

text 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:

a) "Affiliate" of a person or entity means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

b) "Board" means the affirmative action advisory board established in Section 2-92-510 of this chapter.

c) "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.

1

d) "Business enterprise owned or operated by people with disabilities" or "B.E.P.D." shall have the meaning ascribed to it in Section 2-92-586 of this chapter.

e) "Certifying agency" means a private or public entity designated by the chief procurement officer as an agency eligible to certify businesses as C.E.B.s.

f) "Certification eligible business" or "C.E.B." means any one or more businesses in the group consisting of M.B.E.s., W.B.E.s., B.E.P.D.s., V.B.E.'s and such other categories of business enterprises established by the chief procurement officer from time to time as eligible for participation in a certification program, when in his judgment the best available evidence supports such establishment.

g) "Certification program" means any one or more programs in the group consisting of the city's minority- and women- owned business enterprise programs, and-business enterprises owned by people with disabilities program, business enterprises owned by veterans program, and such other programs as the chief procurement officer may from time to time develop and implement, when in his judgment the best available evidence supports such establishment.

h) "Chief procurement officer" means the chief procurement officer of the City of Chicago.

(i) "Contract" means any contract, purchase order or agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement or a construction contract as defined in Section 2-92-670) awarded by any officer or agency of the city other than the City Council, and whose cost is to be paid from funds belonging to or administered by the

City of Chicago, regardless of source.

(j) (Reserved)

(k) "Contractor" means any person or business entity that shall enter into a contract with the city, and includes all partners and all joint venturers of such person.

(l) "Credit program" means the program provided for in Section 2-92-530 of this chapter.

(m) "Delegate agency contract" means a contract with a not-for-profit or for-profit organization which provides social services (including but not limited to job training and placement, education, child day care, emergency shelter, home-delivery meals, and health care) to targeted communities under agreements with the city which are funded by federal or state grants and paid on a pass-through basis.

(n) "Disadvantaged business enterprise" or "D.B.E.", in connection with a contract which is funded in whole or in part from state or federal governmental sources, means a business

2

entity which is a disadvantaged business enterprise pursuant to the rules and regulations of such governmental source.

(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 chief procurement officer pursuant to regulations adopted by the department of procurement services. For calendar year 2000, a business entity shall be presumed to be an established business if the business entity and its affiliates have had annual average gross receipts in excess of \$27,500,000.00 over the previous three fiscal years. For calendar year 2001 and beyond, this sum shall be adjusted upwards or downwards by applying to it a rate equal to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) published by the United States Bureau of Labor Statistics for that calendar year. Such adjustment shall be made 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 chief procurement officer, after computing the adjustment for a given year, shall cause the new sum as adjusted to be published for five consecutive business days in two or more newspapers of general circulation in the city.

(p) "Joint venture" means an association of two or more businesses formed to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skills and knowledge.

(q) "Local business" means a business entity located within the counties of Cook, Du Page, Kane, Lake, McHenry or Will in the State of Illinois (the "Six-County Region") which has the majority of its regular, full-time work force located within the Six-County Region.

(r) "Minority group" means any of the following racial or ethnic groups:

- i) African-Americans or Blacks (persons having origins in any of the Black Racial groups of Africa);
- ii) Hispanics (persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race);
- iii) Asian-Americans (persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
- iv) Other groups, or other individuals, found by the board to be socially and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in Chicago area markets or to do business with the city; and
- v) For purposes of contracts funded by state or federal governmental sources, groups found to be eligible for purposes of the designation of D.B.E.s by such governmental sources.

3

(s) "Minority-owned business" or "M.B.E." means a local business which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of one or more minority groups, whose management and daily business operations are controlled by one or more members of one or more minority groups, and which is not an established business.

(t) "M.B.E. percentage" means, from the effective date of this ordinance through December 31, 1990, 25 percent; from January 1, 1991, through December 31, 1991, 21.1 percent; from January 1, 1992, through December 31, 1992, 19.5 percent; from January 1, 1993, through December 31, 1993, 17.7 percent; and from and after January 1, 1994, 16.9 percent. For contracts procured by public solicitation, the M.B.E. percentages shall apply as of the date the solicitation is publicly advertised.

(u) "M.B.E. target market percentage" means, from January 1, 1991 through December 31, 1991, 5.0 percent; from January 1, 1992, through December 31, 1992, 7.0 percent; from January 1, 1993, through December 31, 1993, 9.0 percent; and from and after January 1, 1994, 10.0 percent.

(u-5) "Non-participating established business" means an established business which is not eligible to participate in the city's minority- and women-owned business enterprise procurement program.

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

(v-5) "Participating established business" means an established business which is eligible to participate in the city's minority- and women-owned business enterprise procurement program as set forth in Section 2-92-470 of this chapter.

