

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

1-8-5a: SUBDIVISION I—GENERAL PROVISIONS.

* * *

D. *Definitions.* The following words, terms and phrases, when used in this Subdivision I shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Additional terms applicable to Subdivision II 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. *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.
3. *Broker* means a Person who or which neither manufactures the supplies, equipment or goods supplied nor owns or operates a store, warehouse or other establishment (and related distribution equipment) in which it maintains, consistent with industry standards, an inventory of the supplies, equipment or goods required for performance of the contract for sale in the normal course of business. A Broker provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.
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* shall have the meaning set forth in subsection J. 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 general contract with the District, other than for construction, and includes all partners and Affiliates Business.
11. *Contract Specific Goals* means the goals established under this Subdivision that are based upon relevant factors including, but not limited to, the availability of MBEs or WBEs in the scopes of work of the project.
12. *District* means the Forest Preserve District of Cook County and its participating Using Department.
13. *District Marketplace* means the six-county region, currently the counties of Cook, DuPage, Kane, Lake, McHenry and Will.
14. *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.

- ~~45~~15. 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 Marketplace.
16. Expertise means demonstrated skills, knowledge or ability to perform, as defined by normal industry practices, including licensure where required, in a field.
- ~~46~~17. 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.
- ~~47~~18. 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.
- ~~48~~19. Local Business means a Business located within the District Marketplace which has the majority of its regular, full time work force located within the District Marketplace.
- ~~49~~20. Local Small Business means a Local Business which is also a Small Business.
- ~~20~~21. 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.
- ~~24~~22. 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.
- ~~22~~23. 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~~ District Marketplace.

~~23~~24. *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.

~~24~~25. *Person(s) or person(s)* means any natural person, corporation, partnership, Joint Venture, trust, association, limited liability company, sole proprietorship or other legal entity.

~~25~~26. *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 ~~of~~ residence. As to assets held jointly with a spouse, an individual's Personal Net Worth includes only that individual's share of such assets. An individual's Personal Net Worth also includes the present value of the individual's interest in 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.

~~26~~27. *Program* means the Minority- and Women-Owned Businesses Enterprise General Program established in this Subdivision.

~~27~~28. *Program Goals* means the targeted levels of participation established by the District for the periodic aggregate participation of ~~MBEs~~ MBEs, WBEs, and ~~WBE's~~ or PCEs in District non-construction contracts.

~~29~~ 28. *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.

~~30~~ 30. *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.

~~31~~ 29. ~~Public Works Contracts~~ means contracts for Public Works.

~~30~~ 32. *Purchasing Agent* means the Purchasing Agent of the District.

~~33~~ 34. *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 who arrange or expedite transactions are not Regular Dealers.

~~34.~~ ~~32.~~—*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.

~~35.~~ ~~33.~~—*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.~~

~~36.~~ ~~34.~~—*Using Department* means the department as defined by the District which is responsible for initiating the procurement process.

~~35.~~—*Utilization Plan* means a plan for utilization of ~~MAWBEs~~ PCEs as described in subsection J. of this Subdivision.

~~37.~~ ~~36.~~—

~~38.~~ *Woman* means a natural person of the female gender.

~~39.~~ ~~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.

E. *Race- and Gender-Neutral Measures to Implement the Program.* The District has adopted and shall continue to develop and use race- and gender-neutral measures to facilitate the participation of all firms in the procurement process. These measures include, but are not limited to, the following:

1. Establishing schedules for submitting Bids and Quotations with adequate time frames for identifying and contacting ~~MAWBEs~~ PCEs qualified to participate in the procurement;
2. Segmenting procurements to facilitate the participation of MBEs, WBEs and other Small Businesses;
3. Providing timely information on contracting procedures, Bid preparation and specific contracting opportunities;
4. Holding pre-Bid conferences, where appropriate, to explain the projects and to encourage Contractors to use available qualified ~~MAWBEs~~ PCEs;
5. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the District;
6. Collecting information from all Contractors detailing the ~~Bids~~ bids or proposals received from all subcontractors for procurements and the expenditures to ~~MAWBEs~~ PCEs;
7. At the discretion of the CCA, in cooperation with the Purchasing Agent, periodically entering into a procurement process without Program Goals or Contract Specific Goals in order to determine MBE and WBE utilization in the absence of such goals;

