

RESOURCE GUIDE

PROCUREMENT FUNDAMENTALS



DPS

Department of
Procurement
Services

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RESOURCE GUIDE – PROCUREMENT FUNDAMENTALS

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1. OVERVIEW

CITY OF CHICAGO DEPARTMENT OF PROCUREMENT SERVICES

PURPOSE OF PROCUREMENT FUNDAMENTALS DOCUMENT

The purpose of this Procurement Fundamentals document is to provide helpful information to contractors and bidders. This document is not intended to provide legal advice or serve as a comprehensive statement of the law or of DPS regulations and procedures. This document should not be relied upon as authoritative interpretation of the Municipal Code of Chicago (MCC) or the rules promulgated by the Chief Procurement Officer (CPO) or other applicable law, executive order, policy or procedure. Please refer to the MCC and the DPS's website for the most up to date ordinances and rules, which take precedence over this document.

THE PROCUREMENT PROCESS

DPS is committed to a public procurement process that is open, timely, and fair to all who participate. DPS is a service department and its clients are the City's User Departments. The City's User Departments determine their needs and requirements. DPS assists them in articulating those needs for the marketplace and contracting to acquire the goods and services necessary to meet those needs. The User Departments are responsible for processing invoices for payment. DPS assists the User Departments in that effort by securing appropriate payment contract terms and conditions and resolving disputes when they arise during the User Departments' administration of their contracts.

The public procurement process administered by DPS serves two fundamental purposes:

1. It enables the public to participate in the business of City government; and
2. It provides a mechanism by which the City can obtain the goods and services necessary to serve its constituents in the most cost-effective manner.

MISSION STATEMENT

DPS is the contracting authority for the procurement of goods and services for the City of Chicago.

We pledge to work together as a team and with our customers, vendors and contractors to have an open, fair, and timely process by establishing, communicating, and enforcing superior business practices.

Integrity, public trust and the law are our guiding principles.

The same principles apply to public procurement that apply to participation in government generally, i.e., fairness and equal opportunity in a manner that is open, non-discriminatory and fair to all who participate. To achieve these goals DPS has many City-generated documents related to its procurement process and referenced in this document on its website www.chicago.gov/dps.

For the procurement of certain contracts, such as those for legal services, Chicago City Council (City Council) awarded contracts, and other contracts for which the City Council has delegated authority to other City departments, DPS coordinates with User Departments as necessary in procuring and administering those contracts; however, DPS is not responsible for the procurement of such contracts.

2. DEFINITIONS

There are a number of terms that are used regularly in this document and in discussing procurement. Definitions for these terms are as follow:

Addendum (plural, addenda)– A change to the City’s requirements in an invitation for bids (IFB), request for qualifications (RFQ), or request for proposals (RFP). An addendum is advertised publicly and issued by DPS to everyone who has signed in as a holder of an IFB, RFQ, or RFP. If DPS issues an addendum or addenda for a procurement, bidders or respondents will be required to acknowledge their receipt of all addenda with their bid or proposal. Failure to acknowledge an addendum may result in the rejection of a bid or proposal. (In the eProcurement system, an addendum is called an amendment.)

Amendment (sometimes called a modification) – A document which formally changes the terms and conditions of a contract. There are several forms of amendments to contracts. A form that is commonly known is a change order to a construction contract.

Bid Package (or Solicitation Documents) – A set of documents issued by the City to solicit bids for goods and services. The bid package includes, among other things:

- Basic information regarding the procurement, including advertisement date , due date for bids, date of pre-bid conference, if any, title, brief description of project or procurement.
- Instructions to bidders on completing the required documents.
- Bid pages, on which the bidder formally states its bid in the format required by the City.
- Detailed specifications, in which the City provides a detailed statement of its requirements. The detailed specifications may be prepared by consultants, and for construction projects, will include plans and drawings. Consultants that assist in the preparation of IFBs are prohibited from participating or bidding on those projects.
- Special conditions regarding minority, women-owned and disadvantaged business enterprise (MBE/WBE/DBE) participation, which include forms for the bidder to state its commitment to the City’s MBE/WBE/DBE goals, and the means through which the bidder will attempt to meet those goals.
- The City’s Economic Disclosure Statement (EDS) on which the bidder and other required parties provide ownership information, information regarding retained parties, and certify as to other compliance matters.
- The bidder’s statement of its qualifications, in a format furnished by the City.
- The City’s general terms and conditions that govern the contract.

