

1-8-5: - MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES.

1-8-5b: SUBDIVISION II—CONSTRUCTION ORDINANCE.

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- E. *Definitions.* The following words, terms and phrases, when used in this Subdivision II shall have the following meanings: ascribed to them in this section, except where the context clearly indicates a different meaning. Additional terms applicable to Subdivision I are set forth in such subdivision.
1. *Affiliate of a person or entity* means a person or entity that directly or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the District shall consider all appropriate factors, including common ownership, common management, and contractual relationships.
  2. *Annual Aspirational Goals* mean the targeted levels of participation established by the District for the annual aggregate participation of MBEs and WBEs in District construction contracts.
  3. *Applicant* means a person who submits documents and information seeking certification, continued certification, or re-certification as ~~an MBE or WBE~~ a PCE to Cook County's Office of Contract Compliance.
  4. *Business* means a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity.
  5. *Certified or Certification* means registration ~~of the~~ with Cook County (or a reciprocal agency acceptable to Cook County) as a Minority Business Enterprise or Women's, Women-Owned Business Enterprise status of a business in the County's Directory of Minority, or Established Business Enterprises and Women's Business Enterprises or registration as a minority or women owned business by a reciprocal agency acceptable to the County.
  6. *Certified Firm* means a firm that has been accepted by the County as Certified.
  7. *Commercially Useful Function* means responsibility for the execution of a distinct element of the work of the contract, as described in subsection K(4) of this Subdivision.
  8. *Contract Compliance Administrator* or CCA means the Forest Preserve District Contract Compliance Administrator.
  9. *Contract Compliance Director* or CCD means the Cook County Contract Compliance Director. The CCD also shall be empowered to act as, or assist, the CCA with respect to the functions of the CCA referenced herein.
  10. *Contractor* means any Business that seeks to enter into a construction contract with the District, other than for professional services, and includes all partners and Affiliates Business.
  11. *District* means the Forest Preserve District of Cook County and its participating Using Department.
  12. *District's Marketplace* means the six-county region, currently the counties of Cook, DuPage, Kane, Lake, McHenry and Will.
  13. *Economically Disadvantaged* means having a Personal Net Worth less than two million dollars (\$2,000,000.00), indexed annually for the Chicago Metro Area Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2008.
  14. *Established Business* means a Local Business that is not a Small Business and was certified as an MBE or WBE within the past twelve (12) months:
    - a. Which is at least 51 percent owned by one or more Minority Individuals or 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 such Minority Individuals or Women;

b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Minority Individuals or Women; and

c. Which has its principal place of business and a majority of its regular, full-time workforce located within the District's Marketplace.

15. *Good Faith Efforts* means actions undertaken by a Contractor to achieve ~~an MBE or WBE~~ a PCE goal, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill such goals.

4516. *Joint Venture* means an association of two (2) or more Businesses proposing to perform a for profit business enterprise. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.

4617. *Local Business* means a Business located within the District's Marketplace which has the majority of its regular, full time work force located within the District's Marketplace.

4718. *Local Small Business* means a Local Business which is also a Small Business.

4819. *Manufacturer* means a Person (as this term is defined below) that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

4920. *Minority Business Enterprise or MBE* means a Business:

- a. Which is at least fifty-one (51) percent owned by one (1) or more Minority Individuals who are Economically Disadvantaged, or in the case of a publicly owned Business, at least fifty- one (51) percent of all classes of the stock of which is owned by one (1) or more such Minority Individuals;
- b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one (1) or more Minority Individuals;
- c. Which performs a Commercially Useful Function;
- d. Which is a Certified Firm; and
- e. Which is a Local Small Business.

2021. *Minority Individual* means a natural person in one (1) of the following groups:

- a. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
- b. Hispanic-Americans, which includes persons who are Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, regardless of race;
- c. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or
- d. Asian-Americans, which includes persons whose origins are in any of the original peoples of the Far East Asia, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent; or
- e. Individual members of other groups, including, but not limited to, Arab-Americans, found by the District 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 District's Marketplace.

2122. *Owned* means having all of the customary incidents of ownership, including the right of disposition, and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.

2223. *Person(s) or person(s)* means any natural person, corporation, partnership, Joint Venture, trust, association, limited liability company, sole proprietorship or other legal entity.

~~23~~24. *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 Certified MBE or WBE is certified by a governmental agency that meets the ~~District's~~County's eligibility criteria or the individual's equity in his or her primary place ~~or~~of residence. As to assets held jointly with ~~his or her~~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 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, and shall not include future payments receivable from a pension or Social Security.

