

(c) The CPO will make best efforts to recruit and solicit bids and make procurements from qualified Service-Disabled Veteran-owned Businesses.

(d) The above-stated goal shall not be treated as a quota nor shall it be used to discriminate against any person or business enterprise on the basis of race, color, national origin, religion or sex.

(e) The provisions of this Division 6, Sec. 34-239 shall be effective as of July 1, 2013. The Contract Compliance Director shall by such date develop procedures for determining the availability of Service-Disabled Veteran-owned businesses and shall report back to the County Board on the appropriateness of the three percent goal, based on such availability.

DIVISION 7. INTEGRITY IN THE PROCUREMENT PROCESS

Sec. 34-250. Reporting irregularities.

The Board encourages any Person, including employees, to report any suspected or known irregularities in the County's procurement process to the County Compliance Officer of the Office of the Cook County Inspector General. In addition to any applicable laws protecting whistleblowers, the County shall ensure that a report made in good faith will not result in any adverse action taken by the Board or the County against the Person making such a report. The CPO's procedures will include a mechanism to publish this provision to all appropriate Persons.

Sec. 34-251. Communications.

For all Procurements, the CPO shall establish procedures to ensure that communications from individuals outside the County regarding a Procurement shall be memorialized and maintained in the procurement file. Communications about a Procurement from or on behalf of an Elected Official or a Using Agency shall also be memorialized and maintained in the Procurement file.

DIVISION 8. MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES

Subdivision I. General Provisions

Sec. 34-260. Short title.

This subdivision shall be known and may be cited as the Cook County Minority- and Women-Owned Business Enterprise General Ordinance. This subdivision is applicable to all Contracts, including Public Works Contracts other than as modified pursuant to subdivision 2 of this Division 8.

Sec. 34-261. Findings.

(a) The County has heretofore adopted a Minority Business Enterprise Ordinance to ensure that minority and women's businesses are provided full and equal opportunity to participate in Contracts.

(b) The Supreme Court of the United States in *City of Richmond v. Croson*, 488 U.S. 469 (1989), has enunciated certain standards which are necessary to maintain effective affirmative action programs in compliance with constitutional requirements.

(c) The County is committed to implementing its affirmative action program in conformance with the United States Supreme Court's decision in *City of Richmond v. Croson*.

(d) In furtherance of this commitment, and at the direction of the Board, County staff and consultants conducted an investigation into the scope of any discrimination in County Procurements, and in the award of and participation in contracts in the metropolitan Chicago economy, the extent to which such discrimination or the effects thereof has denied and continues to deny minority and women's business enterprises equal opportunity to participate in Procurements and to recommend the appropriate affirmative action steps to be taken to eliminate any such discrimination and its continuing effects.

(e) Minority and women's businesses continue to be awarded prime contracts and subcontracts in dollar amounts that are disproportionately lower than the availability of such businesses willing and able to perform Contracts.

(f) The County's procurement practices in the past have contributed to the above identified underutilization of minority and women's businesses on Contracts.

(g) Minority and women's businesses continue to be disadvantaged by discriminatory practices in the local construction industry and economy when competing for Contracts and in seeking subcontracting opportunities on such Contracts.

(h) The County was a passive participant in the discriminatory practices of businesses which discriminate against minority and women's businesses by entering into contracts with such businesses.

(i) Despite its good faith efforts and implementation of previous affirmative action programs, minority and women's businesses remain at a competitive disadvantage in competing for Contracts and subcontracts.

(j) Race and gender neutral measures or affirmative action programs without numerical goals have not and are not likely to eliminate the competitive disadvantage of minority and women's businesses in participating in Contracts due to discrimination in the local economy.

(k) The numerical goals for the participation of minority and women's businesses in Contracts are commensurate with the availability of minority and women's businesses willing and able to perform County work.

Sec. 34-262 Policy and purpose.

Based on the foregoing findings, the policy and purpose of this division are as follows:

(a) It is the public policy of the County to strive to achieve the full and equitable participation of minority and female owned businesses in the County's procurement process as both prime and subcontractors.

(b) The County is committed to a policy of preventing discrimination in making Procurements, and eliminating arbitrary barriers to participation in Procurements by all persons, regardless of race, sex, or ethnicity.

(c) The purpose of this division is to establish and implement goals for participation of PCEs in Procurements, in compliance with all applicable laws.

Sec. 34-263. Definitions.

The following words, terms and phrases, when used in this division, including both subdivision I and subdivision II, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Capitalized terms not defined in this section are defined in Division 1 of this Procurement Code, or in Sec. 1-3 of the County Code. Additional terms applicable to subdivision II are set forth in such subdivision.

Broker means a Person who or which neither manufactures the supplies, equipment or goods supplied or owns or operates a store, warehouse or other establishment (and related distribution equipment) in which it maintains, consistent with industry standards, an inventory of the supplies, equipment or goods, materials or supplies required for performance of the Contract for sale in the normal course of business.

