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City Council Document Tracking Sheet

Meeting Date:	1/18/2012
Sponsor(s):	Emanuel, Rahm (Mayor) Burnett, Walter (27)
Type:	Ordinance
Title:	Amendment of Chapter 2-92 of Municipal Code regarding local purchasing
Committee(s) Assignment:	Committee on Budget and Government Operations

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

January 18, 2012

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Chief Procurement Officer, I transmit herewith, together with Alderman Burnett, an ordinance amending Chapter 2-92 of the Municipal Code regarding local purchasing.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

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

SECTION 1. Chapter 2-92 of the Municipal Code of Chicago is hereby amended by adding new sections 2-92-410 and 2-92-412, by adding the language underscored and by deleting the language struck through, as follows:

2-92-410 Contracts-Bid incentive for certain city-based manufacturers.

(a) For purposes of this section only, the following definitions shall apply:

"City-based manufacturer" means a person who: (i) holds any appropriate city license; (ii) is subject to applicable city taxes; and (iii) owns, operates, or leases a manufacturing facility within the city.

"Contract for goods" means any contract, purchase order or agreement for the purchase of goods awarded by the city and whose cost is to be paid from funds belonging to or administered by the city; provided that a "contract" does not include: (i) a delegate agency contract; (ii) a lease of real property; (iii) a collective bargaining agreement; or (iv) a construction contract as defined in Section 2-92-670.

"Locally manufactured goods" means goods whose value, either in whole or in part, is derived from growing, producing, processing, assembling, or manufacturing activities that occur within a city-based manufacturer's facility located within the city.

"Manufacture" means to produce tangible goods for use from raw or prepared materials by giving the materials new forms, qualities, properties or combinations, whether by hand-labor or machines.

(b) (1) Unless otherwise prohibited by any federal, state or local law, for any contract for goods having an estimated contract value of \$100,000 or more advertised, or if not advertised awarded, after the effective date of this section, the chief procurement officer shall allocate to any qualified bidder the following bid incentive:

total dollar value of locally manufactured goods provided in the contract	Bid incentive
25% to 49%	1% of the contract base bid
50% to 74%	1.5% of the contract base bid
75% or greater	2% of the contract base bid

Provided that for any contract subject to this section, if a contractor is allocated a bid preference pursuant to section 2-92-412, the contractor shall not be eligible to receive the bid incentive allocated pursuant to this section.

The bid incentive is used only to calculate an amount to be used in evaluating the bid to determine the low bidder, and it does not affect the contract price.

(2) The chief procurement officer may determine not to allocate a bid incentive under this section, under the following conditions:

- (i) the purchase of locally manufactured goods is not in the best interest of the city;
- (ii) the locally manufactured goods are not likely to be available in sufficient supply and acceptable quality;
- (iii) the purchase of locally manufactured goods conflicts with another city economic development program;
- (iv) the purchase of locally manufactured goods will increase the cost of the goods by more than five percent over non-locally manufactured goods;
- (v) for cooperative purchasing contracts; or
- (vi) an emergency exists.

(3) For all contracts advertised after the effective date of this section, the chief procurement officer shall include the bid incentive provision consistent with this section in all such advertising.

(c) For a specific type of good, the chief procurement officer shall establish, in rules and regulations, the amount of value that must be derived from manufacturing activities located in the city in order for that good to qualify as a locally manufactured good.

(d) The contractor shall maintain records adequate to monitor compliance with this section and shall submit such reports as required by the chief procurement officer. Full access to the contractor's records shall be granted to the chief procurement officer, the commissioner of the supervising department, the inspector general, or any duly authorized representative thereof. The contractor and subcontractors shall maintain all relevant records for a period of no less than three years after the expiration of the contract.

(e) The chief procurement officer may require, at the time of submission of a bid or at any time during the term of the contract, that the bidder or contractor submit an affidavit and other supporting documents demonstrating that the bid for which the bid incentive is being or was sought satisfies all pertinent requirements, including documentation that a specific good meets the criteria for a locally manufactured good. The documentation may include, but is not limited to, a manufacturer's certification that the good was manufactured at a facility located in the city and an opinion from a certified public accountant that evidences the amount of the value being added from the manufacturing activity located in the city.

