

## **SPECIAL CONDITIONS FOR THE SMALL BUSINESS INITIATIVE CONSTRUCTION PROGRAM**

### **A. POLICY AND TERMS**

1. Pursuant to Chapter 2-92, Sections 2-92-680 and 2-92-710(n) of the Municipal Code of Chicago, the Chief Procurement Officer has established a Small Business Initiative ("SBI") Construction Program with the goal of awarding City construction contracts valued at \$10,000,000.00 or less to Small Local Business Enterprises ("SBEs"). In order to increase opportunities for the full range of small businesses, SBI has been organized into two categories: SBI-1 and SBI-2. SBI-1 refers to projects where the total cost of the Work is estimated to be between \$2,000,000 and \$10,000,000. All SBEs are eligible to participate in projects designated as SBI-1. SBI-2 refers to projects where the estimated total cost of the Work is less than \$2,000,000. Only those SBEs whose gross receipts, averaged over the firm's previous five fiscal years, or its number of employees per pay period averaged over the past twelve months, are less than fifty percent (50%) of the size standards of 13 C.F.R. Part 121 are eligible to bid on projects designated as SBI-2 Projects.

It is the policy of the City of Chicago that SBEs, as defined by Section 2-92-670 of the Municipal Code of Chicago ("MCC"), in accordance with all regulations promulgated under the aforementioned Chapter of the Municipal Code, will have full and fair opportunities to participate fully in the performance of this Contract.

Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the Contract and may result in the termination of the Contract or such remedy as the City of Chicago deems appropriate.

2. A bid shall be rejected as non-responsive if it fails to submit an SBE compliance plan demonstrating how the bidder plans to meet the Contract's 51% SBE requirement.

### **B. DEFINITIONS**

1. "Area of Specialty" means the description of an SBE firm's business which has been determined by the City of Chicago, or which the SBE has affirmed, by an Affidavit of Small Business Status, to be most reflective of the SBE firm's claimed specialty or expertise. Areas of Specialty are identified by the North American Industry Classification System ("NAICS") codes which are listed in the SBA Small Business Size Standards in 13 C.F.R. Part 121.

See [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title13/13cfr121\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title13/13cfr121_main_02.tpl)

NOTICE: The City of Chicago does not make any representation concerning the ability of any SBE to perform work within its Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of SBEs to satisfactorily perform the work proposed.

2. "Bidder" means any person or business entity that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.
3. "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

commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

4. "Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.
5. "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.
6. "Compliance Plan" means Schedule D-5 or D-6, as applicable.
7. "Construction Contract" means a contract, purchase order or agreement (other than lease of real property) for the construction, repair, or improvement of any building, bridge, roadway, sidewalk, alley, railroad or other structure or infrastructure, awarded by any officer of agency of the City, other than the City Council, and whose costs is to be paid from City funds.
8. "Contractor" means any person or business entity that has entered into a contract with the City, and includes all partners, affiliates, and joint ventures of such person or entity.
9. "Independence" of a business is determined solely by the Chief Procurement Officer or his or her designee. Indicia of independence include the ability of the bidder to perform satisfactorily in its area(s) of specialty without substantial reliance upon finances, resources, bonding, expertise, staff, facilities, or equipment of another individual or business. Recognition of the bidder as a separate and distinct entity by governmental taxing authorities is not dispositive of the applicant's assertion of independence. Independence will be evaluated as of the date the bidder was established through and including the date of bidding.
10. "Joint Venture" means an association of two or more SBE firms to carry out a single, for-profit business enterprise, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge.
11. "Local Business Enterprise" means a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (the "Six County Region").
12. "Minority Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations, as long as it is performing in its certified Area of Specialty.
13. "Small Business Enterprise" means a firm whose gross receipts, averaged over the firm's previous seven fiscal years, or its number of employees, per pay period averaged over the past twelve months, do not exceed one and one half times the size standards of 13 C.F.R. Part 121 relevant to the scope(s) of work the firm seeks to perform on City contracts.