(w) "Program", unless used as part of the term "certification program", means the minority-owned and women-owned business enterprise procurement program or the veteran-owned business enterprise procurement program established in Sections 2-92-420 through 2-92-570 of this chapter.

(x) "Target market contract" means a contract designated for competition limited to M.B.E.s or W.B.E.s or V.B.E.s on either a negotiated or competitive bid process pursuant to Section 2-92-460 of this chapter.

(xa) "Veteran" means a person who has served in the United States armed forces and was discharged or separated under honorable conditions.

4

(xb) "Veteran-owned business" or "V.B.E." means a local business which is at least 51 percent owned by one or more veterans, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more veterans, whose management and daily business operations are controlled by one or more veterans, and which is not an established business.

(xc) "V.B.E. percentage" means, from the effective date of this ordinance, 5 percent.

(xd) "V.B.E. target market percentage" means, from the effective date of this ordinance, 5 percent.

(y) "Women-owned business" or "W.B.E." means a local business which is at least 51 percent owned by one or more women, or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women, whose management and daily business operations are controlled by one or more women, and which is not an established business.

(z) "W.B.E. percentage" means, from the effective date of this ordinance through December 31, 1991, 5.0 percent; from January 1, 1992, through December 31, 1992, 4.9 percent; from January 1, 1993, through December 31, 1993, 4.8 percent; and from and after January 1, 1994, 4.5 percent. For contracts procured by public solicitation, the W.B.E. percentage shall apply as of the date the solicitation is publicly advertised.

(aa) "W.B.E. target market percentage" means, from January 1, 1991, through December 31, 1991, 0.25 percent; from January 1, 1992, through December 31, 1992, 0.5 percent; from January 1, 1993, through December 31, 1993, 0.75 percent; and from and after January 1, 1994, 1.0 percent.

2-92-430 Award goal - Established.

The chief procurement officer shall establish a goal of awarding not less than 25 percent of the annual dollar value of all contracts to qualified M.B.E.s[^] and five percent of the annual dollar value of all contracts to qualified W.B.E.'s, and five percent of the annual dollar value of all contracts to qualified V.B.E.'s.

2-92-440 Award goal - Implementation.

In order to achieve the goal stated in Section 2-92-430 of this chapter, the chief procurement

officer shall undertake, in addition to the other measures provided herein, the following measures:

(a) Insert within specifications for each contract let through competitive bidding with an estimated value in excess of \$10,000.00 a requirement that the contractor commit to the expenditure of at least the M.B.E. percentage of the dollar value of the contract with one or more M.B.E.'s and at least the W.B.E. percentage of the dollar value with one or more W.B.E.'s, and

5

at least the V.B.E. percentage of the dollar value of the contract with one or more V.B.E.'s. This commitment may be met by the contractor's status as M.B.E., W.B.E., or V.B.E., or by joint venture with one or more M.B.E.'s or W.B.E.'s as prime contractor (to the extent of the M.B.E. or W.B.E. participation in such joint venture), or by joint venture of one or more V.B.E.'s as prime contractor, or by subcontracting a portion of the work to one or more M.B.E.'s or W.B.E.'s, or V.B.E.'s, or by purchase of materials or services for the work from one or more M.B.E.'s or W.B.E.'s or V.B.E.'s, or by the indirect participation of M.B.E.'s or W.B.E.'s or V.B.E.'s in other aspects of the contractor's business (but no dollar of such indirect M.B.E. or W.B.E. or V.B.E. participation shall be credited more than once against a contractor's M.B.E. or W.B.E. or V.B.E. commitment with respect to all contracts of such contractor), or by any combination of the foregoing;

b) Review each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by ten percent of the initial contract value or \$50,000.00, whichever is greater, for opportunities to increase participation of M.B.E.'s or W.B.E.'s or V.B.E.'s already involved in the contract;

c) Consider the extent of each bidder's commitment to M.B.E./W.B.E./V.B.E. participation as further evidence of the responsibility of the bidder;

d) Negotiate with any contractor whose contract is in excess of \$ 10,000.00 in value and is not awarded by competitive bidding a commitment, where practicable, to M.B.E. participation of at least the M.B.E. percentage and W.B.E. participation of at least the W.B.E. percentage of the dollar value of the contract, and V.B.E. participation of at least the V.B.E. percentage of the dollar value of the contract;

e) Insert in each contract containing a commitment to M.B.E. and/or W.B.E. participation and V.B.E. participation:

i) A requirement of periodic reporting by the contractor to the chief procurement officer on all expenditures made to achieve compliance with the foregoing provisions. Such reports shall include the name and business address of each M.B.E. and W.B.E. and V.B.E. solicited by the contractor to work as a subcontractor on the contract and the responses received by the contractor to such solicitation, the name and business address of each M.B.E. and W.B.E. and V.B.E. actually involved in the contract, a description of the work performed and/or product or service supplied by each such M.B.E. or W.B.E. or V.B.E., the date and amount of each expenditure, and such other information as may assist the chief procurement officer in determining the contractor's compliance with the foregoing provisions, and the status of any M.B.E. or W.B.E. performing any portion of the contract;

ii) Remedies for a contractor's noncompliance with the commitment to M.B.E./W.B.E. participation and V.B.E. participation, including an agreement to pay damages to the M.B.E.s and W.B.E.s and V.B.E.'s which were underutilized. The unexcused reduction of

6

M.B.E. or W.B.E. or V.B.E. contract participation in connection with a contract (including any modification thereof) shall entitle the affected M.B.E.s and W.B.E.s or V.B.E.'s to damages pursuant to such agreement. Such provisions shall include an undertaking by the contractor to submit any dispute concerning such damages to binding arbitration by an independent arbitrator, other than any department or agency of the city, with reasonable expenses, including attorney's fees, being recoverable by a prevailing M.B.E. or W.B.E. or V.B.E. D.P.S. shall adopt rules and procedures governing such arbitrations. Nothing herein shall be construed to limit the rights of and remedies available to the city;

iii) Uniform provisions permitting the termination of the contract by the city upon the disqualification of the contractor as M.B.E. or W.B.E. or V.B.E., if (a) the contractor's status as M.B.E. or W.B.E. or V.B.E. was a factor in the award of the contract and (b) such status was misrepresented by the contractor;

iv) Uniform provisions permitting termination of the contract by the city upon the disqualification of any M.B.E. or W.B.E. or V.B.E. subcontractor or supplier of goods or services if (a) the subcontractor's or supplier's status as M.B.E. or W.B.E. or V.B.E. was a factor in the award of the contract and (b) the status of the subcontractor or supplier was misrepresented by the contractor. In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified M.B.E. or W.B.E. as its replacement;

v) Uniform provisions allowing the chief procurement officer access to the contractor's books and records, including without limitation payroll records, tax returns and records, and books of account, on five business days' notice, to allow the officer to determine the contractor's compliance with its commitment to M.B.E./W.B.E. participation and its commitment to V.B.E. participation, and the status of any M.B.E. or W.B.E. or V.B.E. performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the city for any purpose;

f) Send notices to M.B.E.'s and W.B.E.'s and V.B.E.'s who have been identified as subcontractors in accordance with Section 2-92-440 (e)(i) of this chapter, including therein notification of this right of arbitration provided in Section 2-92-440(e)(ii) of this chapter;

g) To the extent practicable, award contracts requiring the expenditure of funds not exceeding \$10,000.00 to qualified M.B.E.'s and W.B.E.'s and V.B.E.'s. Contracts so awarded to M.B.E.'s and W.B.E.'s shall be considered target market contracts for purposes of satisfying the requirements of Section 2-92-460(a) of this chapter;

h) Include M.B.E.'s and W.B.E.'s and V.B.E.'s on solicitation mailing lists, and encourage that they be solicited for suitable contracts;

7

(i) Include with the bid specifications for each competitively bid contract a list of certified M.B.E.'s and W.B.E.'s and V.B.E.'s that are available to perform the work required by the specifications or otherwise make such a list available to potential bidders;

(j) Working with the department of planning and development, review the bonding and insurance requirements applicable to M.B.E.s and W.B.E.s and V.B.E.'s.

(k) To the extent practicable, ensure that M.B.E./W.B.E. invoices for payment and V.B.E. invoices for payment are processed expeditiously by the relevant city user departments;

(l) Working with the board, issue rules and regulations relating to the credit program;

(m) Working with the law department, issue rules and regulations relating to appeals of the decisions of the chief procurement officer under the program;

2-92-445 Penalty for failure to meet M.B.E. / W.B.E. commitments and V.B.E. commitments.

a) If the chief procurement officer determines, upon reviewing a particular contract, that the M.B.E. or W.B.E. or V.B.E. participation commitments have not been met, a penalty in the amount of the discrepancy between the amount of the commitment, as such amount may be amended through change orders or otherwise over the term of the contract, and the achieved amount may be applied to the contractor.

b) Prior to imposing the penalty specified by this section, the chief procurement officer shall notify the contractor of the fact and amount of the proposed penalty. The contractor shall have the opportunity to present evidence to the chief procurement officer to controvert the fact or amount of the proposed penalty. Within 15 days of receiving the final decision of the chief procurement officer on the matter, and in the event that such final decision is adverse to the contractor, the contractor may submit to the chief procurement officer a written request for a hearing to be conducted by the city's department of administrative hearings.

c) Upon receipt of a timely request for a hearing, the city shall institute an action with the department of administrative hearings, which shall appoint an administrative law officer who shall conduct the hearing within 30 days of receiving the request.

d) The penalty specified by this section shall be imposed either upon expiration of the time period in which the contractor may seek review by the department of administrative hearings, or upon the administrative law officer's finding adverse to the contractor, as applicable.

e) The city shall use all funds collected as penalties under this section exclusively for development of M.B.E./W.B.E. and V.B.E. programs and encouragement of M.B.E./W.B.E. and V.B.E. participation in the city.