Certified or *Certification* means registration of the Minority Business Enterprises or Women's Business Enterprise status of a business in the County's Directory of Minority Business

Enterprises, Women's Business Enterprises and Disadvantaged Business Enterprises ("PCE Directory").

Commercially Useful Function shall have the meaning set forth in subsection 34-383.

Contract means, for purposes of this Division 8, any Procurement or Contract (as defined in Sec. 34-121 in an amount exceeding \$25,000.00.

Contract Specific Goals means the goals established under Sec. 34-267 ~~for a particular Public Works Contract,~~ that are based upon relevant factors, including but not limited to the availability of MBEs or WBEs in the scopes of work of the Project.

County Marketplace means the Metropolitan Statistical Area for Chicago, as established by the Bureau of the Census, currently the counties of Cook, DuPage, Kane, Lake, Kendall and Will.

Economically Disadvantaged means an individual with a Personal Net Worth less than \$2,000,000 indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2011.

Expertise means demonstrated skills, knowledge or ability to perform, as defined by normal industry practices, including licensure where required, in a field.

Good Faith Efforts shall have the meaning set forth in Sec. 34-271.

Joint Venture means an association formed by two or more Persons to carry out a single business enterprise, for which purpose they combine their expertise, property, capital, efforts, and skills.

Manufacturer means a Person that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required for a Procurement and of the general character described by the specifications.

Minority Business Enterprise or *MBE* mean a Local Small Business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:

(1) Which is at least 51 percent owned by one or more Minority Individuals, 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 Minority Individuals;

(2) Whose management, policies, major decisions and daily business operations are independently managed and Controlled by one or more such more Minority Individuals; and

(3) Which has its principal place of business and a majority of its regular, full time workforce located within the County's Marketplace.

Minority Individual means an individual in one of the following groups:

(1) African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;

(2) Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, regardless of race;

(3) Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or

(4) Asian-Americans (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); or

(5) Other groups, including but not limited to Arab-Americans, found by the County 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 the County's Marketplace.

Owned means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risks and profits commensurate with the degree of ownership interest.

Personal Net Worth means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other Certified MBE or WBE, provided that the other Person is certified by a governmental agency that meets the County's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with a spouse, an individual's Personal Net Worth includes only that individual's share of such assets. An individual's Personal Net Worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment

programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

Program means the Minority and Women Owned Businesses Enterprise Program established in this division, and shall include the Public Works Participation Program

Program Goals means the goals set forth in Sec. 34-267.

Protected Class Enterprise or *PCE* shall mean those Persons qualifying under the definitions of *Minority Business Enterprise* and *Women's Business Enterprise* contained in this section.

Public Works Participation Program means the program established pursuant subdivision II.

Regular Dealer means a Person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character required for the Procurement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the Person must be an established business that engages, as its principal business and under its own name, in the Procurement and sale or lease of the products in question. A Person may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the Person both owns and operates distribution equipment for the products. Any supplementing of such Person's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other Persons who arrange or expedite transactions are not Regular Dealers.

Small Business means a small business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the Person seeks to perform on Contracts. A Person is not an eligible small business enterprise in any calendar fiscal year in which its gross receipts, averaged over the Person's previous five fiscal years, exceed the size standards of 13 CFR Part 121.

Socially Disadvantaged means an individual who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.

Utilization Plan means a plan for utilization of PCEs described in Sec. 34-383.

Woman means a person of the female gender.

Woman-Owned Business Enterprise or *WBE* means a Local Small Business, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity:

(1) 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;

(2) Whose management, policies, major decisions and daily business operations are independently managed and Controlled by one or more such Women; and

(3) Which has its principal place of business and a majority of its regular, full time work force located within the County's Marketplace.

Sec. 34-264. Race- and gender-neutral measures to implement the Program.

The County shall use measures such as the following in implementing the Program.

(a) Establishing schedules for submitting Bids and Quotations with adequate time frames for identifying and contacting PCEs qualified to participate in the Procurement;

(b) Segmenting Procurements to facilitate the participation of MBEs, WBEs and other Small Businesses;

(c) Providing timely information on contracting procedures, Bid preparation and specific contracting opportunities;

(d) Holding pre-Bid conferences, where appropriate, to explain the projects and to encourage Contractors to use available qualified PCEs.

(e) Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the County;

(f) Collecting information from all Contractors detailing the Bids or proposals received from all subcontractors for Procurements and the expenditures to PCEs;

(g) At the discretion of the CCD, in cooperation with the CPO, periodically entering into a procurement process without Program Goals or Project Specific Goals in order to determine MBE and WBE utilization in the absence of such goals;

(h) Referring complaints of discrimination to Cook County's Commission on Human Rights, or other appropriate authority, for investigation.

Sec. 34-265. Program administration.

(a) The Office of Contract Compliance, under the direction of the CCD, who shall report to the President, shall administer the Program. The duties of the CCD shall include:

(1) Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program.

(2) Providing information and assistance to PCE's and Small Businesses relating to the Program, and serve as a liaison to community, contractor, professional and supplier groups, and associations and organizations.