14. "Small Local Business Enterprise," or "SBE" means a business that is a Small Business Enterprise and a Local Business Enterprise. Because City-certified minority-owned business enterprises (MBEs) and woman-owned business enterprises (WBEs), by definition in Section 2-92-670 of the Municipal Code of Chicago, must also be small local business enterprises in order to be certified as MBEs or WBEs, they are presumed to meet the definition. In making a determination whether a non-certified business meets that definition, the Chief Procurement Officer will consider, among other factors, whether the business:
- a. Has been in business for at least one (1) year;
  - b. Is independent, and not an affiliate or subsidiary of any other business;
  - c. Has gross receipts, averaged over the firm's previous seven fiscal years, or number of employees, per pay period averaged over the past twelve months, that do not exceed one and one half times the size standards set forth in 13 C.F.R. Part 121 relevant to the scope(s) of work the firm seeks to perform on City contracts;
  - d. Has its principal place of business located in the Six-County region identified in Section 2-92-670 of the Municipal Code of Chicago..
15. "Supplier" or "Distributor" refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
16. "Women Owned Business Enterprise" or "WBE" means a firm awarded certification as a woman owned and controlled business in accordance with City Ordinances and Regulations, as long as it is performing in its certified Area of Specialty.

**C. JOINT VENTURES**

A SBI Joint Venture is allowed as an instrument for SBE participation in the SBI Construction Program. However, a SBI Joint Venture is eligible if, and only if all of the following requirements are satisfied:

- each Joint Venture partner is an SBE;
- each SBE venturer(s) shares in the (1) ownership, (2) control, (3) management responsibilities, (4) risks and (5) profits of the joint venture in proportion with the SBE ownership percentage;
- each SBE venturer(s) is responsible for a clearly defined portion of work to be performed, in proportion with their ownership percentage; and

- each SBE venturer(s) actually performs (with its own forces and using its own equipment) work equal to at least 25% of the value of its ownership of the joint venture. For example, if an SBE is proposed as a 50% venturer on a \$1,000,000 contract, that SBE must, in addition to its other joint venture responsibilities, perform work equal to at least \$125,000 (or 25% of 50% of \$1,000,000); and
- a minimum of 51% of the work on the entire project is performed by SBE firms.

The Chief Procurement Officer will evaluate the proposed SBI joint venture agreement, the Schedule B-5 submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. In addition, the Chief Procurement Officer shall consider the record of the joint venturers as joint venturers on City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract's 51% SBE requirement, and the portion of those goals met by the joint venture, shall be final.

**(Notice:** The City requires that, whenever a joint venture is proposed as the prime contractor, each joint venturer must separately sign the proposal to the City, on the pages, TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.)

The Chief Procurement Officer may also count the dollar value of work subcontracted to other SBEs.

#### **D. ELIGIBILITY**

1. Only SBEs, or Joint Ventures that meet the requirements described above, are eligible to bid on or participate in SBI Construction Program Contracts.
2. Only SBEs with Areas of Specialty in NAICS Sector 23 – Construction are presumptively eligible to bid on SBI Construction Program Contracts. SBEs with other Areas of Specialty are presumptively ineligible to bid on SBI Construction Program Contracts, and their bids will be presumed to be non-responsive. However, bids submitted by presumptively ineligible SBEs may be accepted at the discretion of the Chief Procurement Officer if determined to be in the best interest of the City.
3. SBE prime contractors perform the majority of the work on the construction project with its own forces and/or subcontractors who are also small local business enterprises;
4. Contracts included in the SBI Construction Program have been identified by the Chief Procurement Officer as construction contracts with an estimated contract value of \$10,000,000.00, or less. SBI I refers to projects where the total cost of the Work is estimated to be between \$2,000,000 and \$y,000,000. All SBEs are eligible to participate in projects designated as SBI-1. SBI-2 refers to projects where the estimated total cost of the Work is less than \$2,000,000. Only those SBEs whose gross receipts, averaged over

the firm's previous five fiscal years, or its number of employees per pay period averaged over the past twelve months, are less than fifty percent (50%) of the size standards of 13 C.F.R. Part 121 are eligible to bid on projects designated as SBI-2 Projects.