(f) In addition to the penalty specified by this section, after a contractor's second failure to meet M.B.E./W.B.E. commitments or V.B.E. commitments, the chief procurement officer may declare the contractor ineligible for an award of contracts for a period of up to three years, following the procedures set forth in subsections (b), (c) and (d) of this section. In determining whether to declare a contractor ineligible, the chief procurement officer shall take into account the contractor's record for meeting its commitments regarding W.B.E./W.B.E. participation or V.B.E. participation in contracts with the city.

Bookmark2-92-450 Reduction or waiver of commitment.

If, in connection with a particular contract, either before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract, the chief procurement officer determines that it is impracticable or excessively costly to obtain qualified M.B.E.'s or W.B.E.'s or V.B.E.'s to perform sufficient work to fulfill the commitment stated in Section 2-92-440 hereof, the chief procurement officer shall reduce or waive the commitment to M.B.E./W.B.E. participation or V.B.E. participation in the contract, as may be appropriate. The chief procurement officer shall issue rules and regulations setting forth the standards to be used in determining whether or not such a reduction or waiver is appropriate. Except as otherwise provided in such rules and regulations, a waiver or reduction shall be deemed appropriate if a contractor has unsuccessfully solicited 50 percent or more of the appropriate M.B.E.'s or W.B.E.'s or V.B.E.'s to perform the work identified in the bid solicitation in accordance with Section 2-92-440 (i) hereof and has documented such effort to the satisfaction of the chief procurement officer. In addition, such rules and regulations shall require that a contractor seeking a waiver or reduction shall have provided timely notice of the need for subcontractors to an appropriate association of M.B.E.'s or W.B.E.'s or V.B.E.'s, which association or associations shall be entitled to comment on any waiver or reduction application. If the chief procurement officer determines that a lesser percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, such bid solicitations shall include a statement of such revised standards.

2-92-460 Target market program.

In order to achieve the goal stated in Section 2-92-430 of this chapter, the chief procurement officer shall develop and coordinate a target market program including the following elements:

(a) In January of each year the chief procurement officer shall estimate the dollar value of all contracts to be awarded by the city during that year and shall multiply that total by the M.B.E. target market percentage^{^^} and the W.B.E. target market percentage, and the V.B.E. target market percentage for that year. Contracts with an estimated dollar value equal to such products shall be set aside (prior to advertisement in the case of contracts to be awarded by bid) to be let only to qualified M.B.E.'s and qualified W.B.E.'s and qualified V.B.E.'s, respectively.

b) The chief procurement officer shall work with the officers, departments and agencies of the city and the board to determine the appropriate designation of contracts as target market contracts. To the extent practicable, the chief procurement officer shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from M.B.E.'s and W.B.E.'s and V.B.E.'s. In making his annual designation of target market contracts, the chief procurement officer shall attempt to vary the included procurements so that a variety of goods and services produced by different M.B.E.'s and W.B.E.'s and V.B.E.'s shall be set aside each year. M.B.E.'s and W.B.E.'s and V.B.E.'s shall remain eligible to seek the procurement award of contracts which have not been designated as target market contracts.

c) D.P.S. shall develop a list of M.B.E.s and W.B.E.s and V.B.E.'s who are interested in participating in the target market program, including the type of contract in which each M.B.E. and W.B.E. and V.B.E. is interested in participating. D.P.S. may make participation in the target market program dependent upon submission to stricter compliance audits than are generally applicable to participants in the program. No contract shall be eligible for inclusion in the target market program unless the list developed by D.P.S. indicates that there are at least three qualified M.B.E.s or W.B.E.s or V.B.E.'s interested in participating in that type of contract. D.P.S. may develop guidelines to regulate the level of participation of individual M.B.E.s and W.B.E.s and V.B.E.'s in the target market program in order to prevent the domination of the target market program by a small number of such entities. Where necessary or useful, D.P.S. may require M.B.E.s and W.B.E.s and V.B.E.'s to participate in training programs offered by the department of planning and development or other city departments or agencies as a condition to participation in the target market program.

