

COMMITTEE ON CONTRACTING OVERSIGHT & EQUITY

ORDINANCE

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

SECTION 1. Title 2 of the Municipal Code of Chicago is hereby amended by deleting Chapter 2-26 in its entirety, and by inserting a new Chapter 2-26, as follows:

CHAPTER 2-26: OFFICE OF CONTRACTING EQUITY.

2-26-010 Definitions.

For the purposes of this Chapter, the following terms shall have the following meanings:

"Executive Director" means the Executive Director of the Office of Contracting Equity.

"Noncompliance" means the failure to comply with any federal, state, or local law or regulation or any of the City's compliance-related policies and internal controls within the programs and operations of the City government. Noncompliance shall not include misconduct, or any criminal activity committed by an elected or appointed official, employee or contractor or business entity.

"Office" means the Office of Contracting Equity.

The following terms shall have the meanings ascribed in Chapter 2-92: "Certification eligible business" or "C.E.B.", "established business", "minority-owned business enterprise" or "M.B.E.", "participating established business", "women-owned business enterprise" or "W.B.E.", "disadvantaged business enterprise" or "D.B.E.", "veteran-owned business enterprise", and "Purchasing Act".

2-26-020 Establishment -- Composition.

There is hereby established the Office of Contracting Equity, which shall include the Executive Director and such deputies, assistants and other employees as may be provided for in the annual appropriation ordinance.

2-26-030 Executive Director Of Contracting Equity -- Appointment And Authority.

The Executive Director shall be appointed by the Mayor, subject to approval of the City Council, and shall have responsibility for the operation and management of the Office. The Executive Director shall be appointed for a term of five years, or until a successor is appointed and approved. In the event that the Executive Director does not complete their five-year term, the Mayor shall, subject to the approval of the City Council, appoint a new Executive Director who shall be appointed for a new five-year term.

2-26-040 Executive Director Of Contracting Equity -- Powers And duties.

In addition to other powers conferred herein, the Executive Director shall have the following powers and duties:

(a) Administer, enforce, and ensure compliance with the City's minority- owned and women-owned business enterprise programs established in Chapter 2-92;

(b) Administer the certification of certification eligible businesses;

- (c) Ensure compliance with:
 - (i) the disadvantaged business enterprise program;
 - (ii) other certification eligible business participation programs, including the veteran-owned business enterprise procurement program (Article VIII of Chapter 2-92) and the business enterprises owned or operated by people with disabilities program (Section 2-92-586);
 - (iii) the City's bid incentive programs provided in Chapter 2-92 of the Municipal Code of Chicago;
 - (iv) the construction and non-construction mid-sized business initiative procurement programs provided in Chapter 2-92 of the Municipal Code of Chicago;
- (d) Undertake administrative measures to improve the efficiency and effectiveness of the City's certification programs;
- (e) Establish or adopt substantially consistent standards and procedures for certification of applying businesses by as a C.E.B. Such standards and procedures shall, in the Executive Director's judgment, fairly and effectively determine eligibility for inclusion as a C.E.B. without placing an undue burden on C.E.B.s. Each application for certification shall be in writing and executed by an officer or owner of the applicant and shall contain such information as may assist the Executive Director in determining the status of the applicant. When all or a substantial portion of the application for certification is processed by the Executive Director, each such application submitted to the Executive Director shall be accompanied by a non-refundable \$250.00 fee, in the form of a certified check, cashier's check, money order or such other payment method as may be acceptable to the Executive Director. If certification or recertification of a business entity has been denied three or more times in a five-year period, then the Executive Director 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;
- (f) Maintain an electronic directory of certified C.E.B.s and participating established businesses, describing them by name, business address, classification, type of business, and whether the business is located in a qualified investment area, as defined in Section 16-14-020 of the Municipals Code of Chicago. Additionally, in the case of M.B.E.s, such directory shall also include the minority group or minority groups of which the person or persons who own or control the business is a member, or, in the case of a publicly held corporation, the minority group or minority groups of which the person or persons who own at least 51% of the corporation's stock is a member. This directory shall be made available to any interested person. A local business which meets all the requirements to be certified as a C.E.B. under this Chapter except for the fact that it has become a non-participating established business since its initial certification may request to be listed in the directory, although it will remain ineligible for participation in the certification program;
- (g) Direct certified C.E.B.s to notify the Executive Director of any change in ownership, officers, or management within ten days after such change occurs;
- (h) Establish or adopt substantially consistent procedures for reviewing or auditing any decision of any certifying agency conducting certifications pursuant to an agreement with the Executive Director regarding the certification, recertification, or decertification of any C.E.B.;