5. The Contractor may not subcontract more than forty-nine percent (49%) of the dollar value of the contract to non-SBEs. At least 51% of the awarded contract amount must be performed by SBEs. Up to 49% of the dollar value of the SBI contract may be subcontracted to firms who are non-SBEs. In appropriate cases the Chief Procurement Officer may initiate discussions with a Contractor subcontracting with non-SBE firms in order to maximize the overall participation of SBEs at all contracting levels.
6. The requirement that Contractor may not subcontract more than forty-nine percent (49%) of the dollar value of the contract to non-SBEs shall also apply to any modifications to the Contract after award. That is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to utilize SBEs to complete at least 51% of the work. Contractor must produce a statement listing the SBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms.
7. SBE firms will be allowed to participate in this SBI Contract only in their Areas of Specialty. For SBEs that are also MBEs and/or WBEs, Area of Specialty must be substantiated by current certification letters of all such MBE and WBE firms participating in the contract, which certification letters must be a part of the bid/proposal response. For Non-MBE and/or WBE SBEs, Area of Specialty must be substantiated by an Affidavit of Small Business Status that identifies the SBE's Area of Specialty and which must be a part of the bid/proposal response.
8. Contractor can only receive credit for work performed by SBEs that perform a commercially useful function on the project. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors. An SBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of SBE participation. The CPO may examine similar commercial transactions, particularly those in which SBEs do not participate, to determine whether non SBE firms perform the same function in the marketplace.
9. The Chief Procurement Officer may make participation in the SBI Construction Program dependent upon submission to stricter compliance audits than are generally applicable to participants in other City contracts. Where necessary or useful, the Chief Procurement Officer may require or encourage SBEs to participate in training programs offered by the Department of Planning and Economic Development or other City departments or agencies as a condition of participation in the SBI Construction Program.

#### **E. COUNTING SBE PARTICIPATION TOWARDS THE CONTRACTS GOALS**

Refer to this section when preparing the SBE compliance plan and completing Schedule D-5 for guidance on what value of the participation by SBEs will be counted toward the fifty-one percent

(51%) SBE participation requirement. The “Percent Amount of Participation” depends on whether and with whom an SBE subcontracts out any portion of its work and other factors.

1. Each SBE listed on the Schedule D-5 must perform a commercially useful function on the Contract.
2. If the SBE performs the work itself:
  - a. 100% of the value of work actually performed by the SBE’s own forces shall be counted toward the Contract’s 51% SBE requirement, including the cost of supplies purchased or equipment leased by the SBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces. 0% of the value of work at the project site that an SBE subcontracts to a non-SBE counts toward the Contract’s 51% SBE requirement.
3. If the SBE is a manufacturer:
  - a. 100% of expenditures to an SBE manufacturer for items needed for the Contract shall be counted toward the Contract’s 51% SBE requirement. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the bidder or contractor.
4. If the SBE is a distributor or supplier:
  - a. 60% of expenditures for materials and supplies purchased from an SBE that is a regular dealer or supplier shall be counted toward the Contract’s 51% SBE requirement.
5. If the SBE is a broker:
  - a. 0% of expenditures paid to brokers will be counted toward the Contract’s 51% SBE requirement.
  - b. As defined above, Brokers provide no commercially useful function.
6. If the SBE is a member of a joint venture contractor/bidder:
  - a. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SBE performs toward the Contract’s 51% SBE requirement.
    - i. OR if employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract’s 51% SBE requirement at a rate equal to the SBE firm’s percentage of participation in the joint venture as described in Schedule B-5.
  - b. Note: a joint venture may also count the dollar value of work subcontracted to other SBEs, however, work subcontracted out to non-SBE firms may not be counted.
7. If the SBE subcontracts out any of its work:
  - a. 100% of the value of the work subcontracted to other SBEs performing work in its Area of Specialty may be counted toward the Contract’s 51% SBE requirement.
  - b. 0% of the value of work that an SBE subcontracts to a non-SBE firm counts toward the Contract’s 51% SBE requirement (except for the cost of supplies purchased or equipment leased by the SBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces as allowed by A.1 above).
  - c. The fees or commissions charged for providing a bone fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance or the procurement of essential personnel, facilities, equipment,