d) Participation in the target market program shall be limited to M.B.E.s, W.B.E.s, and joint ventures consisting exclusively of M.B.E.s, W.B.E.s or both, V.B.E.'s, and joint ventures consisting exclusively of V.B.E.'s. The prime contractor on a target market contract may subcontract up to 50 percent of the dollar value of the target market contract to subcontractors who are not M.B.E.s or W.B.E.s or V.B.E.'s.

e) D.P.S. may include in the target market program contracts which are funded by the state or federal government and may vary the standards of eligibility of the target market program (for example, by allowing the participation of D.B.E.s,) to the extent necessary to comply with the requirements of the government agency supplying the funding.

f) If no satisfactory bid or response is received with respect to a contract which has been designated as part of the target market program, D.P.S. may delete such contract from the target market program, in which case the contract shall be subject to the requirements of Section 2-92-440 of this chapter. In addition, the chief procurement officer shall thereupon designate and set aside for the target market program additional contracts corresponding in approximate value to the contract which was deleted from the target market program, to the extent feasible.

(g) In order to facilitate the performance of target market contracts by M.B.E.'s and W.B.E.'s and

V.B.E.'s, the chief procurement officer may expedite payments under target market contracts, may reduce retainages under target market contracts where appropriate and may pay the contractor a portion of the value of a target market contract at the time of award as an advance to cover start-up and mobilization costs.

2-92-470 Established businesses participation in the MBE and WBE procurement program and in the VBE procurement program.

a) A local business entity which meets all the requirements to be certified as an MBE or WBE or VBE under this article except that it has become an established business may participate in the city's minority- and women-owned business enterprise procurement program or the city's veteran-owned business enterprise program, as follows:

1) For a one-year period after the business entity has become an established business, only 75 percent of such business's participation in a city contract shall account for the MBE or WBE or VBE, as applicable, participation requirement set forth in subsections (a) and (d) of Section 2-92-440 of this Code;

2) For a one-year period starting on the one- year anniversary of the date the business entity became an established business, only 50 percent of such business's participation in a city contract shall account for the MBE or WBE or VBE, as applicable, participation requirement set forth in subsections (a) and (d) of Section 2-92-440 of this Code; and

3) For a one-year period starting on the two- year anniversary of the date the business entity became an established business, only 25 percent of such business's participation in a city contract shall account for the MBE or WBE or VBE, as applicable, participation requirement set forth in subsections (a) and (d) of Section 2-92-440 of this Code.

b) An established business entity shall not be eligible to participate in the city's minority-and women - owned business enterprise procurement program or the city's veteran-owned business enterprise procurement program starting on the three-year anniversary of the date the business entity became an established business.

c) The chief procurement officer shall provide notice to participating established businesses of the allowed level of participation by such businesses in the city's minority-and women-owned business enterprise procurement program.

2-92-480 Determination of compliance.

For purposes of determining compliance with any of the requirements for M.B.E. or W.B.E. or V.B.E. participation in contracts under the several programs which constitute the program, contracts with M.B.E.'s or W.B.E.'s or V.B.E.'s that involve performing the duties of a broker shall only be taken into account to the following extent: from the effective date of this

ordinance through December 31, 1990, 20 percent; from January 1, 1991, through December 31, 1991, 10 percent; from January 1, 1992, through December 31, 1992, five percent; and thereafter, zero percent.

2-92-490 Duties of the chief procurement officer.

The chief procurement officer shall, in coordination with the board, perform the following duties:

- a) Supervise the implementation of the program and report to the mayor and to the board on a quarterly basis the extent of achievement of the goal stated in Section 2-92-430 of this chapter, along with any recommendations for modification of the goal or of the measures contained herein;
- b) Establish or adopt substantially consistent standards and procedures for certification of applying businesses by the chief procurement officer or a certifying agency as a C.E.B. Such standards and procedures shall in the chief procurement officer's judgment fairly and effectively determine eligibility for inclusion as a C.E.B. 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 chief procurement officer or applicable certifying agency in determining the status of the applicant. When all or a substantial portion of the application for certification is processed by the chief procurement officer, each such application submitted to the chief procurement officer 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 chief procurement officer. If certification or recertification of a business entity has been denied three or more times in a five-year period, then the chief procurement officer may not consider an application from such business entity or its successors for a period of four years from the date of the most recent denial;
- c) Recruit businesses to apply for certification as C.E.B.s. Recruitment may be done through contact with other governments, governmental agencies, community organizations or business associations, advertising or any other suitable means;
- d) Maintain an electronic directory of certified C.E.B.s and participating established businesses, describing them by name, business address, classification and type of business. 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;
- e) Direct certified C.E.B.s to notify him or her of any change in ownership, officers or management within ten days after such change occurs;