(i) Establish or adopt substantially consistent procedures for the decertification of C.E.B.s which have been improperly certified or no longer qualify for certification, and for appeal from decertification. Such procedures shall be consistent with the principles of due process of law;

(j) Notify the Chief Procurement Officer and all City agencies and departments which request information on certified C.E.B.s of any decertification made in accordance with subsection (i) of this section. If certification or recertification of a business entity has been denied by the Executive Director, then the Executive Director shall 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 Executive Director;

(k) Publicize the certification program through appropriate means, in order to attract qualified certified C.E.B.s;

(l) Periodically review the standards and procedures for certification of C.E.B.s to reduce unnecessary impediments to obtaining certification;

(m) Establish, implement, and enforce workforce development bid incentives and initiatives;

(n) Set goals, monitor, and enforce Chicago resident and project area work hour goals for applicable procurements pursuant to Chapter 2-92;

(o) Enter into agreements or contracts for the purpose of engaging the assistance of outside auditors, consultants, or other services necessary to carry out the requirements of this Chapter. Such agreements and contracts shall be subject to approval by the Corporation Counsel as to form and legality and subject to the approval of the Budget Director as to funding;

(p) Recommend policies, procedures and practices designed to ensure compliance with any federal, State, or local law or regulation or any of the City's contracting equity policies and internal controls;

(q) Assess and provide advice regarding contracting equity controls incorporated in City departments' policies and procedures; and

(r) Provide notice of all complaints to the Office of Inspector General in a timely manner.

2-26-050 Certification of eligible businesses.

(a) As an alternative or in addition to conducting its own C.E.B. certifications by the Executive Director, the Executive Director may designate certain eligible public or private agencies as certifying agencies, which may certify businesses as meeting eligibility standards and requirements necessary to participate as C.E.B.s. Such designation may be by way of: (i) entering a contractual agreement with any eligible certifying agency to act as the City's agent for the purposes of certifying businesses as C.E.B.s; (ii) entering a memorandum of understanding with any eligible certifying agency to accept C.E.B. certifications issued by such agencies; or (iii) accepting C.E.B. certifications issued by eligible certifying agencies. The Executive Director is empowered to enter into such contractual agreements or memoranda of understanding on such terms and conditions as the Executive Director may deem necessary or appropriate.

(b) If in the Executive Director's judgment, or otherwise required by law, additional

requirements to the certification issued by any eligible certifying agency are warranted, the Executive Director is authorized to impose such additional requirements before accepting C.E.B. certifications issued by any such agency to any such business.

(c) To be eligible as a certifying agency such agency shall:

(1) have C.E.B. certification requirements and procedures that conform with the standards and procedures for C.E.B.s certification established or adopted by the Executive Director pursuant to Section 2-92-490 of the Municipal Code of Chicago, or that, in the judgment of the Executive Director, are of equivalent effectiveness in determining eligibility for certification of C.E.B.s;

(2) have at least five years of experience in certifying C.E.B.s for participation in public and private affirmative action programs; and

(3) provide C.E.B. certification which must be accepted by one or more public agencies in the State of Illinois, other than the City of Chicago.

d) If the Executive Director terminates any contractual agreement or memorandum of understanding with any certifying agency, C.E.B.s certified by such agency shall not have their status as C.E.B. affected by the termination of the contractual agreement or memorandum of understanding until their current certification period expires or until they are decertified in accordance with subsection (f) of Section 2-92-490 of the Municipal Code of Chicago.

e) The Executive Director shall post the names, contact information and other information regarding a certifying agency which the Executive Director may deem appropriate on the City's website within 10 (ten) calendar days of execution by the City of any contractual agreement or memorandum of understanding with any certifying agency in accordance with the provisions of this section.

f) The Executive Director is authorized to adopt such rules and regulations as he the Executive Director may deem appropriate for the proper administration and enforcement of the provisions of this section.

g) The Executive Director is authorized to enter into certification recognition agreements and any amendments thereto regarding acceptance or recognition of the City's C.E.B. certifications by other public or private agencies. The Executive Director is also authorized to enter into reciprocal certification recognition agreements and any amendments thereto as required by applicable federal law, including but not limited to, unified certification program agreements.

2-26-060 Conduct Of City Officers, Employees And Other Entities.

The powers and duties of the Executive Director shall extend to the conduct of the following:

(a) except as limited in this section, all employees and elected and appointed officers of the City in the performance of their official duties; and

(b) all contractors and subcontractors in the providing of goods or services to the City pursuant to a contract.