(3) Establishing uniform procedures and criteria for certifying, recertifying and decertifying Persons as PCEs, accepting certifications by other agencies, and maintaining a directory of Certified PCEs.

(4) Establishing Contract Specific Goals based upon the availability of PCEs to provide the supplies, materials and equipment or services required by the Contract;

(5) Monitoring Contracts to evaluate compliance with Contract Specific Goals and commitments.

(6) Cooperating with and providing assistance to Using Agencies to facilitate participation by PCEs in Procurements.

(7) Reviewing, approving or rejecting Utilization Plans for achievement of Contract Specific Goals, and evaluate the extent to which goals were achieved.

(8) Monitor contracts to ensure compliance with Sec. 34-388, Prompt Payment of PCEs.

(9) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.

(10) Evaluate the effectiveness and utility of the Program.

(11) Monitoring the Program and the County's progress towards the Program Goals. The CCD shall report on a quarterly and annual basis to the President on the Program.

(12) The CCD shall report to the CCC, at its request, information regarding the administration of the Program and its progress toward achieving the Program Goals.

(b) Using Agencies shall cooperate with the CCD in the administration of the Program, specifically including assisting the CCD with setting Contract Specific Goals and assisting in the identification of available MBEs and WBEs.

Sec. 34-266. Contract Compliance Committee.

The Contract Compliance Committee ("CCC") shall be a Standing Committee of the Board, consisting of seven members of the Board selected as set forth in Chapter 2, Article III, Sec. 2-105 of the Code. The CCC shall review procedures, proposed modifications to the Program or this division 8, and complaints as referred by the CCD or the CPO.

Sec. 34-267. Program goals.

(a) The County aspires to the following annual Program Goals: A goal of twenty-five percent (25%) of the annual total dollar amount of Contracts other than Public Works Contracts to MBEs, and ten percent (10%) of the total dollar amount of such Contracts to WBEs.

(b) The CCD, in consultation with the CPO and the Using Agency shall establish Contract Specific Goals for each Contract. In establishing a Contract Specific Goal, the CCD shall consider the availability of sufficient Certified MBEs and WBEs for the supplies, materials and equipment or services required as part of the Procurement.

(c) No goal shall be treated as a quota nor shall it be used to discriminate against any Person on the basis of race, color, national origin, religion or sex.

Sec. 34-268. Certification

The CCD shall Certify only Persons that meet all the following criteria:

(a) The Person must be either an MBE or a WBE, or must establish that such Person has individually suffered bias such that his or her opportunities to form and operate a successful business have been substantially diminished because of race, ethnicity, culture or disability. (b)

The Person must be either an individual who is Socially and Economically Disadvantaged or 51 % Owned by one or more individuals who are Socially and Economically Disadvantaged.

(1) The Ownership by a Socially and Economically Disadvantaged Person must be real, substantial, and continuing, going beyond *pro forma* ownership of the Person as reflected in Ownership documents.

(2) The contributions to acquire the Ownership interest must be real and substantial. If Expertise is part of the contribution, the Expertise must be of the requisite quality generally recognized in a specialized field, necessary to the Person's potential success, specific to the type of work the Person performs and documented in the Person's records.

(b) The Person must be managed and Controlled by one or more Socially and Economically Disadvantaged individual.

(1) There must not be any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged individual(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged individual(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged individuals, from making any business decision of the Person, including the making of obligations or the dispersing of funds.

(2) The Socially and Economically Disadvantaged individual(s) must possess the power to direct or cause the direction of the management and policies of the Person and to make day-to-day as well as long-term decisions on management, policy, operations and work.

(3) The Socially and Economically Disadvantaged individual(s) may delegate various areas of the management or daily operations of the Person to individuals are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged individual(s) must retain the power to hire and fire any such Person. The Socially and Economically Disadvantaged individual(s) must actually exercise control over the Person's operations, work, management and policy.

(4) The Socially and Economically Disadvantaged individual(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the Person's operations and work. The Socially and Economically Disadvantaged individual(s) must have the ability to intelligently and critically evaluate information presented by other participants in the Person's activities and to make independent decisions concerning the Person's daily operations, work, management, and policymaking.

(5) If federal, state or local laws, regulations or statutes require a particular license or other credential to own or Control a certain type of Person, then the Socially and Economically Disadvantaged individual(s) must possess the required license or credential.

(6) A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the Person or prevent the owner from devoting sufficient time and attention to manage and Control the Person's day to day activities.

(c) Only an independent Person may be certified as a MBE or WBE. An independent Person is one whose viability does not depend on its relationship with another Person. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a Person is independent. In determining whether an applicant is an independent business, the CCD will:

(1) Scrutinize relationships with non-Certified Persons in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner(s) of the applicant and non-Certified Persons associated with non-Certified Firms compromise the applicant's independence.

(3) Examine the applicant's relationships with non-Certified Persons to determine whether a pattern of exclusive or primary dealings with non-Certified Persons compromises the applicant's independence.