2425. *Program* means the Public Works Minority- and Women- Owned Business Enterprise program established in this Subdivision.

2526. *Project Specific Goals* means the Goals established for a particular project or contract based upon the availability of MBEs ~~or~~, WBEs, and/or PCEs in the scopes of work of the Project.

2627. *Protected Class Enterprise or PCE* shall mean a business meeting the definition of Minority Business Enterprise, Woman-Owned Business Enterprise, or Established Business as set forth in this Subdivision.

28. *Public Works* means ~~all~~ fixed works constructed or demolished by the District, or paid for wholly or in part out of public funds administered by the District. Public Works as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through federal or State government, or local government. Public Works includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. Public Works does not include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multifamily residence.

~~27~~29. *Public Works Contracts* means contracts for Public Works.

2830. *Purchasing Agent* means the Purchasing Agent of the District.

2931. *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 described by the specifications and required under the contract 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, regular Business that engages, as its principal business and under its own name, in the purchase 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 a Person's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacture representatives, or other ~~persons~~Persons who arrange or expedite transactions are not Regular Dealers.

3032. *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 as~~ related to the scope(s) nature of the 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 (5) fiscal years, exceed the size standards of 13 CFR Part 121.

3133. *Socially Disadvantaged* means having been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of identity as a member of a group, and without regard to individual qualities, stemming from circumstances beyond the relevant person's control. ~~A Socially Disadvantaged natural person must be a citizen or lawfully admitted permanent resident of the United States.~~

~~32~~34. *Using Department* means the department as defined by the District which is responsible for initiating the procurement process.

~~33-~~35. *Utilization Plan* means a plan for utilization of ~~MAWBEs~~PCEs as described in subsection L, of this Subdivision.

~~34~~36. *Woman* means a natural person of the female gender.

~~35-~~37. *Woman-Owned Business Enterprise* or *WBE* means a Business:

- a. Which is at least fifty-one (51) percent owned by one (1) or more Women who are Economically Disadvantaged, or in the case of a publicly owned Business, at least fifty-one (51) percent of all classes of the stock of which is owned by one (1) or more such Women;
- b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one (1) or more such Women;
- c. Which performs a Commercially Useful Function;
- d. Which is a Certified Firm; and
- e. Which is a Local Small Business.

F. *Program Administration.*

1. The CCA, in conjunction with the District's Purchasing Agent and the CCD, shall administer the Program. The duties of the CCA shall include:

- a. Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program.
- b. Providing information and assistance to ~~MAWBEs~~PCEs and Small Businesses relating to the Program, serving as a liaison to community, contractor, professional and supplier groups, and serving as liaison to various other associations and organizations.
- c. Verifying that Persons interested in participating in the Program are Certified and monitoring the directory of Certified ~~MAWBEs~~PCEs maintained by Cook County.
- d. Establishing Project Specific Goals in collaboration with the Using Department based upon the availability of ~~MAWBEs~~PCEs to provide the supplies, materials and equipment or services required by the contract.
- e. Evaluating Contractors' achievement of Project Specific Goals and Good Faith Efforts to meet Project Specific Goals.
- f. Cooperating with and providing assistance to Using Departments to facilitate participation by ~~MAWBEs~~PCEs in procurements.
- g. Reviewing, approving, ~~and, if necessary, or~~ rejecting Utilization Plans for achievement of Project Specific Goals; evaluating the extent to which the goals are achieved.
- h. Working with Using Departments to monitor contracts to ensure prompt payments to ~~MBEs and WBEs~~PCEs and compliance with Project Specific Goals and commitments, including gathering data to facilitate such monitoring.
- i. Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
- j. Collecting data to evaluate the Program and other District contracting initiatives.
- k. Monitoring the Program and the District's progress towards its Annual Aspirational Goals. The CCA shall report on a quarterly and annual basis to the General Superintendent and the President on the administration and operations of the Program.
- l. Impose sanctions and penalties as described in Subsection N.