The head of any executive department or agency of the City's government who exercises any contracting power on behalf of the City beyond the scope of the Purchasing Act shall: (i) consult

and cooperate with the Executive Director in achieving the goals stated in Section 2-92-430 of the Municipal Code of Chicago through their exercise of the contracting power and shall, to the extent practicable, implement procedures described in this Chapter, including the applicable procedures described in subsections (a) through (e) of Sections 2-92-440 and 2-92-460 of the Municipal Code of Chicago; and (ii) report to the Executive Director, at times and in the manner reasonably requested by the Executive Director, regarding compliance with this section.

The Office shall have no power or authority over any member of the City Council, any employee, or staff person of any member of the City Council or any employee or staff person of any City Council committee. If the Office receives any complaint alleging noncompliance against any member of the City Council or any employee or staff person of any City Council committee, the Executive Director shall promptly transmit said complaint to the chairman of the City Council Committee on Committees and Rules, or its successor committee. The Committee on Committees and Rules, or its successor committee, shall conduct an investigation of each complaint referred to it by the Executive Director. Nothing in this section shall preclude the Executive Director from referring a complaint or information concerning a member of the City Council or any employee or staff person of any member of the City Council or any employee or any staff person of any City Council committee to the appropriate federal, state or local law enforcement authorities.

2-26-070 Confidentiality.

Complaints to the Office shall be confidential, except as necessary to carry out powers and duties of the Office; provided however, the Executive Director shall provide notice of all complaints to the Office of Inspector General in a timely manner and may refer a complaint or information to the appropriate federal, state or local law enforcement authorities.

2-26-080 Cooperation.

It shall be the duty of every officer, employee, department, and agency of the City to cooperate with the Executive Director in any activities undertaken pursuant to this Chapter. Each department shall make its premises, equipment, personnel, books, records, and papers readily available to the Executive Director. Every City contract shall contain a statement that the person understands and will abide by all provisions of this Chapter.

2-26-090 Retaliation Prohibited -- Penalty.

No person shall retaliate against, punish, or penalize any other person for complaining to, cooperating with, or assisting the Executive Director in the performance of the Executive Director's duties under this Chapter. Any person who violates the provisions of this section shall be subject to a fine of not less than \$500.00 and not more than \$1,000.00 for each violation.

2-26-100 Reports To City Council.

No later than the fifteenth day of January and the 15th day of July of each year, the Executive Director shall file with the Committee on Contracting Oversight and Equity, or its successor committee, a summary report of contracting equity activities undertaken since the date of the last report and shall forward a copy of such report to the Corporation Counsel and the Office of Inspector General.

2-26-110 Executive Director -- Conditions For Removal From Office.

The Executive Director may be removed prior to the expiration of their term only for cause and

in accordance with the provisions of this section. The Mayor shall give written notice (a) to the City Council of their intent to remove the Executive Director; and (b) to the Executive Director of the cause of intended removal. Within ten days after receipt of the notice, the Executive Director may file with the City Council a request for a hearing on the cause for removal. If no such request is made within ten days, the Executive Director shall be deemed to have resigned as of the tenth day after receipt of the notice of intended removal. If such a request is made, the City Council shall convene a hearing on the cause for the removal of the Executive Director, at which the Executive Director may appear, be represented by counsel, and be heard. The hearing shall be convened within ten days after receipt of the request therefore and conclude within 14 days thereafter. The Mayor's notice of intended removal shall constitute the charge against the Executive Director. Removal of the Executive Director for cause after the hearing shall require the affirmative vote of a majority of the members of the City Council.

2-26-120 Obstructing Or Interfering With Actions Of The Office -- Penalty.

No person shall knowingly interfere with or obstruct any actions authorized by this Chapter and conducted by an announced employee of the Office. Any person who willfully violates the provisions of this section shall be subject to a fine of not less than \$500.00 and not more than \$1,000.00 for each such offense, or imprisonment for a period of not less than 30 days and not more than six months, or both a fine and imprisonment. Each day that a violation continues shall constitute a separate and distinct offense. Actions seeking the imposition of a fine only shall be filed as quasi-criminal actions subject to the provisions of the Illinois Code of Civil Procedure, as amended. Actions seeking incarceration, or incarceration and a fine, shall be filed and prosecuted as misdemeanor actions under the procedure set forth in Section 1-2-1.1 of the Illinois Municipal Code, as amended.

2-26-130 Political Activities Prohibited.

Neither the Executive Director nor any employee of the Office shall engage in any political activity as defined in Chapter 2-156 of the Municipal Code.

2-26-140 Violation, Penalty -- Discharge Or Other Discipline.

Any employee or appointed officer of the City who violates any provision of this Chapter shall be subject to discharge (or such other discipline as may be specified in an applicable collective bargaining agreement) in addition to any other penalty provided in this Chapter.