materials or supplies required for performance of the Contract, may be counted toward the Contract's 51% SBE requirement, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- d. The fees charged for delivery of materials and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- e. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

## **F. PROCEDURE TO DETERMINE BID COMPLIANCE**

The following Schedules and requirements govern the bidder's proposal:

### **1. Schedule D-5/D-6: Compliance Plan Regarding SBE Utilization**

Bidders must submit, together with the bid, a completed Schedule D-5 or D-6 (in the case of SBI-2 projects) committing them to the utilization of each listed firm. All SBEs that will perform work on the Contract, including the bidder, must be listed on the Schedule D-5 or D-6. All commitments made by the bidder's Schedule D-5/D-6 must conform to those presented in the submitted Schedule C-5(s) or C-6(s). As stated in Section XXIII(A)(2), above, a bid shall be rejected as non-responsive if it fails to submit an SBE compliance plan demonstrating how the bidder plans to meet the 51% SBE requirement.

A bidder or contractor may not modify its Compliance Plan after bid opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders shall not be permitted to add SBEs after bid opening to meet the Contract's 51% SBE requirement, however, contractors are encouraged to add additional SBE vendors to their approved Compliance Plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder or contractor shall not reduce the dollar commitment made to any SBE in order to achieve conformity between the Schedule C-5s and Schedule D-5. All terms and conditions for SBE participation on the Contract must be negotiated and agreed to between the bidder or contractor and the SBE prior to the submission of the Compliance Plan. If a proposed SBE ceases to be available after submission of the Compliance Plan, the bidder or contractor must comply with the provisions in Section VII.

### **2. Schedule C-5/C-6: Letter of Intent to Perform**

The bidder must submit a Schedule C-5-S or C-6-S (in the case of SBI-2 projects) with its bid for each SBE subcontractor included on the Schedule D-5/D-6. Each Schedule C-5-S/C-6-S must accurately detail the work to be performed by the SBE subcontractor and the agreed upon rates/prices. Each Schedule C-5-S/C-6-S must also include a separate sheet as an attachment on which the SBE fully describes its proposed scope of work,

including a description of the commercially useful function being performed by the SBE in its Area of Specialty. If a facsimile copy of the Schedule C-5-S/C-6-S has been submitted with the bid, an executed original Schedule C-5-S/C-6-S must be submitted by the bidder for each SBE included on the Schedule D-5/D-6 within five business days after the date of the bid opening.

In the event the bidder fails to submit any Schedule C-5-Ss/C-6-Ss with its bid/proposal, the City will presume that no subcontractors are performing services related to the contract absent evidence to the contrary.

The bidder must also submit a Schedule C-5-P or C-6-P (in the case of SBI-2 projects) with its bid which must accurately detail the work to be performed by the bidder's own forces on the Contract.

3. Letters of Certification

For SBEs which are also MBEs or WBEs, a copy of each firm's current MBE/WBE Letter of Certification from the City of Chicago, or from such other certifying body as may be acceptable to the Chief Procurement Officer, should be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago, or from such other certifying body as may be acceptable to the Chief Procurement Officer, include a statement of the MBE/WBE firm's Area of Specialty. The SBE firm's scope of work, as detailed by their Schedule C-5/C-6, must conform to their stated Area of Specialty.