Competitive Bidding – Competitive bidding is a procurement method whereby a contract is awarded to lowest (or in the case of a revenue-generating contract, the highest) responsive and responsible bidder. “Responsive” and “Responsible” are defined below. There are exceptions to the competitive bidding requirement where multiple bidders are not available or contracts by their nature are not adapted to award by competitive bidding, such as contracts for certain professional services.

Contract – The written agreement between the City and a vendor for the provision of goods and/or services to the City by that vendor. There are several different forms of contracts, which will be discussed in later sections.

Depends Upon Requirements (DUR) Contracts – The City often requires goods or of services on an as-needed basis. While the User Departments may have an idea of how many goods, or how often the services may be required, the actual usage is unknown at the outset of the contract. Procurement professionals refer to these as depends upon requirements (DUR) contracts. When the User Department has a need for the goods or services furnished through a DUR contract, the User Department places an order for the goods or services it needs at the time at the price provided in the contract. Unless specified in the contract, DUR contractors should not assume they are the exclusive provider of the goods/services covered under the contract.

eProcurement – The business-to-government purchase of goods and services through the internet.

Good Faith Efforts – Unless the bid documents, RFP, or RFQ states otherwise, bidders or respondents must submit a compliance plan demonstrating how they will utilize MBE, WBE, or DBE firms, as applicable, to meet the MBE/WBE or DBE contract-specific participation goals or demonstrate good faith efforts to do so. Contractors must also demonstrate good faith efforts in attempting to meet MBE/WBE or DBE participation goals at contract close-out. In order to demonstrate good faith efforts, a vendor must document the methods it used to seek MBE/WBE or DBE participation, in accordance with the *Regulations Regarding the Determination of Good Faith Efforts Regarding MBE/WBE/DBE Participation at Contract Close-Out*.

Job Order Contracts (JOC) – JOC is a firm, fixed price, competitively bid, indefinite quantity contract specifically designed for each department’s construction program. General contractors are solicited to respond to an advertised JOC specification which contains a unit price book with the description of various construction tasks, the unit of measure, and unit price for each task. Contractors bid by submitting their proposed adjustment factor to the prices in the unit price book. Award is made to the bidder(s) proposing the lowest adjustment factor.

Master Consulting Agreements – Some User Departments require consulting services on an as-needed, rather than a continuous basis. Instead of engaging consultants for those departments through a contract with a fixed scope of services and fixed compensation, DPS issues RFQs and/or RFPs for Master Consulting Agreements or Professional Services Agreements. These Agreements establish a general scope of work and payment parameters and include the terms

and conditions that are common to nearly all City contracts and would apply to any specific services rendered pursuant to a given task order. The User Departments will then issue project specific task orders under the Agreements to secure the services they require as they are needed. Task orders will contain the specific scope of work required by the User Department, the compensation due for that specific scope of work, and any supplemental terms and conditions that may pertain solely to the task in question. The User Department then submits a task order request to DPS, which issues the task order to the selected vendor for the services.

Pre-Bid Conference – DPS conducts pre-bid conferences for procurements to provide interested bidders with an opportunity to hear directly from the User Department about its requirements, learn about the bidding process for the specific procurement involved and ask questions of DPS and the User Department regarding the procurement. These meetings are also an excellent networking opportunity for subcontractors to meet interested bidders.

Request for Proposals (RFP) – A form of procurement that is typically used to solicit proposals to implement a new project requiring professional services. City-funded professional services, such as architecture, engineering, and consulting, are generally procured through RFPs, unless another procurement method is required by law, as the City is as concerned with the proposer’s experience as with its pricing. Proposers furnish evidence of their ability to meet the City’s requirements along with a proposed price for furnishing the required goods or services.

Request for Qualifications (RFQ) – A form of procurement that is used to solicit qualifications from companies who possess a high degree of technical expertise and knowledge in specific disciplines. RFQs differ from RFPs in that pricing information is not a factor in the selection of a respondent to negotiate a contract. Federally-funded contracts for architects and engineers, for instance, require that the decision to award a contract be made solely upon the qualifications of the providers subject to the negotiation of a fair and reasonable price with the most qualified one. RFQs typically result in a multi-award agreement, known as a Master Consulting Agreement (MCA). The MCA provides a pool of pre-selected vendors to which a Task Order can be issued to secure competitive pricing for projects from the pre-selected pool.