(4) Consider the consistency of relationships between the applicant and non-Certified Persons with normal industry practice.

(d) The Person shall be Certified only for specific supplies, equipment, goods or services, or for types of work in which the Socially and Economically Disadvantaged owner(s) has the ability and Expertise to manage and Control the Person's operations and work.

(e) In lieu of conducting its own certifications, the CCD by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the CCD determines that the certification standards of such entities are comparable to those set forth herein.

(f) The certification status of all MBEs and WBEs shall be reviewed periodically by the Office of Contract Compliance. Failure of the Person to seek recertification by filing the necessary documentation with the CCD as provided by rule may result in decertification.

(g) It is the responsibility of the Certified PCE to notify the CCD of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the PCE's decertification.

(h) The CCD shall decertify a PCE that does not continuously meet the eligibility criteria.

(h) Decertification by another agency shall create a *prima facie* case for decertification by the County. The challenged PCE shall have the burden of proving that its County certification should be maintained.

(j) A Person that has been denied certification or recertification or has been decertified may protest the denial or decertification as provided by rule.

(k) A Person found to be ineligible may not apply for certification for six (6) months after the effective date of the final decision.

(l) A third party may challenge the eligibility of an applicant for Certification or a Certified PCE pursuant to procedures established by the CCD. Such challenges shall be signed and sworn by the individual challenging the eligibility of an applicant for Certification or a Certified PCE. The burden of proof shall rest with the complainant. Such challenges to eligibility shall be subject to an appeal. The CCD shall be the final arbiter of all challenges. The presumption that the challenged PCE is eligible shall remain in effect until the CCD renders a final decision.

Sec. 34-269. Utilization plan; commercially useful function.

(a) *Utilization Plan required.* The CPO shall include in Contract Documents for Contracts covered by this Division, a requirement that a Utilization Plan be submitted which either: (i) commits to PCE participation equal to or greater than the applicable Program Goals or Contract Specific Goals, or (ii) requests a waiver of all or a portion of a Program Goal or Contract Specific Goal. The Utilization Plan shall be in such form and contain such information as is required by the CCD. Failure to include a Utilization Plan will render the submission not Responsive. The CCD shall review and either approve or reject the Utilization Plan. For purposes of evaluation a Utilization Plan, only PCEs which perform a Commercially Useful Function shall be considered.

(b) *Commercially Useful Function.* To be considered in meeting Goals, a PCE must perform a Commercially Useful Function, as determined pursuant to this subsection 34-269(b). “Commercially Useful Function” means the performance of a distinct element of work required for the Procurement, with the requisite skill and Expertise.

(1) In the case of a Procurement of goods or equipment, ordering from a manufacturer or distributor for delivery directly to the Using Agency is not a Commercially Useful Function; provided, however, that to the extent such practice is consistent with normal industry practices, a PCE subcontractor may enter into second tier subcontracts. However, if a PCE Contractor or subcontractor subcontracts a significantly greater portion of the work of the Contract than would be expected on the basis of normal industry practices, the PCE shall be presumed not to be performing a Commercially Useful Function.

(2) In the case of a Procurement of services, a Person which subcontracts with another Person to perform the services required does not perform a Commercially Useful Function unless such Person also performs significant supervisory or management responsibilities. A Broker does not fulfill a Commercially Useful Function. In the case of a Joint Venture partner, each Joint Venture partner must perform a Commercially Useful Function.

(c) PCE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the Contract through which funds are passed in order to obtain the appearance of PCE participation.

(d) When a PCE is presumed not to be performing a Commercially Useful Function, the Certified PCE and the Person seeking to include that PCE in its Utilization Plan, may present evidence to rebut this presumption.

(e) Once a Utilization Plan has been approved, the Contractor cannot make changes to the Utilization Plan, including substituting PCEs named in the Utilization Plan, without the prior written approval of the CCD, CPO and the Using Agency. The CCD shall promulgate procedures for changes to the Utilization Plan.

Sec. 34-270.Methods to Achieve Goals and Compliance.

A Person may achieve the applicable Contract Specific Goals in any one or more of the methods set forth below. The same PCE, whether as a contractor, subcontractor or supplier, cannot be utilized as both a MBE and a WBE on the same Contract.

(1) *PCE as prime Contractor.* An MBE or WBE may count its own participation toward the achievement of the applicable MBE or WBE goal. Such PCE will be required to meet the

other goals by another method described herein. If a WBE is also a MBE, such WBE's participation may count toward either the MBE or WBE Goal but not both.

(2) *Joint Venture with one or more PCE.* Where a Person engages in a Joint Venture with one or more PCEs, the Utilization Plan shall include a written agreement at least the information set forth in subsection 34-384 (ii) 1 through 4 below. The CCD shall consider the following in determining whether the proposed Utilization Plan satisfies the Program Goals based upon such written Joint Venture agreement and the Utilization Plan.