2-26-150 Rules And Regulations.

The Executive Director is authorized to adopt such rules, regulations and procedures as he or she may deem expedient for the proper administration and enforcement of the provisions of this Chapter and is authorized to work with the Office of Inspector General to develop a protocol to ensure that the provisions of this Chapter are fully implemented.

SECTION 2. Title 2 of the Municipal Code of Chicago is hereby amended by inserting a new Section 2-92-330, as follows:

2-92-330 Contracts – Percentages of City and project area residents work hours – Enforcement.

For purposes of this section:

"City residents" means persons domiciled within the City.

"Project area residents" means persons domiciled within that part of the City designated as the project area in the information for bidders issued by DPS.

"Domicile" means an individual's one and only true, fixed, and permanent home and principal establishment.

"Eligible residents" means City residents and project area residents.

"Executive Director" means the Executive Director of the Office of Contracting Equity established pursuant to Chapter 2-26.

a) For any construction project advertised, or if not advertised, awarded, by the City that has an estimated contract value of \$100,000.00 or more, and where not otherwise prohibited by federal, State or local law, it is the policy of the City that it shall provide Eligible Residents a full and fair opportunity to participate in the performance of work on City contracts. Therefore, the Executive Director has established a goal that for all construction contracts, the total hours worked by persons on the site of construction projects by employees of contractors and subcontractors shall be performed by (i) at least 50 percent by City residents; and (ii) at least 7.5 percent by project area residents. Work hours performed by project area residents shall be considered to be work hours performed by City residents for purposes of calculating the minimum work hour percentage required to be performed by City residents. In order to maximize contract participation by Eligible Residents, the Executive Director is authorized to establish contract specific goals for each construction contract let through competitive bidding. Contract specific goals shall be based upon contract history and normal industry practice as determined in consultation with the appropriate departments, and in consideration of the scopes of work for the contract.

These contract specific minimum percentages of work hours for eligible residents shall not be understood as limiting or deterring the fuller utilization of eligible residents beyond these levels but are intended instead as minimum requirements. Contractors shall make good faith efforts to utilize qualified eligible residents in unskilled and skilled labor positions. The Executive Director shall separately monitor the utilization of eligible residents in skilled and unskilled positions, and shall report such findings to the City Council Committee on the Budget and Government Operations, or its successor committee, when substantially all of the construction contracts for each construction season have been closed. The Executive Director shall also report whether he has determined that separate minimum percentages of eligible residents are warranted for skilled and unskilled labor positions.

The Executive Director shall develop standards and procedures for reducing or waiving these contract specific minimum percentages of work hours for eligible residents when a bidder or contractor can demonstrate the impracticality or excessive cost of complying with these percentage levels for particular contracts or classes of employees. Except as otherwise provided in the Executive Director's standards and procedures, a waiver or reduction shall be deemed appropriate if a contractor or subcontractor has unsuccessfully solicited a sufficient number of eligible residents to perform the work identified in the bid solicitation and has documented such effort to the satisfaction of the Executive Director. In addition, such standards and procedures shall require that a contractor seeking a waiver or reduction shall have provided timely notice of the need for qualified eligible residents to an appropriate source of referrals, which source shall be entitled to comment on any waiver or reduction application. The Executive Director shall file quarterly reports of such determinations on all reduction or waiver requests made pursuant to this paragraph with the City Council Committee on the Budget and Government Operations, or its

successor committee.

b) Implementation of the requirements established in subsection (a) of this section will be achieved by including in contracts and subcontracts described therein the following language:

The contractor and all subcontractors that perform work on the site on the construction project undertaken pursuant to this contract shall comply with the contract specific minimum percentages of total work hours performed by eligible residents pursuant to Section 2-92-330 of the Municipal Code of Chicago.

The contractor shall provide for the maintenance of adequate employee residency records to ensure that eligible residents are employed on the project.

The contractor and subcontractors shall maintain copies of personal documents supportive of every eligible resident employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the commissioner of the supervising department in triplicate, shall clearly identify the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

Full access to the contractor's and subcontractors' employment record shall be granted to the Executive Director, the commissioner of the supervising department, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The contractor and subcontractors shall maintain all relevant personnel data in records for a period of at least three years after final acceptance of the work.

At the direction of the supervising department, affidavits and other supporting documentation will be required of the contractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the contractor to provide utilization of eligible residents shall suffice to replace the actual, verified achievement of the requirements of this section concerning the work hours performed by eligible residents. Nothing provided in this paragraph shall be construed to prevent the Executive Director from considering such good faith efforts as appropriate for reducing or waiving the contract specific minimum percentages of work hours for eligible residents requirement, pursuant to Section 2-92-330(a) of the Municipal Code of Chicago.