Responsibility – This term addresses the fitness of a bidder or proposer to provide the required goods or services to the City required under the contract. Responsibility includes such considerations as financial capacity, past performance, experience, adequacy of equipment and personnel, and the ability to perform the contract within the timeframe required by the City in the solicitation document.

Responsiveness – This term addresses the bid or proposal compliance with all the material terms, conditions, and requirements of an invitation for bids, RFP, or RFQ. For example, if a bidder states it does not agree with or proposes to edit a provision in the bid package in a material way, the bid may be deemed non-responsive and would be rejected.

Small Orders/Purchases – Procurements up to \$250,000 are considered small orders.

3. GOVERNING LAWS

All procurements advertised and awarded by DPS that are not authorized by specific ordinance are subject to the Illinois Municipal Purchasing Act for Cities of 500,000 or More Population, 65 ILCS 5/8-10-1 *et seq.* (the Act), and Section 2-92 of the MCC. The principal requirement of the Act and the MCC is that all contracts adapted to competitive bidding in excess of \$100,000 are to be let by free and open competitive bidding after public advertisement.

Certain contracts are not subject to competitive bidding, which include contracts which by their nature are not adapted to award by competitive bidding, such as contracts for professional services, contracts for goods or services that are only available from a single source, utility contracts, publications, and specified printing and binding contracts.

The CPO is authorized under the Act to take the responsibility of a vendor into account when awarding a contract, and to reject a bid, proposal, or qualifications if the vendor is deemed non-responsible. Responsibility includes such considerations as financial capacity, past performance, experience, adequacy of equipment, and the ability to perform the contract within the time frame required by the City.

When contracts are funded through state or federal agencies, additional laws and regulations may apply to the procurement process.

4. PROGRAMS & BID INCENTIVES

PROGRAMS

Target Market Program

The Target Market Program was created to offer exclusive opportunities for MBE/WBEs on non-construction contracts, including contracts for professional services, such as Architecture, Engineers, IT, work services, such as janitorial services and landscaping, and commodities. The program allows prime level opportunities for MBE and WBEs. For a project to be designated as a Target Market project, there must be at least three MBE or WBE vendors certified in the area of specialty of the project. Construction projects may not be bid as Target Market procurements.

Phased Graduation Program

Established MBEs and WBEs that have exceeded the program's size standards to continue to participate in the MBE/WBE program for both construction and non-construction for a period of 3 years, with 75% credit allowed in year one, 50% in year two, and 25% in year three.

Diversity Credit Program

The Diversity Credit Program is designed to increase the participation of MBEs and WBEs in private-sector contracts by making such participation eligible for credit toward MBE/WBE goals on City contracts. Through the program, firms may earn up to 5% MBE/WBE utilization credit on a City contract for work performed by a certified firm on one or more of the prime's private sector contracts (projects not involving government funding) that do not have affirmative action goals.

Mentor/Protégé Program

The Mentor/Protégé Program is designed to encourage primes and certified MBE/WBE firms to mentor MBE/WBEs on City contracts to help certified firms develop their capacity to become self-sufficient, competitive, profitable business enterprises. Firms that participate in the program can earn up to an additional 5% MBE/WBE credit and may be eligible for a 1% bid incentive.

Small Business Initiative Construction Program (SBI)

The SBI program is designed to encourage small businesses to participate in City-funded construction projects under \$10 million in total cost. Small local businesses are exclusive bidders on projects designated as SBI projects, and the majority of the work must be performed by small local businesses with their own forces or in conjunction with subcontractors who are also small local businesses. The SBI program is divided into two tiers: SBI-I for projects with an estimated

cost between \$2,000,000-\$10,000,000 and SBI-II for projects with an estimated cost of less than \$2 million. To be eligible for an SBI project, the bidder must meet the following size standards:

SBI-I:

- No larger than one and a half times the SBA size standards per NAICS code
- At least 51% owned by one or more individuals whose personal net worth does not exceed one and a half times the limits set forth in Section 2-92-670 of the MCC.