- a. Each Joint Venture partner's initial capital investment;
- b. The extent to which the PCE's proposed participation in the performance of the Contract constitutes a Commercially Useful Function;
- c. Whether the PCE's share in the risks and profits of the Joint Venture is proportional to their ownership interest;
- d. Whether the PCE will have duties, responsibilities, management Control and risk with respect to the Joint Venture in proportion to its ownership interest;

(3) *Subcontracting.* A Person may achieve the Contract Specific Goals by means of subcontracting with, or purchasing from one or more PCEs.

Sec. 34-271. Request for a total or partial waiver; Good Faith Efforts.

(a) In reviewing a partial or total request for waiver of a Goal, the CCD shall determine whether a Person has made good faith efforts to meet the applicable Goals and to what extent the waiver request should be granted. In determining whether a Person has made Good faith efforts, the CCD will consider whether the Person has taken the following actions:

- (1) Review lists of PCEs maintained by the County and other State and local governments and agencies to identify qualified PCEs for solicitation for Bids;
- (2) Divide Procurement requirements into small tasks or quantities. This shall include, where appropriate, breaking out Contract work items into economically feasible units, consistent with the availability of PCEs, to facilitate PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces.

(3) Adjust any insurance requirements imposed by the Person seeking PCEs, or otherwise assist PCEs in obtaining any required insurance, where economically feasible, to encourage participation by PCEs;

(4) Make timely attempts to contact PCEs providing the type of supplies, equipment, goods or services required for the Procurement; and provide them with a convenient and timely opportunity to obtain and review all information concerning the Procurement necessary to enable such PCE to respond;

(5) Follow up initial contacts of PCEs to determine if they are interested participating in the Procurement;

(6) Negotiate in good faith and on a timely basis with PCEs to enable them to participate in the Procurement. Evidence of such negotiation includes the names, addresses, and telephone numbers of PCEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached. The Contractor may not reject PCEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using PCEs is not in itself sufficient reason for a Contractor's failure to meet the Goals, as long as such costs are reasonable.

(7) Make efforts to assist interested PCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that such efforts shall not be inconsistent with the requirement that the PCE be responsible for actually obtaining and paying for such items.

(8) Establish delivery schedules which will encourage participation by PCEs, where the requirements of the Procurement permit;

(9) Use the services and assistance of the CCD's staff, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce;

(10) Timely notify appropriate community and minority and women's business organizations identified as assist agencies of the opportunity for participation in the Procurement;

(11) Demonstrate to the CCD that no PCE exists with which a mentor/protégé relationship could be established, as described in Sec. 34-271.

(b) In determining whether a Bidder or Respondent has made Good Faith Efforts, the levels of participation by PCEs set forth in Utilization Plans submitted by other Persons for the

same Procurement may be considered. For example, if the apparent successful Bidder or Respondent fails to meet the Contract Specific Goals, but meets or exceeds the average PCE participation obtained by other Bidders or Respondents, this may be evidence that the apparent successful Bidder or Respondent made Good Faith Efforts.

(c) Where the County requires professional services, the County must be able to call upon those professionals whose particular training and experience are most beneficial to the County.

(1) The County sets an annual "best efforts" goal of 35 percent PCE participation for the total professional services and consulting services utilized by the County.

(2) A Utilization Plan shall be required, and if a waiver or partial waiver is requested, "good faith" efforts shall be demonstrated as set forth in Sec. 34-271; provided, however, that such Persons shall not be required to attempt to subcontract with PCEs if sub-contractors would not typically be utilized for the type of Procurement. In such cases, the Person shall document the reasons for not sub-contracting in a waiver request.

(3) The Contractor will endeavor to maximize use of PCEs for supplies, equipment, goods or services for such Contractor's business operations not specifically for the Procurement.

(4) If such Persons is required to have or has an affirmative action plan and goals, such plan and goals shall be submitted with their Utilization Plan. The CCD shall compare such plan and goals with the Person's actual affirmative action achievements and such achievements may be considered by the County in future Procurements.

(d) *Mentor/protege agreements.* Where a Contractor enters into mentor/protege agreement with a PCE to improve or develop certain aspects of the business of the PCE, the CCD shall evaluate the effect of such agreement as a factor in determining good faith efforts. The mentor/protege agreement may provide for the Contractor to assist the PCE in such areas as technical aspects of the PCE's business, improving financial management, or providing on-the-job training. To constitute good faith efforts, the mentor/protégé agreement shall satisfy the following requirements.

(1) The PCE performs a Commercially Useful Function;

(2) The agreement shall be included in the Utilization Plan; and

(3) The agreement clearly defines the respective responsibilities of the Contractor and the PCE and includes specific, measurable goals to be attained by both parties through the

performance of the agreement. In order to be a factor in establishing best efforts, the mentor/protégé agreement must be for a reasonable period of time.