(f) Upon completion of the work, any contractor that has failed to supply the required percentage of locally manufactured goods for which a bid incentive was allocated shall be fined in an amount equal to three times the amount of the difference between the bid incentive allocated and the bid incentive that would have been allocated to that contractor for the amount of locally manufactured goods actually supplied under the contract, unless the contractor can demonstrate that due to circumstances beyond the contractor's control, the contractor for good cause was unable to provide the required percentage of locally manufactured goods.

(g) The chief procurement officer is authorized to adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement of this section.

2-92-412 Contracts-Bid preference for city-based businesses.

(a) For purposes of this section only, the following definitions shall apply:

"City-based business" means a person who (i) conducts meaningful day-to-day business operations at a facility located within the city and reports such facility to the Internal Revenue Service as a place of employment for the majority of its regular, full-time work force; (ii) holds any appropriate city license; and (iii) is subject to applicable city taxes.

"Contract" means any contract, purchase order or agreement awarded by the city and whose cost is to be paid from funds belonging to or administered by the city; provided that a "contract" does not include: (i) a delegate agency contract; (ii) a lease of real property; or (iii) a collective bargaining agreement.

"Prime Contractor" means a person who is a city-based business and the primary contractor on a contract. A "Prime Contractor" does not include any subcontractors.

(b) (1) Unless otherwise prohibited by any federal, state or local law, for any contract having an estimated contract value of \$100,000 or more advertised, or if not advertised awarded, after the effective date of this section, the chief procurement officer shall allocate to any qualified bidder that is a prime contractor a bid preference of 2% of the contract base bid.

If a prime contractor is allocated a bid preference pursuant to this section, the prime contractor shall not be eligible to receive a bid incentive pursuant to section 2-92-410.

The bid preference is used only to calculate an amount to be used in evaluating the bid to determine the low bidder, and it does not affect the contract price.

(2) The chief procurement officer may determine not to allocate a bid preference under this section, under the following conditions:

- (i) an emergency exists;
- (ii) for cooperative purchasing or cooperative construction contracts; or
- (iii) the chief procurement officer otherwise concludes that the allocation of a bid preference is not in the city's best interest.

(3) For all contracts advertised after the effective date of this section, the chief procurement officer shall include the bid preference provision consistent with this section in all such advertising.

(c) The prime contractor shall maintain records adequate to monitor compliance with this section and shall submit such reports as required by the chief procurement officer. Full access to the prime contractor's records shall be granted to the chief procurement officer, the commissioner of the supervising department, the inspector general, or any duly authorized representative thereof. The prime contractor and subcontractors shall maintain all relevant records for a period of no less than three years after the expiration of the contract.

(d) The chief procurement officer may require, at the time of submission of a bid or at any time during the term of the contractor, that the bidder or prime contractor submit an affidavit and other supporting documents demonstrating that the bidder or prime contractor is a city-based business.

(e) Upon completion of the work, any prime contractor that has failed to remain a city-based business for which a bid preference was taken into consideration in awarding of a contract shall be fined in an amount equal to three times the amount of the bid preference allocated, unless the prime contractor can demonstrate that due to circumstances beyond the prime contractor's control, the prime contractor for good cause was unable to remain a city-based business throughout the duration of the contract period.

(f) The chief procurement officer is authorized to adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement of this section.

2-92-710 Race- and gender-neutral measures.

The city shall develop and use race- and gender-neutral measures to facilitate the participation of small business enterprises in city contracting activities. Race- and gender-neutral measures shall be used to the maximum feasible extent to meet the biannual, aspirational goals established in Section 2-92-690. These measures shall include, but are not limited to:

(Omitted text is unaffected by this ordinance)

(l) ~~Reserved providing a bid preference on construction contracts of 2 percent for firms bidding on prime contracts whose principal place of business is located in the City of Chicago;~~

(Omitted text is unaffected by this ordinance)

SECTION 2. Severability. If any provision of this ordinance is held invalid, such provision shall be deemed excised from this ordinance and the invalidity thereof shall not effect any of the other provisions of this ordinance. If the application of any provision of this ordinance to any person or circumstance is held invalid, it shall not effect the application of such provision to other persons or circumstances.

SECTION 3. This ordinance shall take effect after its passage and approval