2. The Using Departments that receive appropriate delegation for project management, contract management, and/or construction and/or design contract responsibility shall have the following duties and responsibilities with regard to the Program:
    - a. Assisting the CCA with setting Project Specific Goals.
    - b. Assisting in the identification of available ~~MBEs and WBEs~~PCEs, and providing other assistance in meeting the Project Specific Goals.
    - c. Performing other activities to support the Program.
    - d. Gathering and maintaining prime contracting and subcontracting data for those contracts which they manage.
    - e. Submitting subcontracting data as required to the CCA.
  3. Intergovernmental Agreement between District and County. The District shall provide staff and/or reimbursement to Cook County as set out in an intergovernmental agreement for the CCD to also act as, or assist, the CCA.
- G. *Race- and Gender-Neutral Measures to Ensure Equal Opportunities for all Contractors and Subcontractors.* The District has adopted and shall continue to develop and use measures to facilitate the participation of all firms in District construction contracting activities. These measures shall include, but are not limited to:
1. Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms;
  2. Segmenting, structuring or issuing contracts to facilitate the participation of ~~MBEs, WBEs~~PCEs and other Small Businesses;
  3. Providing timely information on contracting procedures, bid preparation and specific contracting opportunities;
  4. Providing assistance to Businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
  5. Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available qualified firms as subcontractors;
  6. Adopting prompt payment procedures, including, requiring by contract that prime Contractors promptly pay subcontractors;
  7. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the District;
  8. Collecting information from all prime Contractors on District construction contracts detailing the bids received from all subcontractors for District construction contracts and the expenditures to subcontractors utilized by prime Contractors on District construction contracts;
  9. At the discretion of the District, letting a representative sample of District construction contracts without goals, to determine MBE and WBE utilization in the absence of goals;
  10. Maintaining information on all firms bidding on District prime contracts and subcontracts; and
  11. Referring complaints of discrimination to the appropriate authority, for investigation.
- H. *Program Eligibility* . Only Businesses that meet the criteria as defined by the CCD for the County of Cook, for certification as a ~~MBE or WBE~~PCE may participate in the Program.
- I. *Annual Aspirational Goals* . The Annual Aspirational Goals for the utilization of MBEs and WBEs on District construction contracts and subcontracts shall be twenty-four (24) percent for MBEs and ten (10) percent for WBEs. Notwithstanding the above, Established Businesses may participate in the Program as authorized under Subsection 1-8-5(O), Established Business Participation in the Program.

J. *Project Specific Goals* . The CCA, following the compilation and stringent review of the most current data that is feasibly and practicably available relative to the availability of MBEs and WBEs who have the capacity to successfully supply the relevant goods and services, and in consultation with the Using Department shall establish Project Specific Goals for construction which shall be incorporated into each bid and RFP. 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. Notwithstanding the above, Established Businesses may participate in the Program as authorized under Subsection 1-8-5(O), Established Business Participation in the Program.

K. *Counting MBE and WBE Participation* .

1. The entire amount of that portion of a contract that is performed by the ~~MBEs or WBEs~~ PCEs own forces shall be counted, including the cost of supplies and materials obtained by the ~~MBE or WBEPCE~~ for the work of the contract, and supplies purchased or equipment leased by the ~~MBE or WBEPCE~~ (except supplies and equipment the ~~MBE or WBEPCE~~ purchases or leases from the prime Contractor or the prime Contractor's Affiliate-), unless otherwise provided pursuant to Subsection 1-8-5(O), Established Business Participation in the Program.
2. The entire amount of fees or commissions charged by a ~~MBE or WBEPCE~~ for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services., unless otherwise provided pursuant to Subsection 1-8-5(O), Established Business Participation in the Program.
3. When a ~~MBE or WBEPCE~~ performs as a participant in a Joint Venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the ~~MBE or WBEPCE~~ with its own forces and for which it is separately at risk, shall be counted-, unless otherwise provided pursuant to Subsection 1-8-5(O), Established Business Participation in the Program.
4. Only expenditures to a ~~MBE or WBEPCE~~ that is performing a Commercially Useful Function shall be counted. To determine whether a ~~MBE or WBEPCE~~ is performing a Commercially Useful Function, the District will evaluate the amount of work subcontracted, industry practices, whether the amount the ~~MBE or WBEPCE~~ is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors. To perform a Commercially Useful Function, the ~~MBE or WBEPCE~~ must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. A ~~MBE or WBEPCE~~ 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 ~~MBE or WBEPCE~~ participation. If a ~~MBE or WBEPCE~~ 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. When a ~~MBE or WBEPCE~~ is presumed not to be performing a Commercially Useful Function, the Certified Firm may present evidence to rebut this presumption.
5. One hundred (100) percent of the cost of the materials or supplies obtained from a ~~MBE or WBEPCE~~ Manufacturer or Regular Dealer shall be counted, unless otherwise provided pursuant to Subsection 1-8-5(O), Established Business Participation in the Program. One hundred (100) percent of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services-, unless otherwise provided pursuant to Subsection 1-8-5(O), Established Business Participation in the Program.
6. If, for reasons associated with malfeasance, fraud or other factors set forth in Subsection N, Sanctions and Penalties, an ~~MAWBEPCE~~ ceases to be Certified during its performance on a procurement, the dollar value of work performed under a contract with that ~~MAWBEPCE~~