When work is completed, in the event that the City has determined that the contractor failed to ensure the fulfillment of the requirements of this section concerning the work hours performed by eligible residents or has failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to eligible residents to the degree stipulated in this section. Therefore, in such a case of non-compliance it is agreed that 1 percent (1.00%), 0.01, of the approved contract value for this contract shall be surrendered by the contractor to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no eligible residents were employed in either of the categories. The willful falsification of statements and the certification of payroll date may subject the contractor or subcontractors or employee to prosecution. Any retainage to cover contract performance that may become due to the contractor pursuant to Section 2-92-250 of the municipal code of Chicago may be withheld by the City pending the Executive Director's

determination whether the contractor must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246", or other affirmative action required for equal opportunity under the provisions of this contract.

c) The monetary damages stipulated in subsection (b) hereof may be adjusted by the Executive Director to represent a larger fraction of the approved contract value, if the Executive Director determines after a review of contractors' compliance with this section that said damages are insufficient to secure compliance herewith. In no event may the damages be adjusted to a lower fraction. Any such change must be made effective for all contracts advertised as of a specific date chosen by the Executive Director and must be made prior to said advertisement.

In addition to assessing the monetary damages stipulated in subsection (b) hereof, the Executive Director may, in lieu of declaring the contractor to be a non-responsible bidder, require the contractor to post a surety bond or other appropriate security in an amount representing ten percent of the approved contract value for subsequent contracts on which the contractor bids, which the contractor shall agree to forfeit in its entirety in the event that full compliance with the requirements of this section is not achieved during the performance of any future contract that the contractor enters with the City of Chicago.

d) Any person who is employed in a construction project subject to the provisions of this section who knowingly supplies false information concerning their residence shall be subject to a fine of not more than \$1,000.00 for each offense, and imprisonment for a period not to exceed 30 days. Any person found to have violated this section shall also be barred from employment on any construction project subject to this section for a period of five years.

e) The monetary damages stipulated in subsection (b) hereof shall be used for establishing worker training programs.

f) The Executive Director is authorized to adopt rules and regulations for the proper administration and enforcement of this section.

SECTION 3. Section 2-92-390 of the Municipal Code of Chicago is hereby deleted in its entirety, and replaced with a new Section 2-92-390, as follows:

2-92-390 Equal employment opportunity regulations for contracts – Enforcement.

For purposes of this section, "Executive Director" means the Executive Director of the Office of Contracting Equity established pursuant to Chapter 2-26

a) If there exists evidence that minorities and/or women are under-represented in a contractor's work force, by comparison thereof to the labor force available within the population of the City of Chicago as established in the most recent federal census or in statistics compiled by the U.S. Department of Labor, if more recent, such contractor shall forthwith take appropriate remedial action to achieve compliance with applicable federal laws and regulations.

b) For any construction project having an estimated contract value of \$100,000.00 or more, and which is directly supervised by the City of Chicago, beginning with the calendar year 1984, the City shall have as its yearly equal employment opportunity goals the following percentages of

construction aggregated work hours in each of the categories of construction journey worker and apprentice:

- a. At least 25 percent by minorities, as described in subsection (c) of this section;
- b. At least seven percent by women.

c) For any construction project having an estimated contract value of \$100,000.00 or more, which is directly supervised by the City of Chicago, beginning with the calendar year 1984, the City shall have as its yearly employment opportunity goals the following percentages of construction aggregated work hours in the category of construction laborer:

- a. At least 40 percent by minorities, as described in subsection (c) of this section;
- b. At least ten percent by women.

d) In order to effectuate the achievement of these goals, the Executive Director shall employ the canvassing formula described in subsection (c) of this section in the bidding for and in the awarding of all contracts involving construction projects having an estimated contract value of \$100,000.00 or more and which are directly supervised by the City of Chicago. These goals shall also apply to construction projects subsidized in part with federal revenues pursuant to congressionally created grant programs which are intended to encourage economic revitalization including improved opportunities for the poor, minorities, and unemployed within the municipality to which the grant was given (including, without limitation, Community Development Block Grants, Urban Development Action Grants and Economic Development Administration Grants), and shall be monitored by the supervising department.

e) Fulfillment of these equal employment opportunity goals for construction projects having an estimated contract value of \$100,000.00 or more which are directly supervised by the City of Chicago will be achieved through contracts which shall include the following language:

In accordance with Chapter 2-92 of the Municipal Code of Chicago, and in order to promote equality of opportunity for minority and female personnel on this project, the City of Chicago has established the following canvassing formula for the purpose of evaluating proposals and awarding the contract.