12

- f) Establish or adopt substantially consistent procedures for reviewing or auditing any decision of any certifying agency conducting certifications pursuant to an agreement with the chief procurement officer, regarding the certification, recertification or decertification of any C.E.B.;

- g) 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;

h) 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 (g) of this section. If certification or recertification of a business entity has been denied by the chief procurement officer, then the chief procurement officer 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 chief procurement officer; and

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

2-92-495 Certification of eligible businesses.

a) As an alternative or in addition to conducting its own C.E.B. certification, the chief procurement officer 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 chief procurement officer is empowered to enter into such contractual agreements or memoranda of understanding on such terms and conditions as he may deem necessary or appropriate.

b) If in the chief procurement officer's judgment, or otherwise required by law, additional requirements to the certification issued by any eligible certifying agency are warranted, the chief procurement officer 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 chief

13

procurement officer pursuant to Section 2-92-490 of this chapter, or that, in the judgment of the chief procurement officer, 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 chief procurement officer 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 this chapter.

e) The chief procurement officer shall post the names, contact information and other information regarding a certifying agency which he may deem appropriate on the city's D.P.S. web site 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 chief procurement officer is authorized to adopt such rules and regulations as he may deem appropriate for the proper administration and enforcement of the provisions of this section.

g) The chief procurement officer 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 chief procurement officer 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.

2-92-500 City officers - Consultation and cooperation.

The head of any executive department or agency of city government who exercises any contracting power on behalf of the city beyond the scope of the Purchasing Act shall consult and cooperate with the chief procurement officer in achieving the goal stated in Section 2-92-430 of this chapter through his or her exercise of the contracting power and shall, to the extent practicable, implement procedures described in subsections (a) through (e) of Sections 2-92-440 and 2-92-460.

2-92-510 Affirmative action advisory boards - Membership, appointment, term and compensation.

14

There is hereby established for the City of Chicago an affirmative action advisory board to monitor and report on the participation of minority- and women- owned businesses in public contracting. The board shall consist of 11 members appointed by the mayor within 90 days of the effective date of this ordinance for two- year terms, who shall serve at the pleasure of the mayor. All members of the board who are not employees of the city shall be subject to confirmation by the city council. Members shall hold office until their successors are appointed.

Whenever a vacancy shall occur by reason of death, resignation, expiration of term or other reason, the mayor shall appoint a new member for the balance of the unexpired term. The mayor shall designate a member to serve as chair of the board, who shall serve in such capacity at the pleasure of the mayor. All members of the board shall be residents of the City of Chicago. Two of the members shall be a representatives of D.P.S., one member shall be a representative of the department of transportation, four members shall be

representatives of M.B.E.s, one member shall be a representative of a W.B.E. and three members shall be representatives of contractors that are neither M.B.E.s nor W.B.E.s. The mayor may appoint representatives of appropriate associations of M.B.E.'s, W.B.E.'s or contractors that are neither M.B.E.'s nor W.B.E.'s as members of the board. Members of the board who are not employees of the city may not be appointed to more than two consecutive terms. Members of the board who are not employees of the city shall disclose to the board any financial or economic interest, as defined in the governmental ethics ordinance, they, a relative as defined in the governmental ethics ordinance, or any M.B.E., W.B.E. or contractor they represent may have in matters coming before the board and shall abstain from participation in such matters. Members of the board who are not employees of the city shall be exempt from Sections 2-156-020, 2-156-030, 2-156-080 through 2-156-110 inclusive, and 2-156-130(b) and (c) of the governmental ethics ordinance as these sections pertain to their board membership. No member of the board shall be compensated for membership, but each member may be reimbursed for expenses reasonably incurred in the performance of official duties. The mayor shall appoint a staff director and such additional staff as may be necessary to carry out the business of the board in cooperation with D.P.S.

There is further established for the City of Chicago an affirmative action advisory board to monitor and report on the participation of V.B.E.'s in contracting associated with the city and in contracting with other public entities associated with the city. The board shall consist of 11 members appointed by the mayor, with the advice and consent of the city council, within 90 days of the effective date of this ordinance for two- year terms, who shall serve at the pleasure of the mayor. Members shall hold office until their successors are appointed.