after it has ceased to be Certified shall not be counted. If, for other reasons not associated with malfeasance, fraud or other factors set forth in Subsection N, Sanctions and Penalties, an ~~MAWBE~~PCE ceases to be Certified during its performance on a procurement, the dollar value of work performed under a contract with that ~~MAWBE~~PCE after it has ceased to be Certified shall be counted for the remaining term of the contract.

7. In determining achievement of Project Specific Goals, the participation of a ~~MBE or WBE~~PCE shall not be counted until that amount has been paid to the ~~MBE or WBE~~PCE.

L. *Contract Pre-Award Compliance Procedures .*

1. For all solicitations, the bidder/proposer shall submit a Utilization Plan detailing all subcontractors from which the Contractor solicited bids or quotations, and if Project Specific Goals have been established, its achievement of the Goals or its Good Faith Efforts to do so. The Utilization Plan shall be due at the time the bid proposal is due. In the event a bid or proposal leads to a contract with the District, the Utilization Plan, as approved by the CCA, shall be incorporated as a material commitment as between the Contractor and all relevant ~~MAWBEs~~PCEs, and the Contractor and the District.
2. Any agreement between a Contractor and a ~~MBE or WBE~~PCE in which the Contractor requires that the ~~MBE or WBE~~PCE not provide subcontracting quotations to other Contractors is prohibited.
3. Parties submitting bids or proposals may in all instance request a partial or full waiver of one (1) or more established Project Specific Goals for ~~MAWBE~~PCE participation. Where the Contractor cannot achieve the Project Specific Goal(s), the CCA will determine whether the Contractor has made Good Faith Efforts to meet the Goal(s). In making this determination, the CCA will consider, at a minimum, whether the Contractor has:
  - a. Solicited through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all ~~MBEs and WBEs~~PCEs certified in the scopes of work of the contract. The Contractor shall provide interested ~~MBEs and WBEs~~PCEs with timely, adequate information about the plans, specifications, and requirements of the contract to allow ~~MBEs and WBEs~~PCEs to respond to the solicitation. The Contractor must follow up initial solicitations with interested ~~MBEs and WBEs~~PCEs.
  - b. Selected portions of the work to be performed by ~~MBEs and WBEs~~PCEs in order to increase the likelihood that the Project Specific Goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate ~~MBE and WBE~~PCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces. It is the Contractor's responsibility to make a portion of the work available to ~~MBEs and WBEs~~PCEs and to select those portions of the work or material needs consistent with the availability ~~MBEs and WBEs~~PCEs to facilitate their participation.
  - c. Negotiated in good faith with interested ~~MBEs and WBEs~~PCEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of ~~MBEs and WBEs~~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 with ~~MBEs and WBEs~~PCEs. The Contractor may not reject ~~MBEs and WBEs~~PCEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using ~~MBEs and WBEs~~PCEs is not in itself sufficient reason for a Contractor's failure to meet the Project Specific Goals, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all scopes of work that could be subcontracted.
  - d. Made efforts to assist interested ~~MBEs and WBEs~~PCEs in obtaining bonding, lines of credit, or insurance as required by the District or the prime Contractor, where appropriate; provided, however, that such efforts shall not be inconsistent with the requirements that the ~~MAWBE~~PCE be responsible for actually obtaining and paying for such items.