Each bidder is invited to propose the minority and female employee utilization goals for the project, as percentages of the journey worker and apprentice and laborer hours to be expended in the construction of the project. Lines 2, 4, and 6 in the formula shall not be greater than 70 percent in each category, for the purpose of canvassing only. The 70 percent limit shall not deter or restrict the fuller utilization of minority employees for the project but shall only serve as a limiting figure for use in the formula. Similarly, lines 8, 10, and 12 shall not be greater than 15 percent in each category, for the purpose of canvassing only. Actual amounts of minority and female work will be measured for the total hours of construction workers employed on the projects within each of the categories of journey workers, apprentice, laborers by the contractor and all of the worksite subcontractors.

Canvassing Formula

Line 1.	Base bid, in figures	_____
Line 2.	Percentage of the total journey worker hours that the contractor proposes to be worked by minority journey workers during construction of the project. Maximum figure .70.	_____
Line 3.	Multiply line 2 by line 1 by 0.04	_____
Line 4.	Percentage of the total apprentice hours that the contractor proposes to be worked by minority apprentices during construction of the project. Maximum figure .70.	_____
Line 5.	Multiply line 4 by line 1 by 0.03	_____
Line 6.	Percentage of the total laborer hours that the contractor proposes to be worked by minority laborers during construction of the project. Maximum figure .70.	_____
Line 7.	Multiply line 6 by line 1 by .01.	_____
Line 8.	Percentage of the total journey worker hours that the contractor proposes to be worked by female journey workers during construction of the project. Maximum figure .15.	_____
Line 9.	Multiply line 8 by line 1 by 0.04.	_____
Line 10.	Percentage of the total apprentice hours that the contractor proposes to be worked by female apprentices during construction of the project. Maximum figure .15.	_____
Line 11.	Multiply line 10 by line 1 by 0.03.	_____
Line 12.	Percentage of the total laborer hours that the contractor proposes to be worked by female laborers during construction of the project. Maximum figure .15.	_____
Line 13.	Multiply line 12 by line 1 by 0.01	_____
Line 14.	Summation of lines 3, 5, 7, 9, 11, and 13.	_____
Line 15.	Subtract line 14 from line 1 = award criteria figure.	_____

The bidder shall complete the canvassing formula and transfer the final award criteria figure, line 15, to the space provided on the itemized proposal sheet. A contract in the amount of the total base bid will be awarded to the responsible bidder with the lowest award criteria figure. The City reserves the right to revise all arithmetic calculations for correctness. The contractor is obliged during the construction of the project to fulfill every numerical commitment made under the canvassing formula categories. Therefore, every limiting condition or circumstance which may

affect referral, hiring, or deployment of construction trades employees must be taken into account by the bidder before the commitment is proposed. Limits imposed by the policies or circumstances of labor organizations or other referral resources, for example, should be anticipated by the bidder, since relief from the contractor's obligations as established under the canvassing formula is not available due to such circumstances found to exist during construction. Also, if journey workers will not be employed in the project, or apprentices, or laborers, then the proposal made in the appropriate lines, lines 2 and 8, or lines 4 and 10 or 6 and 12, should be entered as "0 percent", since no journey worker or apprentice or laborer hours are reported after construction, this will be computed by the City as 0 percent minority/female hours achieved.

If commitments are made in the apprentice category, lines 4 and 10, the total apprentice hours to be employed on the project should be anticipated to be a substantial number of hours; since it is the intention of the City that where a commitment for a percentage of minority or female apprentices has been made, the percentage may be counted as fulfilled only as long as there were provided at least 40 actual hours of minority or female employment as apprentices. For this reason, where a minority or female percentage commitment has been made, if in the final audit of the performance of the contract there are less than 40 actual hours of minority or female apprentice work performed, then the number of minority or female apprentice hours will be counted by the City as "0" for the purpose of measuring the achievement towards the apprentice canvassing formula goal.

Therefore, notice that when the contractor is performing at a level under a minority or female apprentice goal, line 4 or line 10 above, the contractor will be subject to the full amount of liquidated damages, see lines 5 and 11, if at least 40 actual hours of minority or female apprenticeship work are not achieved. When the bidder foresees that this minimum amount of apprenticeship is not available to the project, then "0" should be put in lines 4 and 10 as the percentage commitment for apprentices.

The contractor is obligated to meet the total commitment made in each category, subject to liquidated damages as described below for noncompliance. The contractor hereby consents and agrees that, in the event of failure to comply with each of the minimum commitments submitted with the proposal on lines 2, 4, 6, 8, 10 and 12 of the canvassing formula, covering journey workers, apprentices, and laborers, respectively, the following shall apply to determine a monetary sum to be withheld from the final payment to the contractor.