SBI-II:

- No larger than ½ the SBA size standards per NAICS code
- At least 51% owned by one or more individuals whose personal net worth is not more than ½ the limits set forth in Section 2-92-670 of the MCC.

Mid-Sized Business Initiative Construction Program (MBI)

The MBI Construction Program is designed to increase small and mid-sized business participation in City-funded construction projects between \$10 million and \$20 million in total cost. Only mid or small-sized local businesses may bid on projects designated as MBI projects, and the majority of the work must be performed by mid or small-sized local businesses with their own forces or in conjunction with subcontractors who are also mid or small-sized local businesses.

MBI – projects between \$10-20 million in total cost. To bid on an MBI project, firms must be:

- No larger than two times the SBA size standards per NAICS code
- At least 51% owned by one or more individuals whose personal net worth is not more than two times the limits set forth in Section 2-92-670 of the MCC.

Non-Construction Mid-Sized Business Initiative Program (NMBI)

The Non-Construction Mid-Sized Business Initiative Program is designed to increase small and mid-sized local participation on non-construction projects valued between \$3 million and \$10 million. Only small or mid-sized local businesses are eligible to bid on NMBI projects. In order to be eligible, bidders cannot exceed one and a half times the size standards of minority-owned or women-owned businesses under Section 420(o) of the MCC.

BID INCENTIVES

Bid incentives are established to promote economic inclusion and equitable competition. Bid incentives demonstrate DPS's commitment to strengthening the ability for small, local, women and minority firms to participate in city contracts and ensuring that those who do business with the City reflect Chicago's rich diversity.

A bid incentive is an artificial price reduction of a bid for the purposes of bid evaluation only. The application of bid incentives does not affect the amount actually bid, awarded, or paid. It is applied strictly for bid comparison purposes. In general, these incentives can be applied to City funded projects only.

Construction Only Bid Incentives

Apprentice Utilization Bid Incentive

Provides an incentive to bidders of up to 1% of the base bid to be applied in future projects in City-funded construction contracts for using apprentices who:

- Are sponsored into an apprenticeship training program by a contractor that is authorized by a union to sponsor apprentices (the union training program must be registered with the United States Department of Labor, or approved or recognized by the State of Illinois); or
- Have graduated from a Chicago Public Schools high school; or
- Are enrolled in or have graduated from the City Colleges of Chicago's construction technology training program on prior construction projects.

Equal Employment Opportunity (EEO) Bid Incentive

Provides a bid incentive for committing to utilization goals for minority and women journey workers, apprentices and laborers on construction projects with an estimated value of \$100,000 or more. The bid incentive is pursuant to a canvassing formula, which is applied as a percentage off the contract base bid for comparison purposes.

Returning Resident Apprentice Utilization Bid Incentive

Provides a bid incentive on future bids of up to 1% to contractors based on the total labor hours performed by ex-offender apprentices on a construction contract with an estimated value of at least \$100,000.

Project Area Subcontractors Utilization Bid Incentive

Allows for up to a 2% bid preference for bidders on City construction contracts that utilize subcontractors located within the project area (specified) of the construction project.

Veteran-Owned Subcontractor Utilization Bid Incentive

Allows for up to 2% for the utilization of subcontractors that are VBE subcontractors in the performance of City construction contracts.

Non-Construction Only

City-Based Manufacturers Bid Incentive

Allows for up to 2% to bidders who provide goods made or assembled in the City.

Both Construction and Non-Construction

Mentor/Protégé Bid Incentive

Bidders that are participating in the Mentor/Protégé program may be eligible for a 1% bid incentive.

Alternatively Powered Vehicles Bid Incentive

Allows for a ½ % bid incentive to local bidders if the majority of the fleet is based locally (within the Six-County Region) and the majority of the majority of those vehicles are alternately powered.

Business Enterprises owned or operated by People with Disabilities (BEPD) Bid Incentive

Authorizes a bid incentive of up to 4% of the base bid for using Business Enterprises owned or operated by People with Disabilities (BEPDs) as prime contractor or subcontractors.

City-Based Business Bid Incentive

This is a three-tier incentive based on the makeup of a firm's workforce and the levels must be maintained through contract completion.