- e. Made efforts to assist interested ~~MBEs and WBEs~~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 requirements that the ~~MAWBE~~PCE be responsible for actually obtaining and paying for such items.
  - f. Used the services of the CCA, available minority/women community organizations, minority/women contractors' groups, government sponsored minority/women business assistance offices and other appropriate organizations to provide assistance in the recruitment and placement of ~~MBEs and WBEs~~PCEs.
  - g. Maintained or committed to establish and maintain a mentor-protégé agreement with one (1) or more ~~MAWBEs~~PCEs that is enforceable and that, in the judgment of the CCA, has performance standards and outcomes that are clearly established and effective in terms of assisting the ~~MAWBE~~PCE in acquiring additional skills, experience, and relationships helpful to the long-term success of the ~~MAWBE~~PCE.
4. In determining whether a Contractor has made Good Faith Efforts, the performance of other Contractors in meeting the Project Specific Goals may be considered. For example, when the apparent successful Contractor fails to meet the Project Specific Goals but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Contractor could have met the Project Specific Goals. Similarly, if the apparent successful Contractor fails to meet the Project Specific Goals, but meets or exceeds the average ~~MBE or WBE~~PCE participation obtained by other Contractors, this may be evidence that the apparent successful Contractor made Good Faith Efforts.
  5. A signed letter of intent from each listed ~~MBE or WBE~~PCE, describing the work, materials, equipment or services to be performed or provided by the ~~MBE or WBE~~PCE and the agreed upon dollar value shall be due at the time of bid proposal or within three (3) days after such submission. The CCA shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from ~~MBEs and WBEs~~PCEs. The CCA may request clarification in writing of items listed in the Utilization Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.
  6. If the CCA determines that the Utilization Plan demonstrates that the Project Specific Goals have been achieved or Good Faith Efforts made, with the concurrence of the Using Department, the CCA and Using Department shall recommend award to Purchasing Department.
  7. If the CCA finds that a Contractor did not make sufficient Good Faith Efforts, the CCA shall communicate this finding to the Purchasing Department and recommend that the bid/proposal be rejected. A Contractor may protest this determination pursuant to the ~~County's District's~~ bid protest procedures.
  8. The CCA shall from time to time, by way of seminars and internet-based communications, make available to the business community such information and documents as will assist the community in understanding the manner in which a full or partial waiver may be requested, and the manner in which such a request may be supported. In addition, the CCA shall make representatives available to confer on the subject of waivers with parties who plan on submitting particular bids or proposals.
- M. *Contract Administration Procedures.*
1. Upon award of a contract by the District that includes Project Specific Goals; the Project Specific Goals become covenants of performance by the Contractors and incorporated in the contract.
  2. The Contractor shall provide a listing of all subcontractors to be used in the performance of the contract, and detailed subcontractor information to the District with each request for payment submitted to the District or as otherwise directed by the District. The CCA and the Using Department shall monitor subcontractor participation during the course of the contract. The District shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to ~~MBE and WBE~~PCE

participation and the status of any ~~MBE or WBEPCE~~ 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 District for any purpose.

3. The Contractor cannot make changes to the Utilization Plan or substitute ~~MBEs or WBEPCEs~~ named in the Utilization Plan without the prior written approval of the CCA, in conjunction with the Purchasing Agent and the Using Department. Unauthorized changes or substitutions shall be a violation of this subdivision and a breach of contract, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed contract for breach, the withholding of payment and/or subject the Contractor to contract penalties or other sanctions.
  - a. All requests for changes or substitutions of a ~~MBE or WBE Subcontractor~~ PCE subcontractor(s) named in the Utilization Plan shall be made to the CCA, Purchasing Agent and the Using Department in writing, and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a ~~MBE or WBEPCE~~ subcontractor or perform the work designated for a ~~MBE or WBEPCE~~ subcontractor with its own forces unless and until the CCA, in consultation with the Purchasing Agent and Using Department, approves such substitution in writing. A Contractor shall not allow a substituted subcontractor to begin work until the CCA, Purchasing Agent and the Using Department have approved the substitution.
  - b. The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Utilization Plan. Bid shopping is prohibited. The Contractor must negotiate with the ~~MBE or WBEPCE~~ subcontractor to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the ~~MBE or WBEPCE~~ can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
  - c. Substitutions of the subcontractor shall be permitted only on the following bases:
    - (i) Unavailability after receipt of reasonable notice to proceed.
    - (ii) Failure of performance.
    - (iii) Financial incapacity.
    - (iv) Refusal by the subcontractor to honor the bid or proposal price.
    - (v) Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.
    - (vi) Failure of the subcontractor to meet insurance, licensing or bonding requirements; or
    - (vii) The subcontractor's withdrawal of its bid or proposal.
  - d. The final decision whether to permit or deny the proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the CCA.
  - e. Where the Contractor has established the basis for the substitution to the satisfaction of the District, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CCA in obtaining a new ~~MBE or WBEPCE~~. If the Project Specific Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.
  - f. If the District requires the substitution of a ~~MBE or WBEPCE~~ subcontractor listed in the Utilization Plan, the Contractor shall undertake Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CCA in obtaining a new ~~MBE or WBEPCE~~ subcontractor. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.
4. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of the CCA to modify the Utilization Plan and must make Good Faith Efforts to ensure that ~~MBEs and WBEPCEs~~ have

- a fair opportunity to bid on the new scope of work.
- 5. Changes to the scopes of work shall be documented by the Using Department at the time they arise, to establish the reasons for the change and the effect on achievement of the ~~MBE~~ or ~~WBEPCE~~ goal.
- 6. Prior to contract closeout, the CCA shall evaluate the Contractor's fulfillment of the contracted goals, taking into account all approved substitutions, terminations and changes to the contract's scope of work. If the District determines that Good Faith Efforts to meet the ~~MBE or WBEPCE~~ commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the contract or violation of this subdivision, a remedy or sanction may be imposed, as provided in the contract.