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

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 a 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 Contract 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. Monitoring contracts to evaluate compliance with Contract Specific Goals and commitments.
 - 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 Contract Specific Goals, and evaluating the extent to which goals were achieved.
 - h. Monitoring contracts to ensure compliance with ~~subsection~~Subsection O. of this Subdivision, Prompt Payment of ~~MAWBEs~~Firms.
 - i. Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
 - j. Evaluating the effectiveness and utility of the Program.
 - k. Monitoring the Program and the District's progress towards the Program Goals.
 - l. Impose sanctions and penalties as described in Subsection R.
2. The CCA shall report to the Contract Compliance Committee on an annual basis, or as requested by the Contract Compliance Committee, information regarding the administration of the Program and progress toward achieving the Program Goals.
3. Using Departments shall cooperate with the CCA in the administration of the Program, specifically including assisting the CCA with setting Contract Specific Goals and assisting in the identification of available ~~MBEs and WBEs~~PCEs.
4. *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. *Contract Compliance Committee.* The Contract Compliance Committee ("CCC") shall be a Standing Committee of the Board, consisting of ~~seven (7)~~nine (9) members of the Board selected as set forth in Title 1, Chapter 5, Section 1-5-2 of the Code. The CCC shall review procedures, proposed modifications to the Program or this Section 1-8-5, and complaints as referred by the CCA or the Purchasing Agent.

H. *Program Goals.*

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

2. 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 Purchasing Agent and the Using Department shall establish Contract Specific Goals for each contract, which shall be incorporated into each bid notice and Request for Proposals. 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.
 3. Notwithstanding the above, Established Businesses may participate in the Program as authorized under Subsection 1-8-5(S), Established Business Participation in the Program.
- I. *Program Eligibility.* Only Businesses that meet the criteria as determined by the CCD for the County of Cook, for certification as a ~~MBE or WBE~~ PCE may participate in the Program.
 - J. *Utilization Plan; Commercially Useful Function.*
 1. *Utilization Plan Required.* The Purchasing Agent shall include in contract documents for contracts covered by this Division, a requirement that a Utilization Plan be submitted from a bidder or proposer that either: (i) commits to ~~MAWBE~~ PCE participation equal to or greater than the applicable Contract Specific Goals, or (ii) requests a waiver of all or a portion of the Contract Specific Goals based on the bidder's or proposer's Good Faith Efforts to meet the goals. The Utilization Plan shall be in such form and contain such information as is required by the CCA. Failure to include a Utilization Plan will render the submission not responsive. 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 between the Contractor and all relevant ~~MAWBEs~~ PCEs and the Contractor and the District. The CCA shall review and either approve or reject the Utilization Plan. For purposes of evaluating a Utilization Plan, only ~~MAWBEs~~ PCEs which perform a Commercially Useful Function shall be considered.
 2. *Commercially Useful Function.* To be considered in meeting Goals, a ~~MAWBE~~ PCE must perform a Commercially Useful Function. "Commercially Useful Function" means the performance of a distinct element of work required for the procurement, with the requisite skill and Expertise.
 - a. In the case of a procurement of goods or equipment, ordering from a manufacturer or distributor for delivery directly to the Using Department is not a Commercially Useful Function; provided, however, that to the extent such practice is consistent with normal industry practices, ~~an MAWBE a~~ PCE subcontractor may enter into second tier subcontracts. However, if ~~an MAWBE a~~ PCE Contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the ~~MAWBE~~ PCE shall be presumed not to be performing a Commercially Useful Function.
 - b. In the case of a procurement of services, a Person which subcontracts with another Person to perform the services required does not perform a Commercially Useful Function unless such Person also performs significant supervisory or management responsibilities. A Broker does not fulfill a Commercially Useful Function. In the case of a Joint Venture partner, each Joint Venture partner must perform a Commercially Useful Function.
 3. ~~MAWBE~~ PCE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the contract through which funds are passed in order to obtain the appearance of ~~MAWBE~~ PCE participation.
 4. When ~~an MAWBE a~~ PCE is presumed not to be performing a Commercially Useful Function, the Certified ~~MAWBE~~ PCE and the Person seeking to include that ~~MAWBE~~ PCE in its Utilization Plan, may present evidence to rebut this presumption.
 5. Once a Utilization Plan has been approved, the Contractor cannot make changes to the Utilization Plan, including substituting ~~MAWBEs~~ PCEs named in the Utilization Plan, without the prior written approval of the CCA, Purchasing Agent and the Using Department. The CCA shall promulgate procedures for changes to the Utilization Plan. 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.