In calculating the aggregated work hours toward the utilization goals for construction journey workers, apprentices, or laborers under this subsection, the contractor shall be given 150 percent credit for every work hour performed by a minority or woman worker residing within a socio-economically disadvantaged area. The criteria for designation of an area as socio-economically disadvantaged will be set forth in rules promulgated by the Commissioner of Planning and Development. Such criteria shall include, but not be limited to, the median family income of an area.

f) Liquidating Damages.

a. For each one percent deficiency of minority journey workers not utilized toward the goal (line 2), four cents for each hundred dollars of the base bid, calculated as follows:

$$\frac{\text{Line 1} \times .04}{100}$$

b. Each one percent deficiency of shortfall toward the goal line (line 8) for female

journey workers shall be computed in the same way. For each one percent deficiency of minority apprentices not utilized toward the goal (line 4), three cents per each hundred dollars on the base bid, calculated as follows:

$$\frac{\text{Line 1 X .03}}{100}$$

c. Each one percent of shortfall toward the goal (line 10) for female apprentices shall be computed in the same way. For each one percent deficiency of minority laborers not utilized toward the goal (line 6), one cent per each hundred dollars of the base bid, calculated as follows:

$$\frac{\text{Line 1 X .01}}{100}$$

d. Each one percent shortfall toward the goal (line 12) for female laborers shall be computed in the same way.

g) Reporting.

a. The contractor shall submit to the City on a timely basis a completed weekly certified payroll, (U.S. Department of Labor Form WH-347, Illinois Department of Transportation Form RE-48, or equivalent) with race and gender of employees clearly named or coded each week. The contractor is responsible for forwarding every worksite subcontractor's weekly certified payroll. Supportive information regarding an employee's race, gender, or work classification of such is required by the City. Failure to report fully all required workforce information will subject the contractor to liquidated damages in the total amount listed in line 14 above. In the weekly payroll reports, the following ethnic categories should be used to indicate minority personnel for purposes of the canvassing formula:

- i. Black = Persons having origins in any of the Black racial groups of Africa.
- ii. Hispanic = Persons of Mexican, Puerto Rican, Cuban, Central American, or other Spanish culture or origin, regardless of race.
- iii. Native American = Persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
- iv. Asian Pacific = Persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories, or the Northern Marianas.
- v. Asian Indian = Persons whose origins are from India, Pakistan, or Bangladesh.

b. Included in the canvassing formula as "Journey workers" are the construction-site journey workers from the major trades including, without limitation, truck drivers, electrical grounds men, and elevator construction helpers. Other "Helpers", watchmen, custodial workers, clerical workers, and salaried superintendents are not creditable in the formula. Hourly wage "Foremen" and "General Foremen" will be counted as journey workers for purposes of the canvassing formula.

c. Included in the canvassing formula as "Apprentices" are only bona fide apprentices currently in a training program certified by the U.S. Department of Labor – Bureau of

Apprenticeship and Training, and for the hours employed at the construction-site. Other categories of trainees are not creditable in the formula. Individual workers who are both minority and female will have their hours counted toward both a minority goal and any female goal.

h) Other Regulations.

a. The adherence to the canvassing formula does not abrogate other responsibilities of the contractor to comply with equal employment opportunity requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in this contract.

b. The monetary damages stipulated in subsection (c) hereof may be adjusted by the Executive Director to represent a larger fraction of the base bid price, if the Executive Director after review of contractors' compliance with this section determines that said damages are insufficient to secure contractors' compliance herewith. In no event may said damages be adjusted to a lower fraction. The Corporation Counsel shall assist the Executive Director in the development of standards for the calculation of appropriate liquidated damages. Any such damage must be made effective for all contracts advertised as of a specific date chosen by the Executive Director and must be made prior to said advertisement.

c. In addition to assessing the monetary damages stipulated in subsection (c) hereof, the Executive Director may, for future bids, in lieu of declaring the contractor to be a non-responsible bidder, limit the contractor from proposing minority and female employee utilization goals that are in excess of participation actually achieved on prior contracts.

i) The Executive Director is authorized to adopt rules for the proper administration of this section.

SECTION 4. Section 2-92-420 of the Municipal Code of Chicago is hereby amended by inserting the text underscored, and by deleting the text struck through, as follows:

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:

(Omitted text is unaffected by this ordinance)

(o) "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 full participant in the program in order to effectuate the purposes of the program, as determined by the Executive Director of the Office of Contracting Equity ~~officer~~ pursuant to regulations adopted by the Department of Procurement Services Office of Contracting Equity. For calendar year 2023-2000, 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 ~~\$27,500,000.00 over the previous three fiscal years~~ \$150,000,000 as evidenced by the federal tax return of the business. For calendar year ~~2004~~-2024 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 for 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 Contracting

Equity 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.

