the presumption that the applicant is an established business. The applicant also may provide evidence that the industry standard is incorrect or an improper industry standard is being applied to the entity.

The following factors will be considered when establishing industry standards and determining whether the firm is an established business:

- A. Average gross receipts in the past few years and growth thereof;
- A. Amount of business the entity receives through the Program and other affirmative action programs;
- B. The percentage of an entity's business obtained through the Program and other affirmative action programs;
- C. The nature of the business;
- D. The entity's rank in any relevant industry ratings as to size, ability, etc.;
- E. Average Profits in recent years and any profit trends;
- F. Average Return on investment and return on assets;
- G. Average number of individuals employed;
- H. Average value and nature of assets;
- I. Bonding capacity;
- J. The number of years the entity has been in existence;
- K. Any "going concern" problems raised in auditor's letters for the entity;
- L. Any bankruptcy filings by the entity;
- M. The extent to which the entity dominates or controls any markets in the Program;
- O. Any other factors the Contract Compliance Administrator deems relevant.

IX IMPACT OF CONTRACT COMPLIANCE ADMINISTRATOR'S DETERMINATION AS TO WHETHER OR NOT AN ENTITY IS AN ESTABLISHED BUSINESS

If the Contract Compliance Administrator determines that an Applicant is an established business, the firm cannot be certified or recertified as an MBE or WBE. The Contract Compliance Administrator's decision shall be final with no provision for appeal. The applicant will be notified of the decision that it is an established business and cannot be certified or recertified. That notification also shall indicate that the Applicant may appeal the decision pursuant to the Ordinance and any applicable regulations. If the entity is making an application for certification, rather than continued eligibility, the decision shall be effective as of the date of the letter.

The determination that a firm cannot receive continued eligibility, because it is established, shall become effective on the date specified in the notification letter of the Contract Compliance Administrator's decision (the "Effective Date"); provided, however, that the Effective Date shall be no later than one year after the date of the notification. The Contract Compliance Administrator shall select an Effective Date that affords the entity a sufficient time to disengage from the Program in order to effectuate the purposes of the Program, not to exceed twelve months. Until the Effective Date of the Contract Compliance Administrator's decision that an entity is an established business, the entity shall be treated as certified.

While continued eligibility may not be granted after the Effective Date of the determination of "graduation", continued recognition as a Minority-Owned Business or Women-Owned Business will be afforded by continued listing in the City of Chicago Directory of Disadvantaged, Minority and Women-Owned Business Enterprises. Recognition as a non-certified Minority or Women-Owned Business precludes participation as a certified business on City contracts, but addresses the needs of programs in the private sector and in other governmental bodies that rely upon certification decisions of the City and utilize MBE and WBE firms in their own procurement practices.

Any business which the Contract Compliance Administrator determines is an established business shall not be eligible to apply for certification with the City as an MBE or WBE for at least one year after the Effective Date of the final decision that the entity is an established business. The entity may apply only at such time as it has information to show a significant change in its ownership, management, contractual relations, or in other functions bearing on its status as an established business.

XXI. RE-APPLICATION

Firms that have been denied certification may re-apply for certification with the City after a period of ninety (90) days from the date of the final denial letter.

**CITY OF CHICAGO
AMENDMENT OF MUNICIPAL CODE
CHAPTER 26, AUTHORIZING
THE MINORITY AND WOMEN OWNED BUSINESS
ENTERPRISE
PROCUREMENT PROGRAM**

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:

- XXI. "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 Chief Procurement Officer pursuant to regulations adopted by the purchasing department. For calendar year 2000, a business entity shall be presumed to be an established business if the business entity and its affiliates have had annual average gross receipts in excess of \$27,000,000,00 over the previous three fiscal years. For calendar year 2001 and beyond, this sum shall be adjusted upwards or downwards by applying to it a rate equal to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) published by the United States Bureau of Labor Statistics for that calendar year. Such adjustment shall be made or a given year in January of the following year and shall remain in effect for that given year until the following year's adjustment is made. The Chief Procurement Officer, after computing the adjustment for a given year, shall cause the new sum as adjusted to be published for five consecutive business days in two or more newspapers of general circulation in the City.
- (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) **“Deputy Procurement Officer”** 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 Deputy Procurement Officer 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 Deputy Procurement Officer 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 contract 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 Deputy Procurement Officer 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 Deputy Procurement Officer 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 Deputy Procurement Officer shall reduce or waive the

commitment to MBE/WBE participation in the contract, as may be appropriate. The Deputy Procurement Officer 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 Deputy Procurement Officer. 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 Deputy Procurement Officer 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 Deputy Procurement Officer shall develop and coordinate a target market program including the following elements:

- (a) In January of each year the Deputy Procurement Officer 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 Deputy Procurement Officer 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 Deputy Procurement Officer shall divide the procurements so designated into contract 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 Deputy Procurement Officer 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 Deputy Procurement Officer 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

Deputy Procurement Officer 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 Deputy Procurement Officer, 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 Deputy Procurement Officer, 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 continued eligibility 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

- (d) 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;
- IX Notify the Deputy Procurement Officer 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 continued eligibility 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 Deputy Procurement Officer 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 Deputy Procurement Officer, 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 Deputy Procurement Officer 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 Deputy Procurement Officer 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 1st 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 Deputy Procurement Officer determines, after notice and a hearing before the Deputy Procurement Officer 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.

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