N. *Sanctions and Penalties* .

- 1. The following violations of this subdivision may result in a breach of contract:
  - a. Providing false or misleading information to the District in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations or colluded with ~~other~~ others to do so.; or
  - b. Committing any other violations of this subdivision.
- 2. A contractor or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, or being barred or deemed non-responsive in future District solicitations and contracts as determined by the District's Purchasing Agent, if it is found to have:
  - a. Provided false or misleading information in connection with the submission of a bid, responses to requests for qualifications or proposal, Good Faith Efforts documentation, post-award compliance, or other Program operations or colluded with others to do so;
  - b. Failed in bad faith to fulfill ~~Contract~~Project Specific Goals, thereby materially breaching the contract; or
  - c. Failed to comply in good faith with substantive provisions of this subdivision.
- 3. The CCA may refer instances of non-compliance as described in Subsection N(2)(a.—c.) that may warrant decertification to the CCD if any ~~MAWBEPCE~~ involved was certified by Cook County, or other applicable agency if any ~~MAWBEPCE~~ involved was certified by an agency other than Cook County.
- 4. ~~A Contractor, MBE, WBE~~ Contractors and PCEs who fails fail to comply with the requirements of a Utilization Plan may be liable for a fine of two thousand five hundred dollars (\$2,500.00), and such sanction, if issued, shall apply jointly and individually to the Contractor and the relevant owner(s) of the Contractor; and the MBE/PCE and the relevant owner(s) of the MBE; and/or the WBE and the relevant owner(s) of the WBEPCE. Such fine, once imposed, may be taken, at the District's sole discretion, from any retainage or future payments due from the District to such Contractor. The determination as to whether a Contractor, ~~MBE, or WBEPCE~~ has failed to comply with the requirements of a Utilization Plan shall be made by an Administrative Law Judge from the Cook County Department of Administrative Hearings pursuant to Chapter 2, Article IX, of the Cook County Code. Decisions of an Administrative Law Judge from the Cook County Administrative Hearing Department of Administrative Hearings shall be subject to review pursuant to the Illinois Administrative Act (735 ILCS 5/3-101 et seq.).

OO. Established Business Participation in the Program.

1.An Established Business may participate in the Program, as follows:

- a.For a one-year period after the Business has become an Established Business, only 75 percent of such Business's participation in a District contract shall account for the MBE or WBE.

as applicable, Annual Aspirational Goals:

b. For a one-year period starting on the one- year anniversary of the date the Business became an Established Business, only 50 percent of such Business's participation in a District contract shall account for the MBE or WBE, as applicable, Annual Aspirational Goals; and

c. For a one-year period starting on the two- year anniversary of the date the Business became an Established Business, only 25 percent of such Business's participation in a District contract shall account for the MBE or WBE, as applicable, Annual Aspirational Goals.

2. An Established Business shall not be eligible to participate in the Program starting on the three- year anniversary of the date the Business became an Established Business.

3. The CCA or CCD shall provide notice to participating Established Businesses of the allowed level of participation by such Businesses in the Program.

P. *Program Review and Sunset.*

1. The President and the Board of Commissioners shall receive quarterly and annual reports from the CCA detailing the District's performance under the Program.
2. The President and the Board of Commissioners will review these reports, including the Annual Aspirational Goals and the District's progress towards meeting those Goals and eliminating discrimination in its contracting activities and marketplace.
3. Prior to the sunset date of this subdivision, the District will review the operation of the Program and the evidentiary basis for the Program in order to determine whether the District has a continuing compelling interest in remedying discrimination against ~~MBEs and WBEs~~ PCEs in its construction marketplace, and the permissible scope of any narrowly tailored remedies to redress discrimination against ~~MBEs or WBEs~~ PCEs so that the District will not function as a passive participant in a discriminatory marketplace.
4. This subdivision shall sunset on or before June 30, 2021.