- City-based bidders that have a majority of their full-time workforce in the City may be eligible for a 4% bid incentive.
- If the majority of the employees of those City businesses are City residents, the bidder may be eligible for a 6% bid incentive.
- If a bidder is eligible for the 6% incentive and the majority of the City resident employees are residents of a socio-economically disadvantaged area, then the bidder may be eligible for an 8% bid incentive.

Incentive to Encourage Utilization of MBE/WBEs

Provides up to a 2% bid incentive for the utilization of MBE or WBE firms on City contracts subject to the MBE/WBE ordinances where the City did not establish MBE/WBE participation goals.

Veteran-Owned and Small Businesses JV + VBE Bid Incentive

Allows for a 5% bid incentive for bidders on City contracts that are joint ventures between small businesses and veteran-owned businesses and for bidders that are VBEs.

Diverse Workforce and Management Bid Incentive

Encourages contractors to have a diverse management and workforce by providing bidders an incentive of up to 4% of the bid price depending on the level of diverse management of the bidder, and an incentive of up to 6% depending on the level of diverse workforce of the bidder. Both incentives may be applied together. The level of diversity must be maintained through contract completion.

Additional information about the City's Bid Incentives and Programs, including information about the eligibility criteria and how to apply for an incentive, can be found in the Bid Incentives and Programs Guide, available online at www.chicago.gov/dps.

5. INELIGIBILITY, DEBARMENT, CRIMINAL MISCONDUCT, AND OTHER PROHIBITED BEHAVIOR

INELIGIBILITY TO DO BUSINESS WITH THE CITY

Certain offenses committed by vendors or individuals are of such a serious nature that they result in automatic ineligibility to do business with the City. Section 1-23-020 of the MCC provides that no person, business entity, or controlling person of such business entity, are eligible to do business with the City if they have been convicted, charged, indicted, or made admissions of guilt in a legal proceeding, for any felony. The same applies for other specified criminal offenses committed against the City or a sister agency, regardless of degree, including but not limited to bribery, theft, fraud, forgery and perjury. Being debarred by another governmental entity may also be cause for ineligibility. In addition, ineligibility may be imputed to successor business entities as a result of an acquisition or merger.

DEBARMENT

Section 2-92-320 of the MCC authorizes the CPO to debar individuals or vendors. Debarment is a determination by the CPO that an individual or vendor is not responsible and, therefore, ineligible to enter contracts with the City. Due to the serious nature of debarment, sanctions are only imposed in the public interest and not as a form of punishment. The Department of Procurement Services Debarment Rules (“Debarment Rules”) prescribe policies and procedures governing the debarment process.

Causes for Debarment

The causes for debarment are provided in Section V of the Debarment Rules. Examples include:

- Conviction or civil judgment for fraud or a criminal offense related to obtaining or performing a contract
- Violation of laws relating to the submission of bids, proposals and claims
- Commission or attempted commission of embezzlement, theft, forgery and bribery
- Engaging in conduct indicating a lack of truthfulness, veracity or honesty that affects the responsibility of the vendor

- Violation of the terms of a City contact or subcontract
- Making false statements or claims to the City in order to obtain any benefit
- Any other cause of so serious a nature that it affects the responsibility of the vendor.

The existence of grounds for debarment does not necessarily require debarment. Before making a debarment decision, the CPO will consider several factors, including the seriousness of the offense, mitigating factors and remedial measures. The CPO may impose less than full debarment or enter into a settlement agreement related to the debarment. The CPO's decision is final and the vendor may seek judicial review by a common law writ of certiorari, which is a court process by which a decision of an administrative agency is assessed.

OTHER PROHIBITIONS ON CONTRACT AWARD

Predatory Lenders

Section 2-92-325 of the MCC provides that financial institutions or affiliates that are determined by the City to be predatory lenders may not be awarded a City contract. As defined in MCC Section 2-32-455(b), a predatory loan includes conduct such as fraudulent marketing, lending without regard to repayment ability and financing fees in excess of six percent of the loan amount. Any financial institution that submits a bid for a City contract must submit a signed pledge that they and their affiliates are not and will not become predatory lenders.

