

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 2-92 of the Municipal Code of Chicago is hereby amended by adding a new Article X, as follows:

ARTICLE X. NON-CONSTRUCTION SMALL BUSINESS INITIATIVE PROCUREMENT PROGRAM (2-92-1100 et seq.)

2-92-1100 Application of article.

This Article shall apply to non-construction procurement contracts. This Article is enacted pursuant to the home rule powers of the City and supersedes any inconsistent provision of any law or regulation of the State of Illinois to the extent such inconsistency is permitted under the home rule powers of the City. This Article shall not apply to any procurement contract to the extent that it is inconsistent with procedures or standards required by any law or regulation of the United States or the State of Illinois to the extent such inconsistency is not permitted under the home rule powers of the City. In connection with any procurement contract funded in whole or in part from state or federal sources, state or federal standards and regulations shall control to the extent this Article is inconsistent with such state or federal standards.

2-92-1110 Definitions.

For purposes of this Article X, the following definitions shall apply:

"Chief Procurement Officer" means the City's Chief Procurement Officer.

"Contract" means any contract, purchase order or agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement or a construction contract as defined in Section 2-92-670) 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, regardless of source.

"Department of Procurement Services" or "DPS" means the City's Department of Procurement Services.

"Non-construction small business initiative procurement program" or "NSBI procurement program" means the program established pursuant to this Article X.

"Small business enterprise" or "SBE" means a business enterprise that has gross receipts, averaged over its previous five fiscal years that do not exceed the size standards of minority-owned or women-owned business as set forth pursuant to Section 2-92-420(o) of this Code.

2-92-1120 NSBI procurement program – Established.

Unless otherwise prohibited by any federal, state or local law, the Chief Procurement Officer shall establish a race- and gender-neutral program to increase SBE participation in non-construction procurement contracts. The Chief Procurement Officer is authorized to identify and offer non-construction procurement contracts for exclusive participation of SBEs. The estimated costs of such contracts shall be less than \$3,000,000.

2-92-1130 NSBI procurement program – Eligibility.

To be eligible for the NSBI procurement program, a business enterprise must:

- (1) be a small business enterprise;
- (2) perform at least fifty-one percent of the non- construction procurement contract with its own work force or subcontractors that are small business enterprises; and
- (3) be independent, and must not be an affiliate or subsidiary of any other business enterprise. For purposes of this subsection, the Chief Procurement Officer shall have the sole authority to determine the independence of a business enterprise.

2-92-1140 NSBI procurement program – Presumption, attestation and notification.

(a) Minority-owned business enterprises and women-owned business enterprises, as defined in Section 2-92-420, shall be presumed to be SBEs.

(b) Except as otherwise provided in subsection (a), any business enterprise that claims to be an SBE shall at the time of such claim, and annually thereafter, submit an affidavit, in a form prescribed by the Chief Procurement Officer, attesting that it meets the SBE eligibility requirements provided in Section 2-92-1130. The Chief Procurement Officer is authorized to investigate the accuracy of the information provided in, and require documents and information in support of, such affidavits.

(c) SBEs and business enterprises presumed to be SBEs shall notify the Department of Procurement Services of any change that affects such enterprises' SBE status within five business days of the occurrence of such change.

2-92-1150 Reporting requirements.

The Chief Procurement Officer is authorized to impose reasonable reporting requirements on participants in the NSBI procurement program. Such reporting requirements shall be designed and used to evaluate the effectiveness of the program. Any NSBI procurement program participant shall comply with the reporting requirements as required by the Chief Procurement Officer.

2-92-1160 Rules.

The Chief Procurement Officer is authorized to adopt rules for the proper administration and enforcement of this Article X.

2-92-1170 Enforcement.

(a) *Fraudulent misrepresentation.* If the Chief Procurement Officer determines, after notice and a hearing before the Chief Procurement Officer, that any SBE has made fraudulent misrepresentations to the City regarding its SBE status, or has colluded with another making such fraudulent misrepresentations, the SBE shall be declared ineligible to contract or subcontract on

additional contracts. Upon making a finding of ineligibility, the Chief Procurement Officer shall determine the period of ineligibility imposed, which may include permanent or indefinite ineligibility, or ineligibility for a lesser duration. No SBE shall be disqualified for collusive misrepresentations unless all parties with which the SBE was found to have colluded with are also disqualified. The City shall regard as nonresponsive any bid submitted during such period of ineligibility 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 DPS not to have been involved in any misrepresentation of the status of a disqualified subcontractor included in the bid, DPS 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. DPS shall inform the State's Attorney of Cook County and the City of Chicago Office of Inspector General of instances of fraudulent misrepresentation and collusion.

(b) *False representation.* In addition to any other penalty imposed by law, any person who knowingly obtains, or knowingly assists another in obtaining, a contract with the City by falsely representing that the entity, or the entity assisted, is an SBE is guilty of a misdemeanor, punishable by incarceration in the county jail for a period not to exceed six months or a fine of not less than \$5,000 and not more than \$10,000, or both.

(c) *Other violations.* Except as otherwise provided in subsections (a) and (b), any person who violates this Article X shall be fined not less than \$1,000 nor more than \$5,000 for each offense.

SECTION 2. Severability. In the event that any section, subsection, paragraph, clause, provision or application of Article X of Chapter 2-92 of the Municipal Code of Chicago shall be held invalid by any court, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.

SECTION 3. This ordinance shall take effect 10 days after passage and publication.