Whenever a vacancy shall occur by reason of death, resignation, expiration of term or other reason, the mayor shall appoint a new member for the balance of the unexpired term. The mayor shall designate a member to serve as chair of the board, who shall serve in such capacity at the pleasure of the mayor. All members of the board shall be residents of the City of Chicago. One of the members shall be a representative of D.P.S., one member shall be a representative of the department of transportation, one member shall be a representative of the department of

15

aviation, five members shall be representatives of V.B.E.'s and three members shall be representatives of contractors that are not V.B.E.s The mayor may appoint representatives of appropriate associations of V.B.E.'s or contractors that are not V.B.E.'s to the board. Members of the board who are not employees of the city may not be appointed to more than two consecutive terms. Members of the board who are not employees of the city shall disclose to the board any financial or economic interest, as defined in the governmental ethics ordinance, they, a relative as defined in the governmental ethics ordinance, or any V.B.E. or contractor they represent may have in matters coming before the board and shall abstain from participation in such matters. Members of the board who are not employees of the city shall be exempt from Sections 2-156-020, 2-156-030, 2-156-080 through 2-156-110 inclusive, and 2-156-130(b) and (c) of the governmental ethics ordinance as these sections pertain to their board membership. No member of the board shall be compensated for membership, but each member may be reimbursed for expenses reasonably incurred in the performance of official duties. The mayor shall appoint a staff director and such additional staff as may be necessary to carry out the business of the board

in cooperation with D.P.S.

2-92-520 Affirmative action advisory boards - Duties and responsibilities.

The boards and its staff shall meet regularly with representatives of D.P.S. and the department of transportation to review the implementation of the program. In addition, the board shall:

- a) assist the D.P.S. in the adoption of regulations and guidelines for the implementation of the program, including the target market program;
- b) recommend to D.P.S. contract areas appropriate for inclusion in the target market program;
- c) (Reserved)
- d) Refer charges that city employees have engaged in discrimination against members of minority groups or women in the purchasing function to the city inspector general, the city commission on human relations or the Illinois Department of Human Rights;
- e) Administer the credit program;
- f) Make recommendations to the chief procurement officer concerning the suspension of contractors, M.B.E.'s and W.B.E.'s and V.B.E.'s that are charged with making fraudulent misrepresentations concerning M.B.E. and W.B.E. and V.B.E. utilization pursuant to Section 2-92-540 of this chapter;
- g) On or before September 30, 1991, issue a report to the mayor and to the chief procurement officer setting forth proposed standards for the determination of when an M.B.E. or

16

W.B.E. has become self-sufficient and capable of competing in the market with nondisadvantaged firms and thus should be treated as an established business under the program;

- (h) Submit a report on or before March 1 st of each year to the mayor and to the city council reviewing the performance of city departments in meeting the goals established in the program, and recommend amendments to the program which the board believes are necessary to accomplish its purposes.
- (i) Perform such other affirmative action related duties as the mayor may require.

2-92-530 Credit program.

D.P.S. and the board shall establish by January 1, 1991, a program (the "credit program") whereby contractors may receive credit applicable to meeting the requirements set forth in subsections (a) and (d) of

Section 2-92-440, based on their utilization of M.B.E.s and W.B.E.s and V.B.E.'s in projects not involving governmental funding. The credit program shall be reviewed annually by the board and D.P.S. and may be suspended by the board upon a finding of substantial evidence of fraud in connection with the application for credits. The credit program shall include the following features:

- a) Credits shall be awarded by the board only for the use of M.B.E.'s or W.B.E.'s or V.B.E.'s in projects which do not have affirmative action goals mandated by law or contract or to the extent of use in excess of such mandated affirmative action goals.
- b) One dollar of credit shall be earned for each three dollars of eligible use.
- c) Credits shall be awarded only to the party responsible for hiring the M.B.E. or W.B.E. or V.B.E. and if there is more than one responsible party, credits shall be allocated ratably among such parties in order to prevent duplication.
- d) Credits may be applied at the time a contract is awarded against the requirements set forth in subsections (a) and (d) of Section 2-92-440 to reduce the requirements, dollar of requirement for dollar of credit, up to a maximum credit of five percent of the dollar value of the contract.
- e) Credits may not be applied more than one year after being awarded by the board.

2-92-535 Mentoring program.

(a) The chief procurement officer is authorized to establish a program (for purposes of this section, "mentoring program") whereby a prime contractor may receive up to 5 percent additional credit, as calculated in accordance with subsection (b) of this section, applicable to meet the MBE and WBE and V.B.E. participation requirements or goals set forth pursuant to this chapter, if the contractor complies with all of the following requirements:

- 1) The prime contractor has entered into a written mentor-protege agreement approved by the chief procurement officer (for purposes of this section, "mentor agreement") with MBEs and WBEs and V.B.E.'s to develop their capacity in becoming self-sufficient, competitive and profitable business enterprises;
 - 2) The MBEs or WBEs, or combination thereof, and the V.B.E.s or combination thereof, that have entered into the mentor agreement have self-performed at least 1 percent of the value of the contract awarded to the prime contractor; and
 - 3) The prime contractor has complied with, as determined by the chief procurement officer, the terms of the mentor agreement.
- b) The prime contractor shall be awarded an additional 0.333 percent credit, up to a maximum of a total of 5 percent additional credit, for every 1 percent of the value of the contract self-performed by MBEs or WBEs or V.B.E.'s, or combination thereof, that have entered into a mentor agreement with the contractor. The

additional credit shall be calculated based on the value of the contract in which the credit has been received, and may only be applied to meet the MBE or WBE or V.B.E., as applicable, participation requirements or goals set forth pursuant to this chapter in the same contract.