SECTION 5. Section 2-92-670 of the Municipal Code of Chicago is hereby deleted in its entirety, and replaced with a new Section 2-92-670, as follows:

2-92-670 Definitions.

As used in this article, the following terms shall have the following meanings:

(a) "Affiliate" means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining whether persons or entities are affiliates, the City shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates shall be considered together in determining whether a firm is a Small Business Enterprise.

(b) "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third-party supplier rather than out of existing inventory, and provides no commercially useful function other than acting as a conduit between a supplier and a customer.

(c) "Executive Director" has the meaning ascribed to this term in Chapter 2-26.

(d) "Chief Procurement Officer" or "CPO" means the Chief Procurement Officer of the City of Chicago.

(e) "Commercially useful function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a joint venturer.

(f) "Construction contract" means a contract, purchase order or agreement (other than a lease of real property) for the construction, repair or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, 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 the City.

(g) "Contract specific goals" means the subcontracting goals for M.B.E. and W.B.E. participation established for a particular contract based upon the availability of M.B.E.s and W.B.E.s to perform the anticipated scopes of work of the contract, and the City's progress towards meeting the aspirational goals.

(h) "Contractor" means any person or business entity that seeks to enter into a construction contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

(i) "Department of Procurement Services" or "D.P.S." means the Department of Procurement Services of the City of Chicago.

(j) "Established business" means a business which is not a "small business enterprise" as determined according to subsection (s) of this section.

(k) "Good faith efforts" means actions undertaken by a contractor to achieve a contract specific goal that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

(l) "Joint venture" means an association of two or more persons or entities, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the M.B.E. or W.B.E. is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibilities to the contract.

(m) "Local business enterprise" means a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry, or Will in the State of Illinois (the "Six County Region").

(n) "Minority" means:

- a. any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:
- b. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
- c. Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race;
- d. Asian-Americans, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent;
- e. American Indians, which includes persons having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment; and
- f. individual members of other groups, including but not limited to Arab-Americans, found by the City to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the City.

(o) "Minority-owned business enterprise" or "M.B.E." means a small local business enterprise which is at least 51 percent owned by one or more minority persons, or in the case of a publicly held business, at least 51 percent of all classes of the stock of which is owned by one or more minority persons, whose management, policies, major decisions, and daily business operations are independently managed and controlled by one or more minority persons.

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

(q) "Participating established business" means an established business which is eligible to participate in the City's minority- and women-owned business enterprise construction procurement

program as set forth in Section 2-92-725 of this Code.

(r) "Private sector credit program" means the program provided for in Section 2-92-720 of this Chapter.

(s) "Program" means the minority- and women- owned business enterprise construction procurement program established in this article.

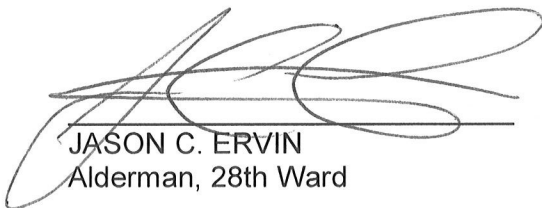
(t) "Small business enterprise" means a business that has gross receipts that do not exceed \$150,000,000 as evidenced by the federal tax return of the business.

(u) "Small local business enterprise" means a business that is a small business enterprise and a local business enterprise.

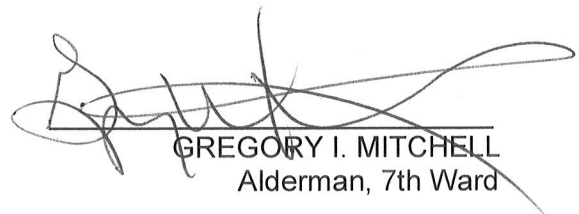
(v) "Woman" means a person of the female gender, who is presumed to be socially disadvantaged.

(w) "Women-owned business enterprise" or "W.B.E." means a small local business enterprise which is at least 51 percent owned by one or more women, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more women, whose management, policies, major decisions, and daily business operations are independently managed and controlled by one or more women.

SECTION 6. This ordinance shall take effect upon passage and approval.



JASON C. ERVIN
Alderman, 28th Ward



GREGORY I. MITCHELL
Alderman, 7th Ward



MICHELLE A. HARRIS
Alderman, 8th Ward



EMMA MITTS
Alderman, 37th Ward



Walter Bennett, Jr.
27th W.D.