K. *Methods to Achieve Goals and Compliance.* A Person may achieve the applicable Contract Specific Goals in any one (1) or more of the methods set forth below. The same MAWBEPCE, whether as a contractor, subcontractor or supplier, may not be utilized duplicatively as a MBE and a WBE on the same contract.

1. MAWBEPCE as Prime Contractor. An MBE or WBE PCE may count its own participation toward the achievement of the applicable MBE or WBE goal. Such MAWBEPCE will be required to meet the other goals by another method described herein. If a WBE PCE is also certified as a WBE and a MBE, such WBE's PCE's participation may count toward either the MBE or WBE Goal but not both.
2. *Joint Venture with One or More MAWBEPCEs.* Where a Person engages in a Joint Venture with one (1) or more MAWBEPCEs, the Utilization Plan shall include a written agreement containing at least the information set forth in this Subsection. The CCA shall consider the following in determining whether the proposed Utilization Plan satisfies the Program Goals based upon such written Joint Venture agreement and the Utilization Plan.
 - a. Each Joint Venture partner's initial capital investment;
 - b. The extent to which each MAWBEPCE's proposed participation in the performance of the contract constitutes a Commercially Useful Function;
 - c. Whether the relevant MAWBEPCE shares in the risks and profits of the Joint Venture are proportional to their ownership interest;
 - d. Whether the relevant MAWBEPCE will have duties, responsibilities, management control and risk with respect to the Joint Venture in proportion to its ownership interest.
3. *Subcontracting.* A Person may achieve the Contract Specific Goals by means of subcontracting with, or purchasing from one (1) or more MAWBEPCEs.

L. *Request for a Total or Partial Waiver of the Contract Specific Goals; Good Faith Efforts.*

1. Parties submitting bids or proposals may in all instances request a partial or full waiver of one (1) or more established Contract Specific Goals for MAWBEPCE participation. In reviewing a request for a partial or total waiver of a Contract Specific Goal, the CCA shall determine whether a Person has made Good Faith Efforts to meet the applicable Goals and to what extent the waiver request should be granted. In determining whether a Person has made Good Faith Efforts, the CCA will consider whether the Person has:
 - a. Reviewed lists of MAWBEPCEs maintained by Cook County and other State and local governments and agencies to identify qualified MAWBEPCEs for solicitation for Bids;
 - b. Divided procurement requirements into small tasks or quantities. This shall include, where appropriate, whether the person has broken out contract work items into economically feasible units, consistent with the availability of MAWBEPCEs, to facilitate MAWBEPCE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces;
 - c. Adjusted any insurance requirements imposed by the Person seeking MAWBEPCEs, or otherwise assisted MAWBEPCEs in obtaining any required insurance, where economically feasible, to encourage participation by MAWBEPCEs;
 - d. Made timely attempts to contact MAWBEPCEs providing the type of supplies, equipment, goods or services required for the procurement; and provided them with a convenient and timely opportunity to obtain and review all information concerning the procurement necessary to enable such MAWBEPCE to respond;
 - e. Followed up on initial contacts of MAWBEPCEs to determine if they are interested in participating in the procurement;