(e) The CCD may grant a total or partial waiver based upon the following criteria:

(1) There are not sufficient PCEs capable of providing the supplies, equipment, goods or services required for the Procurement;

(2) The Procurement cannot reasonably be divided;

(3) The price required by potential PCEs is more than ten percent above competitive levels; and

(4) Any other factor relating to good faith efforts as set forth in the Person's Utilization Plan.

Sec. 34-272. Calculating PCE participation.

In calculating a PCE's participation, only dollar amounts commensurate with a PCE's performance of a Commercially Useful Function may be counted.

(a) The dollar value of that portion of a Procurement that is performed by the PCEs' own forces shall be counted, including the cost of supplies, materials and equipment furnished by the PCE for the Procurement, whether purchased or leased (except to the extent purchased or leased from the Contractor or the Contractor's Affiliate).

(b) The dollar amount of fees or commissions charged by a PCE for providing a bona fide service, such as professional, technical, consultant, managerial, insurance brokerage or surety services, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

(c) When a PCE is a Joint Venture partner, only the dollar value of the distinct, clearly defined work performed by the PCE with its own forces, shall be counted.

(d) Only the dollar value must be commensurate with the work the PCE actually performs.

(e) One hundred percent (100%) of the cost of the supplies, equipment or goods obtained from a PCE Manufacturer or Regular Dealer shall be counted.

(f) One hundred percent of the fees or transportation charges for the delivery of supplies, equipment, materials or goods shall be counted only if the payment of such fees is a customary industry practice and such fees are commensurate with fees customarily charged for similar services.

(g) If a PCE ceases to be Certified during its performance on a Procurement, the dollar value of work performed under a Contract with that Person after it has ceased to be Certified shall not be counted.

(h) Only the dollar amount actually paid to the PCE shall be counted toward the participation of a PCE.

Sec. 34-273. Review of contract performance.

(a) *Compliance with Utilization Plan.* The CCD shall review the Contractor's compliance with its Utilization Plan as necessary during the performance of the Contract. The CCD may establish such requirements for periodic Contractor reporting on compliance with its Utilization Plan as the CCD determines appropriate and necessary. A Contractor shall be required to provide any additional requested compliance documentation within 14 days of request by the CCD.

(1) If the CCD determines that the Contractor has failed to comply with its Utilization Plan, the CCD shall notify the CPO of such failure. The CPO shall then send notice of default to the Contractor, and the Contractor shall have such time to cure the default as is provided in the Contract. If no such period is provided, the Contractor shall have ten days to cure such default. For purposes of this Section, providing a plan for bringing the Contract into compliance with the Utilization Plan may constitute a cure, if compliance cannot reasonably be achieved within the applicable cure period, and if compliance is achieved in accordance with such plan.

(2) If a Contractor fails to provide any documentation required by the CCD, the CCD shall notify the CPO of such failure. The CPO shall then send notice of default to the Contractor, and the Contractor shall have such time to cure the default as is provided in the Contract. If no such period is provided, the Contractor shall have ten days to cure such default.

(b) *Bid and target market programs.* To address more specifically the barriers to PCE participation as prime Contractors in County work, the CCD may recommend to the CPO to institute the following special PCE bidding provisions, following determination of the appropriateness of such provisions.

(1) In connection with the award of a Contract subject to competitive bidding on which a PCE has bid and where the PCE is bidding on the item in question for the first time; and has

never successfully bid on a Cook County purchasing contract, the Contract Compliance Director may, at the opening of the bids on the item, compare the PCE Bid with the lowest Bid, and, if the PCE's Bid is closely competitive as defined by guidelines to be established by the Contract Compliance Director with that of lowest actual Bids, direct the CPO to declare the PCE the successful Bidder. A PCE may use this procedure only once to become the successful Bidder on any particular item. Thereafter, the PCE must be totally competitive in terms of price to be the successful Bidder.

(2) The Contract Compliance Director shall develop and coordinate a target market program as follows:

a. The Contract Compliance Director shall review the availability of PCEs providing various goods and services and shall identify for inclusion in a potential program for bidding among PCE Persons certain commodity areas with sufficient PCE availability to ensure that the County receives a competitive price. The Contract Compliance Director shall report his/her findings and recommendations to the Contract Compliance Committee;

b. Upon a determination by the CCD that such a program is advisable for any particular commodity procurement, the Contract Compliance Director will institute the following procedures:

1. The Contract Compliance Director will notify the CPO of identification of those commodity codes appropriate for a target market program;

2. To the extent practicable, the CPO, with the aid of the Contract Compliance Director, shall divide procurement in the designated commodity areas into economically feasible sizes to facilitate Bids or offers from PCEs and shall designate contracts to be offered under the target market program;

3. The CPO shall offer PCEs the opportunity to bid on such contracts in a limited competition;

4. All standard County rules for bidding will then become effective and, provided that at least three PCEs Bid or make an offer on the contract, the lowest Responsive and Responsible Bidder among the PCEs will receive the contract;

5. In the event less than three PCEs Bid or make an offer on the Contract

or if there is no Responsive Bid or offer received from a Responsible PCE, the CPO shall rebid the Contract not subject to the target market program.

