



# Office of the City Clerk

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## Legislation Text

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City Council

Referred to Committee on Budget and Government Operation

### ORDINANCE

#### Independent Minority and Women Owned Business Enterprise Program

#### ARTICLE IV. INDEPENDENT MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM (2-92-420 et seq.)

##### 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.
- 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. and such other categories of business enterprises established by the contract compliance 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, and such other programs as the contract compliance 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 (1) contract, purchase order or agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement) 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; and (2) contract or agreement to which the City is a party relative to any financial transaction, including those associated with financial institutions, bond underwriters, lines of credit, financial advisors, bond counsel, disclosure counsel, pension disclosure counsel, and the like .

(j) "Contract compliance officer" means the independent chief contract compliance officer of the City, as appointed by the Mayor with the advice and consent of the City Council; who shall, with such employees and resources as are assigned to the Program and the Department of Contract Compliance ("DCC") by way of the City's 2020 Appropriation Ordinance and every Appropriation Ordinance thereafter, independently direct and administer the Program.

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

(o) (Reserved).

(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.

(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.

(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; from January 1, 1994 through December 31, 2019, 16.9 percent; and from January 1, 2020, 22 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; from after January 1, 1994 through December 31, 2019, 10.0 percent; and from January 1, 2020, 12 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) (Reserved) (w) "Program", unless used as part of the term "certification program", means the minority-owned and women-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 on either a negotiated or competitive bid process pursuant to Section 2-92-460 of this chapter.

(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.

(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; from January 1, 1994 through December 31, 2019, 4.5 percent; and from January 1, 2020, 6 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; from January 1, 1994 through December 31, 2019, 1.0 percent; and from January 1, 2020, 2 percent.

### **2-92-430 Award goal - Established.**

The contract compliance officer shall establish a goal of awarding not less than 30 percent of the annual dollar value of all contracts to qualified M.B.E.s and eight percent of the annual dollar value of all contracts to qualified W.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 contract compliance 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 MBE percentage of the dollar value of the contract with one or more MBEs and at least the WBE percentage of the dollar value with one or more WBEs, or make good faith efforts to do so. This commitment may be met by the contractor's status as MBE or WBE, or by joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE's or WBE's participation in such joint venture), or by subcontracting a portion of the work to one or more MBEs or WBEs, or by purchase of materials or services for the work from one or more MBEs or WBEs, or by any combination of the foregoing. In determining whether a contractor has made good faith efforts, the contract compliance officer shall consider the factors enumerated in Section 2-92-720(c)(iii) of this chapter, and the indirect participation of MBEs or WBEs in other aspects of the contractor's business (but no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's good faith efforts to achieve the MBE or WBE commitment with respect to all contracts of such contractor);
- 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 MBEs or WBEs already involved in the contract;
- c) Consider the extent of each bidder's commitment to MBE/WBE 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 MBE participation of at least the MBE percentage and WBE participation of at least the WBE percentage of the dollar value of the contract;
- e) Insert in each contract containing a commitment to MBE and/or WBE participation:
  - (i) A requirement of periodic reporting by the contractor to the contract compliance officer on all expenditures made to achieve compliance with the foregoing provisions. Such reports shall include the name and business address of each MBE and WBE 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 MBE and WBE actually involved in the contract, a description of the work performed and/or product or service supplied by each such

MBE or WBE, the date and amount of each expenditure, and such other information as may assist the contract compliance officer in determining the contractor's compliance with the foregoing provisions, and the status of any MBE or WBE performing any portion of the contract;

- ii) Remedies for a contractor's non-compliance with the commitment to MBE/WBE participation, including an agreement to pay damages to the MBEs and WBEs which were underutilized. The unexcused reduction of MBE or WBE contract participation in connection with a contract (including any modification thereof) shall entitle the affected MBEs and WBEs to damages, by way of administrative and judicial proceedings, 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 MBE or WBE. The contract compliance officer 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 MBE or WBE, if (a) the contractor's status as MBE or WBE 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 MBE or WBE subcontractor or supplier of goods or services if (a) the subcontractor's or supplier's status as MBE or WBE 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 MBE or WBE as its replacement;

v) Uniform provisions allowing the contract compliance 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 MBE/WBE participation and the status of any MBE or WBE 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 MBEs and WBEs 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 MBEs and WBEs. Contracts so awarded to MBEs and WBEs shall be considered target market contracts for purposes of satisfying the requirements of Section 2-92-460(a) of this chapter;

h) Include MBEs and WBEs on solicitation mailing lists, and encourage that they be solicited for suitable contracts;