4. Affidavit of Small Business Status

Bidders must submit a separate Affidavit of Small Business Status, which affirms that a firm qualifies as an SBE, and which identifies the SBE's Area of Specialty, for each SBE listed on the bidder's compliance plan. The SBE firm's scope of work, as detailed by their Schedule C-5/C-6, must conform to their stated Area of Specialty. Areas of Specialty identified in the Affidavit of Small Business Status must correspond to one or more of the North American Industry Classification System ("NAICS") codes which are listed in the SBA Small Business Size Standards in 13 C.F.R. Part 121.

5. Joint Venture Agreements

If the bidder is a Joint Venture, the bidder must submit with its bid a copy of the Joint Venture agreement and a Schedule B-5 or B-6 (in the case of SBI-2 projects). See Section III, Joint Ventures, above, for more details.

6. Schedule B-5/B-6: SBE Affidavit of Joint Venture

Where the bidder's Compliance Plan includes the participation of any SBE as a joint venture partner, the bidder must submit with its bid a Schedule B-5 or B-6 and the proposed joint venture agreement. These documents must both clearly evidence that the SBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the SBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:



1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the SBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the SBE joint venture partner; and
4. The SBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

NOTE: Vague, general descriptions of the responsibilities of the SBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the SBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

7. Agreements between a bidder or contractor and an SBE in which the SBE promises not to provide subcontracting quotations to other bidders or contractors are prohibited.
8. Prior to award, the bidder agrees to promptly cooperate with the Department of Procurement Services in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed SBE. Failure to cooperate may render the bid non-responsive.
9. If the City determines that the Compliance Plan contains minor errors or omissions, the bidder or contractor must submit a revised Compliance Plan within five (5) business days after notification by the City that remedies the minor errors or omissions. Failure to correct all minor errors or omissions may result in the determination that a bid is non-responsive.
10. No later than three (3) business days after receipt of the executed contract, the contractor must execute a complete subcontract agreement or purchase order with each SBE listed in the Compliance Plan. No later than eight (8) business days after receipt of the executed contract, the contractor must provide copies of each signed subcontract, purchase order, or other agreement to the Department of Procurement Services.

#### **G. CHANGES TO COMPLIANCE PLAN**

1. No changes to the compliance plan or contractual SBE commitments or substitution of SBE subcontractors may be made without the prior written approval of the Chief Procurement Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to

contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the SBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

2. Substitutions of an SBE subcontractor shall be permitted only on the following bases:
  - a. Unavailability after receipt of reasonable notice to proceed;
  - b. Failure of performance;
  - c. Financial incapacity;
  - d. Refusal by the subcontractor to honor the bid or proposal price or scope;
  - e. Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  - f. Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  - g. The subcontractor's withdrawal of its bid or proposal; or
  - h. Subcontractor no longer qualifies as an SBE.
  
3. If it becomes necessary to substitute an SBE or otherwise change the compliance plan, the procedure will be as follows:
  - a. The bidder or contractor must notify the Chief Procurement Officer in writing of the request to substitute an SBE or otherwise change the compliance plan. The request must state specific reasons for the substitution or change. A letter from the SBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.
  - b. The City will approve or deny a request for substitution or other change within 15 business days of receipt of the request.
  - c. Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make good faith efforts to meet the Contract's 51% SBE requirement by substituting an SBE subcontractor. Documentation of a replacement SBE must meet the requirements in Section VI.
  - d. If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the compliance plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the compliance plan and must make good faith efforts to ensure that SBEs have a fair opportunity to bid on the new scope of work.
  - e. A new subcontract must be executed and submitted to the Chief Procurement Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.
  