Building Code Scofflaw / Problem Landlord

Section 2-92-416 of the MCC states that building code scofflaws and problem landlords are ineligible to do business with the City. This ineligibility extends to any entity in which they have a substantial ownership interest. A building code scofflaw is a residential building owner whose violations of the building code have created a threat to the health, safety or welfare of the building's tenants or community. A problem landlord is a residential building owner who has repeatedly been found liable for violations of the building code.

Suspension of ineligibility for predatory lenders, building code scofflaws and problem landlords, can occur with proper authorization/approval, if the public health, safety or welfare of the City requires the goods/services or the City is unable to acquire them at a comparable price and quality, and in sufficient quantity from other sources.

Federally Debarred Vendors

For federally funded contracts, contracting with firms that are federally debarred is prohibited.

CRIMINAL CODE OF ILLINOIS

The Criminal Code of Illinois (720 ILCS 5/) (Criminal Code) promotes integrity in the bidding process by prohibiting certain conduct in public contracting. A few key provisions are summarized in the table below.

Code Section	Violation	Description	Penalty
33E-3	Bid Rigging	Two or more bidders that would otherwise be competitors collude, so that one of them wins the bid.	Class 3 Felony
33E-4	Bid Rotation	Two or more bidders submit bids with the intent of taking turns being awarded bids.	Class 2 Felony
33E-5(a)	Bid Opening	Public official who opens a sealed bid at a time/place not specified in the invitation.	Class 4 Felony
33E-5(b)	Bid Disclosure	Public official who discloses terms of a sealed bid to interested party.	Class 3 Felony
33E-6(a)	Interference with Contract Submission and Award by Public Official	Public official who discloses specifications, or the identity of potential subcontractors, when it would influence the likelihood of acceptance.	Class 4 Felony
33E-6(b)	Interference with Contract Submission and Award by Public Official	Public official who informs a bidder that the bid will be accepted only if specified subcontractors are included.	Class 3 Felony
33E-6(e)	Interference with Contract Submission and Award by Public Official	Any public official who awards a contract based on criteria not publicly disseminated in the invitation to bid.	Class 3 Felony
33E-7(a)	Kickbacks	Providing or soliciting a kickback. A kickback is anything of value provided to a contractor for the purpose of obtaining favorable treatment.	Class 3 Felony
33E-8	Bribery of Inspector	Offering to any person employed by contractor anything of value to obtain wrongful certification or approval of the quality or completion of any goods or services supplied.	Class 4 Felony
33E-14	False Statements	Making any false statement in a vendor application with the intent to influence the action of local government.	Class 3 Felony
33E-18	Bid Stringing	Breaking bid packages into lesser quantities to avoid competitive bidding.	Class 4 Felony

The Criminal Code also penalizes the failure to report certain violations to the Attorney General and State's Attorney, such as Sections 33E-6(a), 33E-6(b) and 33E-7 listed above. You can report a violation of the Criminal Code by contacting the Attorney General or the State's Attorney.

The Antitrust Division of the US Department of Justice is responsible for investigating and prosecuting crimes associated with procurement, such as price fixing and bid rigging. The contact number for the Chicago office of the Antitrust Division is 312-353-7530.

INSPECTOR GENERAL

Authority

Per Section 2-56-030(b) of the MCC, the Inspector General for the City has the authority to investigate the performance of governmental officers, employees, functions and programs to prevent misconduct, inefficiency and waste. Section 2-56-090 of the MCC provides that it is the duty of every public official, City employee, contractor and applicant for certification of eligibility for a City contract or program, to cooperate with the Inspector General.

Reporting Requirements

Per Section 2-156-018 of the MCC, City employees and officials are required to promptly report corrupt or unlawful activity by another City employee or official, which concerns their employment or office, or any person regarding dealings with the City. In addition, every City contractor is required to promptly report any information concerning conduct that involves corrupt activity. The Inspector General may be contacted anonymously by at 866-IG-TIPLINE (866-448-4754) or online at www.chicagoinspectorgeneral.org.