- f. Negotiated in good faith and on a timely basis with MAWBEsPCEs to enable them to participate in the procurement. Evidence of such negotiation includes the names, addresses, and telephone numbers of MAWBEsPCEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached. The Contractor may not reject MAWBEsPCEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using MAWBEsPCEs is not in itself sufficient reason for a Contractor's failure to meet the Goals, as long as such costs are reasonable;
 - g. Made efforts to assist interested MAWBEsPCEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that such efforts shall not be inconsistent with the requirement that the MAWBEPCE be responsible for actually obtaining and paying for such items;
 - h. Established delivery schedules which will encourage participation by MAWBEsPCEs, where the requirements of the procurement permit;
 - i. Used the services and assistance of the CCA and the District's staff, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce;
 - j. Timely notified appropriate community and minority and women's business organizations identified as assist agencies of the opportunity for participation in the procurement;
 - k. Established and/or maintained a mentor-protégé agreement with one (1) or more MAWBEsPCEs 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 MAWBEPCE in acquiring additional skills, experience and relationships helpful to the long-term success of the MAWBEPCE.
2. In determining whether a Bidder or Respondent has made Good Faith Efforts, the levels of participation by MAWBEsPCEs set forth in Utilization Plans submitted by other Persons for the same procurement may be considered. For example, if the apparent successful Bidder or Respondent fails to meet the Contract Specific Goals, but meets or exceeds the average MAWBEPCE participation obtained by other Bidders or Respondents, this may be evidence that the apparent successful Bidder or Respondent made Good Faith Efforts.
3. Where the District requires professional services, the District must be able to call upon those professionals whose particular training and experience are most beneficial to the District.
 - a. The District aspires to an annual goal of thirty-five (35) percent aggregate MAWBEPCE participation for the total professional services and consulting services utilized by the District.
 - b. A Utilization Plan shall be required, and if a waiver or partial waiver is requested, "good faith" efforts shall be demonstrated as set forth in this subsection L.; provided, however, that such Persons shall not be required to attempt to subcontract with MAWBEsPCEs if subcontractors would not typically be utilized for the type of procurement. In such cases, the Person shall document the reasons for not subcontracting in a waiver request.
 - c. The Contractor will endeavor to maximize use of MAWBEsPCEs for supplies, equipment, goods or services for such Contractor's business operations not specifically for the procurement.
 - d. If such Person is required to have or has an affirmative action plan and goals, such plan and goals shall be submitted with their Utilization Plan. The CCA shall compare such plan and goals with the Person's actual affirmative action achievements and such achievements may be considered by the District in future Procurements.
4. Mentor/protégé agreements. Where a contractor enters into a mentor/protégé agreement with a MAWBEPCE to improve or develop certain aspects of the business of the MAWBEPCE, the CCA shall evaluate the effect of such agreement as a factor in determining Good Faith Efforts. The mentor/protégé agreement may provide for the contractor to assist the MAWBEPCE in such areas

as technical aspects of the ~~MAWBE's~~PCE's business, improving financial management, or providing on-the-job training. To constitute Good Faith Efforts, the mentor/protégé agreement shall satisfy the following requirements:

- a. The ~~MAWBE~~PCE performs a Commercially Useful Function;
 - b. The agreement shall be included in the Utilization Plan; and
 - c. The agreement clearly defines the respective responsibilities of the contractor and the ~~MAWBE~~PCE and includes specific, measurable goals to be attained by both parties through the performance of the agreement. In order to be a factor in establishing best efforts, the mentor/protégé agreement ~~must~~must be for a reasonable period of time.
5. The CCA may grant a total or partial waiver based upon the following criteria:
- a. There are not sufficient ~~MAWBEs~~PCEs capable of providing the supplies, equipment, goods or services required for the procurement;
 - b. The procurement cannot reasonably be divided;
 - c. The price required by potential ~~MAWBEs~~PCEs is more than ten (10) percent above competitive levels; and
 - d. Any other factor relating to Good Faith Efforts as set forth in the Person's Utilization Plan.
 - e. 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. *Calculating ~~MAWBE~~PCE Participation.* In calculating a ~~MAWBE's~~PCE's participation, only dollar amounts commensurate with a ~~MAWBE's~~PCE's performance of a Commercially Useful Function may be counted.
1. The dollar value of that portion of a procurement that is performed by the ~~MAWBE's~~PCE's own forces shall be counted, including the cost of supplies, materials and equipment furnished by the ~~MAWBE~~PCE for the procurement, whether purchased or leased (except to the extent purchased or leased from the Contractor or the Contractor's Affiliate).
 2. The dollar amount of fees or commissions charged by a ~~MAWBE~~PCE for providing a bona fide service, such as professional, technical, consultant, managerial, insurance brokerage or surety services, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
 3. When ~~an MAWBE~~a PCE is a Joint Venture partner, only the dollar value of the distinct, clearly defined work performed by the ~~MAWBE~~PCE with its own forces shall be counted.
 4. Only expenditures to a ~~MBE or WBEPCE~~PCE that is performing a Commercially Useful Function shall be counted. To determine whether a ~~MBE or WBEPCE~~PCE is performing a Commercially Useful Function, the District will evaluate the amount of work subcontracted, industry practices, whether the amount the ~~MBE or WBEPCE~~PCE is to be paid under contract is commensurate with the work it is actually performing and other relevant factors. To perform a Commercially Useful Function, the ~~MBE or WBEPCE~~PCE 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~~PCE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the contract through which funds are passed in order to obtain the appearance of ~~MBE or WBEPCE~~PCE participation. If a ~~MBE or WBEPCE~~PCE subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a ~~MBE or WBEPCE~~PCE is presumed not to be performing a