- c. Participation in the target market program shall be limited to Minority Business Enterprises, Women's Business Enterprises and Joint Ventures consisting exclusively of Minority Business Enterprises, Women's Business Enterprises or both. The PCE Contractor on a target market Contract may subcontract up to 49 percent of the dollar value of the target market Contract to subcontractors who are not Minority Business Enterprises or Women's Business Enterprises.

Sec. 34-274. Prompt payment of PCEs.

If an invoice from a Contractor includes payment for supplies, equipment, goods or services furnished by a PCE, Contractor shall pay such PCE for such supplies, equipment, goods or services within thirty (30) days after receipt of payment from the County. The CCD shall investigate any complaint or charge of excessive delay in payment, and shall report the results of such investigations to the Contract Compliance Committee and to the County Comptroller. Failure of Contractor to comply with this Sec. 34-388 shall constitute a material breach of the Contract.

Sec. 34-275. Reporting and review.

The CCD shall report to the Board on an annual basis with respect to the following:

- (1) The percentage of the total dollar amount of Procurements for such year actually received by PCEs;
- (2) The number of MBEs and WBEs available for participation in Procurements, by category;
- (3) An evaluation of the effectiveness of this division in ensuring equitable participation by PCEs in Procurements;
- (4) An assessment of the continuing need for the Program;
- (5) Identification of any enforcement problems; and

(6) Any recommendations with respect to modifying or improving the Program, including discontinuing or modifying Program Goals in those cases where Minority Business Enterprises and Women's Business Enterprises no longer are disadvantaged by the effects of discrimination in their participation in Procurements.

Sec. 34-276. Prohibited provisions.

Any agreement between a Contractor and a MBE or WBE in which the Contractor requires that the MBE or WBE not provide subcontracting quotations to other Contractors is prohibited.

Subdivision II. Participation in Cook County Public Works Contracts

Sec. 34-285. Short title; incorporation of provisions.

This subdivision may be known and cited as the Cook County Public Works Minority- and Women-Owned Business Enterprise Ordinance. The provisions of the Cook County Minority- and Women-Owned business Enterprise General Ordinance are applicable to Public Works Contracts, except to the extent modified hereby.

Sec. 34-286. Findings.

(a) The findings set forth in subdivision I Sec. 34-261 of this division 8 are incorporated herein by this reference.

(b) The requirement in subdivision I that minority- and women-owned businesses (M/WBEs) be allotted certain percentages of County construction contracts was ruled unconstitutional as applied to construction contracts in *Builders Association of Greater Chicago v. County of Cook*, 256 F.3d 642 (7th Cir. 2001). See also *Builders Association of Greater Chicago v. City of Chicago*, 2003 WL 1786489, 2003 U.S. Dist. Lexis 23287 (N.D. Ill. 2003).

(c) The President and the Board of Commissioners of the County of Cook, after considering (i) evidence presented at trial in *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) and *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005); (ii) County statistical evidence of continuing discrimination against Blacks, Hispanics, Asians and women in the County's Procurements; (iii) the Report title, "Review of Compelling Evidence of Discrimination Against Minority- and Women-Owned Business Enterprise in the Chicago Area Construction Industry and Recommendations for Narrowly Tailored Remedies for Cook County, Illinois;" as well as (iv) anecdotal evidence of discrimination against minorities and women in

the County's Public Works Contracts; and (v) receiving and considering written reports, adopts the following findings as a strong basis in evidence supporting a narrowly tailored, remedial affirmative action program in Public Works Contracts.

(d) The County seeks to provide a level playing field and equal access for all prime contractors and subcontractors to participate in Public Works Contracts;

(e) The County has engaged in committee hearings in which the County has heard anecdotal evidence of discrimination in the construction industry, has commissioned a study on the levels of PCE participation in Public Works Contracts, has reviewed the report prepared indicating evidence of discrimination in Public Works Contracts and has considered the evidence in relevant case law; and

(f) In the absence of application of the Program to Public Works Contracts, the County has witnessed a drastic decline in PCE in its Public Works Contracts, to levels below the availability of PCEs, and thus, the County would be a passive participant in a discriminatory marketplace without the application of PCE goals.

Sec. 34-287 Policy.

Based on the findings set forth in subdivision I, Sec. 34-261 and the findings set forth in subdivision II, Sec. 34-286, and in addition to the policy set forth at Sec. 34-262, the policy and purpose of this subdivision is to establish and implement goals for participation of PCEs in Public Works Contracts, in accordance with all applicable laws.

Sec. 34-288. Program goals.

The Program Goal applicable to Public Works Contracts shall be a goal of twenty-four percent (24%) of the annual total dollar amount of Public Works Contracts to MBEs and a goal of not less than ten percent (10%) of the annual total dollar amount of Public Works Contracts to WBEs. In establishing a Contract Specific Goal for Public Works Contracts, the CCD shall consider the availability of sufficient Certified MBEs and WBEs for each trade required as part of the project.