c) The chief procurement officer shall have power to enter into service and reimbursement agreements with associations of MBEs and WBEs and V.B.E.'s, minority or women or veteran community organizations, minority or women or veteran contractors' groups, local, state and federal minority or women or veteran business assistance offices, and other organizations that provide assistance in the recruitment and placement of MBEs or WBEs or VBEs, pertaining to the provision of training and related assistance to current or prospective MBEs and WBEs and VBEs.

d) The chief procurement officer is authorized to adopt rules and regulations for the proper administration and enforcement of this section, including regulations governing mentor agreements.

2-92-540 Fraudulent misrepresentation.

(a) If the chief procurement officer determines, after notice and a hearing before the chief procurement officer and upon receipt of a nonbinding recommendation from the board, that a contractor, M.B.E. or W.B.E. or V.B.E. has made fraudulent misrepresentations to the city regarding the utilization or status of M.B.E.s or W.B.E.s or V.B.E.s, or has colluded with another making such fraudulent misrepresentations, the contractor, M.B.E. or W.B.E. or V.B.E., as the case may be, shall be declared ineligible to contract or subcontract on additional contracts. Upon making a finding of ineligibility, the chief procurement officer shall determine the period of ineligibility imposed, which may include permanent or indefinite ineligibility or some lesser penalty. No M.B.E. or W.B.E. or V.B.E. shall be disqualified for collusive misrepresentations

18

unless all parties with which the M.B.E. or W.B.E. or V.B.E. was found to have colluded are also disqualified. The city shall regard as nonresponsive any bid submitted during such period of ineligibility which includes a disqualified entity as a contractor, subcontractor or member of a joint venture. In the event that a contractor submitting a bid is determined by D.P.S. not to have been involved in any misrepresentation of the status of a disqualified subcontractor included in the bid, D.P.S. may allow the contractor to discharge the disqualified subcontractor and, if possible, identify and engage a qualified subcontractor as its replacement for inclusion in the bid. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject. D.P.S. shall inform the State's Attorney of Cook County of instances of fraudulent misrepresentation and collusion.

b) In addition to any other penalty imposed by law, any person who knowingly obtains, or knowingly assists another in obtaining, a contract with the city by falsely representing that the individual or entity, or the individual or entity assisted, is a minority-owned business or a woman-owned business is guilty of a misdemeanor, punishable by incarceration in the county jail for a period not to exceed six months or a fine of not less than \$5,000.00 and not more than \$10,000, or both.

c) All funds collected as penalties or fines under this section shall be used for the purposes set forth in Section 2-92-445(e).

2-92-550 Administrative rules and regulations.

D.P.S. may promulgate administrative rules and regulations implementing Sections 2-92-420 through 2-92-570 of this chapter. The rules and regulations may prescribe time delays and preemptive periods for applications, for appeals or for the doing of any act required or permitted herein.

2-92-560 Statutory authority and applicability of federal and state requirements.

Sections 2-92-420 through 2-92-570 of this chapter are adopted pursuant to the home rule powers of the city and supersede any inconsistent provision of any law or regulation of the State of Illinois. Such sections of this chapter shall not apply to any contract to the extent that it is inconsistent with procedures or standards required by any law or regulation of the United States or the State of Illinois to the extent such inconsistency is not permitted under the home rule powers of the city. In connection with any contract funded in whole or in part from state or federal sources which require the imposition of goals related to the participation of D.B.E.'s, Sections 2-92-420 through 2-92-570 shall not apply to the extent inconsistent with such state or federal requirements.

2-92-570 Severability and compliance with applicable law.

19

In the event that any section, subsection, paragraph, clause or provision of Sections 2-92-420 through 2-92-570 of this chapter shall be held invalid by any court, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof. Notwithstanding anything to the contrary herein, if any section, subsection, paragraph, clause or provision of Sections 2-92-420 through 2-92-570 of this chapter is held invalid by any court, the chief procurement officer shall, if necessary, adjust the percentages within subsections 2-92-420(q), (r), (y) and (z) and Section 2-92-430 to the extent necessary to comply with applicable law.

Gilbert Villegas Alderman, 36th Ward

20

This Ordinance shall be effective upon becoming law.