4. The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with Contract's 51% SBE requirement.

#### **H. REPORTING REQUIREMENTS DURING THE TERM OF THE CONTRACT**

1. The Contractor will, not later than three (3) calendar days from receipt of the executed contract by the City, execute formal contracts or purchase orders with the SBE subcontractors listed on its Schedule D-5 form.

2. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City of Chicago to the Contractor for services performed, on the first day of each month and every month thereafter, email and or fax notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, or compatible structure that can be uploaded into C2 or City's current system, on or before the fifteenth (15th) day of each month. For purposes of this Contract, all subsequent references to C2 shall mean C2, or the City's current system, or a compatible structure that can be uploaded into C2 or City's current system, unless the context provides otherwise.
3. Once the prime Contractor has reported payments made to each subcontractor, including zero dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
4. All subcontract agreements between the Contractor and SBE subcontractors or any first tier non-SBE subcontractor and lower tier SBE firms must contain language requiring the SBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://chicago.mwdbe.com>

5. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have 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 SBE participation and the status of any SBE 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.
6. The Contractor shall maintain records of all relevant data with respect to the utilization of SBEs, retaining these records for a period of at least five years after final closeout of the contract. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

#### **I. COMPLIANCE**

1. The Chief Procurement Officer, or his or her designee, shall be entitled to examine on five business days notice, the Contractor's books and records including without limitation payroll records, tax returns and records, and books of account, to determine whether the Contractor is in compliance with the requirements of the SBI Construction Program and the status of any SBE performing any portion of the contract. Such rights are in addition to any other audit inspection rights contained in the contract.

2. It is a material breach of the contract if the Contractor, a joint venturer, or subcontractor is disqualified as a SBE, such status was a factor in contract award, and the status was misrepresented by the contractor or any joint venturer. Such a breach shall entitle the City to declare a default, terminate the contract and exercise those remedies provided for in the contract, at law, or in equity.
3. In the event that the Contractor is determined not to have been involved in any misrepresentation of the status of an SBE, the Contractor shall discharge the disqualified SBE and, if possible, identify and engage a qualified SBE as its replacement. Continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. Payments due under the contract may be withheld until corrective action is taken.

#### **J. ARBITRATION**

1. In the event that the Contractor has not complied with the contractual SBE percentages in its Schedule D-5 or D-6 as applicable, underutilization of SBEs shall entitle the affected SBE to recover from the Contractor damages suffered by such entity as a result of being underutilized. Any disputes between the Contractor and such affected SBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing SBE in accordance with these regulations. This provision is intended for the benefit of any SBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a Contractor and a SBE.
2. An SBE desiring to arbitrate shall contact the Contractor in writing to initiate the arbitral process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the Contractor receiving notification of the intent to arbitrate from the SBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the SBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.
3. All fees of the arbitrator are the initial responsibility of the SBE; provided, however, that the arbitrator is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing SBE.
4. The SBE must send the City a copy of the Demand for Arbitration within ten calendar days after it is filed with the AAA. The SBE also must send the City a copy of the decision of the arbitrator within ten (calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

#### **K. EQUAL EMPLOYMENT OPPORTUNITY**

Compliance with SBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law related to bidder or contractor and subcontractor obligations.

**L. RESOURCE AGENCIES**

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration Program  
500 W. Madison Street, Suite 1250  
Chicago, Illinois 60661  
Attn: General Services  
(312)353-4528

S.B.A. - Bond Guarantee Program  
Surety Bond  
500 West Madison, Suite 1250  
Chicago, Illinois 60661  
Attention: Carole Harris  
(312) 353-4003

S.B.A. - Procurement Assistance  
500 West Madison Street, Suite 1250  
Chicago, Illinois 60601  
Attention: Robert P. Murphy, Area Regional Administrator  
(312) 353-7381

City of Chicago  
Department of Procurement Services (DPS)  
Contract Administration Division  
City Hall - Room 403  
Chicago, Illinois 60602  
Attention: DPS  
312-744-4900