Sec. 34-289. Commercially useful function.

To determine whether a PCE is performing a Commercially Useful Function, the County will evaluate whether the portion of the work subcontracted to or by a PCE is in accordance with industry standards. For example, if a PCE subcontracts a greater portion of the work of a Contract than would be expected based on normal industry practice, it is presumed not to

perform a Commercially Useful Function. In addition, to perform a Commercially Useful Function, the PCE must be responsible, with respect to materials, equipment and supplies used in performing its portion of the Contract, for negotiating price, determining whether quality meets specifications, ordering the material, installing (where applicable) and paying for the material itself.

DIVISION 9. CONTRACT MANAGEMENT

Sec. 34-300. Contracts

(a) *Purpose.* The purpose of this Division is to ensure that Contracts in an amount of \$1,000,000.00 or more are performed in accordance with the Contract terms.

(b) *Applicability.* This Division shall only apply to Contracts of \$1,000,000.00 or more.

(c) *Funding.* The extent to which this division shall be implemented shall be limited to the availability of funding. The Board encourages the County to seek out any available grant funding for this initiative.

Sec. 34-301. Information to be contained in Contracts

All Contracts over \$1,000,000.00 should contain, but not be limited to, the following information, as applicable:

(a) Clearly state the specifications, contract period, allowable renewals or extension periods, and procedures for amendments or changes;

(b) Provide for specific measurable deliverables and reporting requirements, including due dates;

(c) Describe any payment schedules and escalation factors;

(d) Contain performance standards;

(e) Tie payments to the acceptance of deliverables or the final product;

(f) Contain all standard or required clauses as published in an RFP. Order of precedence should be addressed in case of a discrepancy between the RFP and the Contract;

(g) Contain appropriate signatures, approvals, acknowledgements, or witnesses; and

(h) Be reviewed and approved as to form by an attorney from the Cook County State's Attorney's Office prior to execution.

Sec. 34-302. Contract management for Contracts.

(a) Using Agency responsibilities are as follows:

(1) Designate one or more individuals as the "Contract Manager" with the knowledge, skills, ability and time to monitor the Contract;

(2) The CPO may provide staff to assist the Using Agency in complying with this division.

(b) Contract Manager's duties:

(1) Monitor performance of the Contract in accordance with its terms;

(2) Track budgets and compare invoices and charges to contract terms and conditions;

(3) Document the timeliness and acceptance or rejection of deliverables and initiate appropriate action to enforce the Contract terms; and

(4) Evaluate and document compliance with Contract requirements on a periodic basis during the term of the Contract and submit to the CPO.

(c) CPO's duties:

(1) Create uniform evaluation forms for use by Contract Managers, to evaluate the extent to which the Contractor satisfied the Contract terms;

(2) Establish appropriate procedures to ensure that evaluations are utilized in determining whether a Bidder or Proposer is Responsible; provided, however, that evaluations made only within the past three years shall be considered;

(3) Assist Using Agencies in obtaining training through the National Contract Managers Association, Institute of Supply Management or National Institute of Government Purchasing standards, for Contract Managers.

Sec. 34-310. Invoices required for all service Contracts.

(a) *Work Performed.* All Contracts for services, regardless of compensation structure, shall contain a provision requiring the Contractor to maintain and submit for review upon request by the Using Agency, itemized records indicating the dates that services were provided, a detailed description of the work performed on each such date, and the amount of time spent performing work on each such date.

(b) *Expenses.* Contracts for services shall also require Contractors to submit documentation of the types and amounts of expenses incurred related to the work performed if the Contractor ~~uses County funds to pay for any such expenses or seeks reimbursement for any such expenses incurred.~~

(c) *Invoice Documentation.* All Contracts for services, regardless of compensation structure, shall contain a provision requiring the Contractor to submit itemized records indicating the dates or time period in which the services being invoiced were provided, a detailed description of the work performed for the time period being invoiced and the amount of time spent performing work for the time period in question. In addition, all Contracts for services that are procured as Sole Source must also contain a provision requiring the Contractor to submit itemized records indicating the dates that services were provided, a detailed description of the work performed on each such date, and the amount of time spent performing work on each such date.

(~~e~~d) *Payment.* All Contracts for services shall further require that the itemized work and expense records required in 34-310 (b) and (c) be submitted to the Using Agency with the Contractor's invoice as a condition of payment for any services rendered.

Sec. 34-311. No payment prior to submission of invoice.

The Comptroller shall not issue a payment to any Contractor providing services who has not submitted the requisite invoice with work and expense records unless the Contractor has been approved for advance payment ~~by the CPO per the Contract.~~ The Comptroller shall not issue an advance payment to any Contractor providing services unless the invoice includes written authorization from the Using Agency documenting the contractual basis for the advance payment. Contractors approved for advance payment shall be required to submit invoices providing work and expense records as described above in Section 34-310 on at least a monthly basis.

Effective date.

This Ordinance shall in effect thirty (30) days after adoption.