Commercially Useful Function, the Certified Firm and the person seeking to include the PCE in its Utilization Plan may present evidence to rebut this presumption.

5. Only the dollar amount actually paid to the MAWBEPCE shall be counted toward the participation of a MAWBEPCE.
6. One hundred (100) percent of the cost of the supplies, equipment or goods obtained from a MAWBEPCE Manufacturer or Regular Dealer shall be counted, unless otherwise provided pursuant to Subsection S, Established Business Participation in the Program.
7. One hundred (100) percent of the fees or transportation charges for the delivery of supplies, equipment, materials or goods shall be counted only if the payment of such fees is a customary industry practice and such fees are commensurate with fees customarily charged for similar services, unless otherwise provided pursuant to Subsection S, Established Business Participation in the Program.
8. If, for reasons associated with malfeasance, fraud or other factors set forth in Subsection R, Sanctions and Penalties, ~~an MAWBE~~ a PCE 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.
89. If, for other reasons not associated with malfeasance, fraud or other factors set forth in Subsection R, Sanctions and Penalties, ~~an MAWBE~~ a PCE 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 be counted for the remaining term of the contract.

N. *Review of Contract Performance.*

1. *Compliance with Utilization Plan.* The CCA shall review the Contractor and MAWBEPCE compliance with its Utilization Plan as necessary during the performance of the contract. The CCA may establish such requirements for periodic Contractor and MAWBEPCE reporting on compliance with its Utilization Plan as the CCA determines appropriate and necessary. A Contractor and MAWBEPCE shall be required to provide any additional requested compliance documentation within fourteen (14) days of request by the CCA.
 - a. If the CCA determines that the Contractor or MAWBEPCE has failed to comply with a Utilization Plan and has failed to provide a cure accepted by the CCA in his or her discretion, the CCA shall notify the Purchasing Agent of such failure. The Purchasing Agent shall then send notice of default to the Contractor or MAWBEPCE, or both, and the Contractor and MAWBEPCE shall have such time to cure the default as is provided in the contract. If no such period is provided, the Contractor or MAWBEPCE, as the case may be, shall have ten (10) days to cure such default. For purposes of this section, providing a plan for bringing the contract into compliance with the Utilization Plan may constitute a cure, if compliance cannot reasonably be achieved within the applicable cure period, and if compliance is achieved in accordance with such plan.
 - b. If a Contractor or MAWBEPCE fails to provide any documentation required by the CCA, the CCA shall notify the Purchasing Agent of such failure. The Purchasing Agent shall then send notice of default to the Contractor or MAWBEPCE, and the Contractor or MAWBEPCE shall have such time to cure the default as is provided in the contract. If no such period is provided, the Contractor shall have ten (10) days to cure such default.
2. *Bid and Target Market Programs.* To address more specifically the barriers to MAWBEPCE participation as prime Contractors in District work, the CCA may recommend to the Purchasing Agent to institute the following special MAWBEPCE bidding provisions, following determination of the appropriateness of such provisions.
 - a. In connection with the award of a contract subject to competitive bidding on which a MAWBEPCE has bid and where the MAWBEPCE is bidding on the item in question for the first time; and has never successfully bid on a Forest Preserve District of Cook County purchasing contract, the CCA may, at the opening of the bids on the item, compare the

MAWBEPCE Bid with the lowest Bid, and, if the MAWBE'sPCE's Bid is closely competitive as defined by guidelines to be established by the CCA with that of lowest actual Bids, direct the Purchasing Agent to declare the MAWBEPCE the successful Bidder. A MAWBEPCE may use this procedure only once to become the successful Bidder on any particular item. Thereafter, the MAWBEPCE must be totally competitive in terms of price to be the successful Bidder.