(i) Include with the bid specifications for each competitively bid contract a list of certified MBEs and WBEs 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 MBEs and WBEs;

(k) To the extent practicable, ensure that MBE/WBE 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 contract compliance officer under the program.

#### **2-92-445 Penalty for failure to meet M.B.E. / W.B.E. commitments, false statements.**

a) If the contract compliance officer determines, upon reviewing a particular contract, that the M.B.E. or W.B.E. participation commitments have not been met, or that a contractor has submitted to the city information that is materially false or incorrect regarding proposed or actual contract participation, the contract compliance officer may (1) penalize the contractor 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; (2) impose a fine on the contractor of up to \$10,000.00 per offense; and (3) bar the contractor from doing business with the City for a period of up to five years.

b) Prior to imposing the penalty specified by this section, the contract compliance 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 contract compliance officer to controvert the fact or amount of the proposed penalty. Within 15 days of receiving the final decision of the contract compliance officer on the matter, and in the event that such final decision is adverse to the contractor, the contractor may submit to the contract compliance 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, and until such time as the penalty is paid, the contractor shall be barred from doing business with the City.

e) The city shall deposit all funds collected as penalties in a special purpose account, and use such funds exclusively for development of M.B.E./W.B.E. programs and encouragement of M.B.E./W.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, the contract compliance officer shall 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 contract compliance officer shall take into account the contractor's record for meeting its commitments regarding W.B.E./W.B.E. participation in contracts with the city.

#### **2-92-450 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 contract compliance officer determines that it is impracticable or excessively costly to obtain qualified M.B.E.'s or W.B.E.'s to perform sufficient work to fulfill the commitment stated in Section 2-92-440 hereof, the contract compliance officer shall reduce or waive the commitment to M.B.E./W.B.E. participation in the contract, as may be appropriate. The contract compliance 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 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 contract compliance 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, which association or associations shall be entitled to comment on any waiver or reduction application. If the contract compliance 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 contract compliance officer shall develop and coordinate a target market program including the following elements:

a) In January of each year the contract compliance 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 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, respectively.

b) The contract compliance 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 contract compliance 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. In making his annual designation of target market contracts, the contract compliance 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 shall be set aside each year. M.B.E.'s and W.B.E.'s shall remain eligible to seek the procurement award of contracts which have not been designated as target market contracts.

c) DCC shall develop a list of M.B.E.s and W.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. is

interested in participating. DCC 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 DCC indicates that there are at least three qualified M.B.E.s or W.B.E.s interested in participating in that type of contract. DCC may develop guidelines to regulate the level of participation of individual M.B.E.s and W.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, DCC may require M.B.E.s and W.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. 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.

e) DCC 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, DCC 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 contract compliance 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, the contract compliance 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 startup and mobilization costs.

## **2-92-470 (Reserved)**

## **2-92-480 Determination of compliance, brokers.**

For purposes of determining compliance with any of the requirements for M.B.E. or W.B.E. participation in contracts under the several programs which constitute the program, contracts with M.B.E.'s or W.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 Rules and regulations**

The contract compliance officer shall promulgate rules and regulations as are necessary or helpful in the administration of the Program, including those regarding program certification, contract participation, and penalties.

### **2-92-500 Transition**

With the advice and consent of the City Council, the Mayor shall appoint, the contract compliance officer no later than July 31, 2019. For fiscal year 2020 and each fiscal year thereafter, the contract compliance officer shall devise those portions of the Appropriation Ordinance that relate to the Program, sufficient to promote the goals and objectives of the Program.

### **2-92-510 Effective date**

This ordinance shall be effective immediately.

Gilbert Villegas Alderman,  
36<sup>th</sup> Ward