- b. The Contract Compliance Administrator shall develop and coordinate a target market program as follows:
- (i) The CCA shall review the availability of MAWBEsPCEs providing various goods and services and shall identify for inclusion in a potential program for bidding among MAWBEPCE Persons certain commodity areas with sufficient MAWBEPCE availability to ensure that the District receives a competitive price. The CCA shall report his/her findings and recommendations to the Contract Compliance Committee;
 - (ii) Upon a determination by the CCA that such a program is advisable for any particular commodity procurement; the CCA will institute the following procedures:
 - (a) The CCA will notify the Purchasing Agent of identification of those commodity codes appropriate for a target market program;
 - (b) To the extent practicable, the Purchasing Agent, with the aid of the CCA, shall divide procurement in the designated commodity areas into economically feasible sizes to facilitate Bidsbids or offers from MAWBEsPCEs and shall designate contracts to be offered under the target market program;
 - (c) The Purchasing Agent shall offer MAWBEsPCEs the opportunity to bid on such contracts in a limited competition;
 - (d) All standard District rules for bidding will then become effective and, provided that at least three (3) MAWBEsPCEs Bid or make an offer on the contract, the lowest Responsive~~responsive~~ and Responsible~~responsible~~ Bidder among the MAWBEsPCEs will receive the contract;
 - (e) In the event less than three (3) MAWBEs BidPCEs bid or make an offer on the contract or if there is no Rresponsive Bbid or offer received from a Rresponsible MAWBEPCE, the Purchasing Agent shall rebid the contract not subject to the target market program.
 - (iii) Participation in the target market program shall be limited to Minority Business Enterprises, Women'sWomen-Owned Business Enterprises and Joint Ventures consisting exclusively of Minority Business Enterprises, Women'sWomen-Owned Business Enterprises or both. The MAWBEPCE Contractor on a target market contract may subcontract up to forty-nine (49) percent of the dollar value of the target market contract to subcontractors who are not Minority Business Enterprises or Women'sWomen-Owned Business Enterprises.
- O. *Prompt Payment of Firms.* If an invoice from a Contractor includes payment for supplies, equipment, goods or services furnished by a MAWBEPCE, Contractor shall pay such MAWBEPCE for such supplies, equipment, goods or services within fourteen (14) days after receipt of payment from the District. The CCA shall investigate any complaint or charge of excessive delay in payment, and shall report the results of such investigations to the Contract Compliance Committee and to the District Comptroller. Failure of Contractor to comply with this Section shall constitute a material breach of the contract.
- P. *Reporting and Review.* The CCA shall report to the Board on an annual basis with respect to the following:
- 1. The percentage of the total dollar amount of procurements for such year actually received by MAWBEsPCEs;
 - 2. The number of MBEs and WBEs available for participation in procurements, by category;

3. An evaluation of the effectiveness of this division in ensuring equitable participation by ~~MAWBEs~~PCEs in procurements;
 4. An assessment of the continuing need for the Program;
 5. Identification of any enforcement problems; and
 6. Any recommendations with respect to modifying or improving the Program, including discontinuing or modifying Program Goals in those cases where Minority Business Enterprises and ~~Women's~~Women-Owned Business Enterprises no longer are disadvantaged by the effects of discrimination in their participation in procurements.
- Q. *Prohibited Provisions.* 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.
- R. *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 ~~other others~~ to do so;
 - b. Failed in bad faith to fulfill Contract 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 R(2)(a.—c.) that may warrant decertification to the CCD if any ~~MAWBE~~PCE involved was certified by Cook County, or other applicable agency if any ~~MAWBE~~PCE 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 WBE/PCE. 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 WBE~~PCE 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 the Cook County an Administrative Hearing~~Law Judge from the Cook County Department of Administrative Hearings shall be subject to review pursuant to the Illinois Administrative Act (735 ILCS 5/3-101 et seq.).
- SS. 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, Program 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, Program 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, Program 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

I. *Review and Sunset.*

1. On or before the sunset date of this Ordinance, the District shall review new evidence to determine whether it has a compelling interest in continuing narrowly tailored remedies to redress discrimination against ~~MAWBEs~~PCEs so that the District will not function as a passive participant in a discriminatory marketplace.
2. This Ordinance shall sunset on or before June 30, 2021.