6. DPS POLICIES & PROCEDURES

A. MBE/WBE/DBE/ACDBE/VBE/BEPD Certification

Contractors, whether individuals or legal entities, can apply for certification in order to participate in, obtain credit for participation under the MBE/WBE Programs or DBE Program, or avail themselves of City Bid Incentives, when applicable. Certified firms are listed in the City's directory of certified firms. The certifications that the City offers are:

City Programs

- Minority-Owned Business Enterprise (MBE)
- Women-Owned Business Enterprise (WBE)
- Veteran-Owned Business Enterprise (VBE)
- Business Enterprises Owned or Operated by People with Disabilities (BEPD)

Federal Programs

- Disadvantaged Business Enterprise (DBE)
- Airport Concession Disadvantaged Business Enterprise (ACDBE)

Subject to the applicable federal regulations and City ordinances, the following describes in very general terms the criteria that needs to be met to be certified as a MBE, WBE, VBE, BEPD, DBE or ACDBE.

MBE/WBE, VBE, BEPD Certification – Certification for Locally Funded Programs

In order to be certified by the City under Chapter 2-92 of the MCC and applicable regulations as an MBE/WBE (Article IV for non-construction and Article VI for construction) and as a VBE and/or BEPD, a sole proprietor or legal entity must meet, among others, the respective following criteria for certification and subsequent participation credit in contracts and certain City programs:

- Ownership: At least 51% of the business entity must be owned by one or more eligible individuals. For MBE certification, at least 51% of the firm must be owned by eligible minority groups. For WBE certification, firms must be at least 51% owned by women. For VBE, the firm must be at least 51% owned by eligible veterans. For BEPD, the firm must be at least 51% owned or operated by individuals with disabilities.

- Independence: Must demonstrate the ability to independently perform in the firms' area of specialty/expertise without substantial reliance upon non-MBE, WBE, VBE, or BEPD.
- Control: Eligible owners must exercise control over the management and daily business operations of the firm.
- Expertise: The eligible owners must demonstrate prior experience and expertise in the desired specialty area (i.e. training, licenses, certifications or academic credentials).
- Location: MBE, WBE, and VBEs must be located in the Illinois counties of: Cook, DuPage, Kane, Will, Lake, or McHenry.
- Size: The business must not exceed certain size standards established by City ordinance and /or regulations.

Entities that are certified by Cook County as MBEs and/or WBEs are considered certified firms for City projects.

DBE and ACDBE – Certification for Federally Funded Programs

Certification as a DBE is governed by the United States Code of Federal Regulations 49 C.F.R. Part 26 and as an ACDBE by 49 C.F.R Part 23. In general, the types of criteria described above are also applicable to certification as a DBE or ACDBE except that DBE and ACDBE firms do not need to be located in the Six-County Region. Therefore, to qualify for DBE or ACDBE qualification an entity or individual must be a small business pursuant to SBA standards for DBE certification or Part 23 standards for ACDBE certification and be at least 51% owned and controlled by socially and economically disadvantaged individuals in those areas of specialty in which the firm is certified as a DBE or ACDBE. The City is a member of the DBE Illinois Unified Certification Program.

B. CONTRACT SPECIAL CONDITIONS REGARDING MBE/WBE PARTICIPATION

Articles IV and VI of Chapter 2-92 of the MCC provide the City's affirmative action policies with respect to MBE/WBE participation in contracts. The Special Conditions provide the governing law, key definitions, contract requirements and City's policies and goals with respect to the implementation of its MBE/WBE Programs. In addition, the Special Conditions set forth the manner in which participation by MBEs/WBEs in the performance of the contract are credited towards the achievement of a contractor's goals.

A bid may be rejected if it does not include a compliance plan demonstrating a vendor's commitment to meet the contract specific goals or documentation of good faith efforts to do so. Below is a brief summary of how firms can meet their contract goal commitments and what documents must be submitted with a bid to demonstrate compliance.

General Requirements

All MBEs/WBEs must be performing a commercially useful function in their certified area of specialty to receive credit towards contract goals. A commercially useful function is defined as having responsibility for the execution of a distinct element of the work of the contract, which is carried out by performing, managing, and supervising the work involved and evidencing the responsibilities and risks of a business owner. DPS evaluates several factors to determine whether a firm is performing a commercially useful function, including the amount of work subcontracted and whether the amount to be paid is indicative of the work to be performed.

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either an MBE or a WBE to demonstrate compliance with the goals. In addition, a firm that is both a MBE and WBE cannot self-perform 100% of a contract unless it can show good faith efforts to meet the contract specific goals by including work to be performed by another MBE or WBE or the contract is Target Market. For assistance in identifying and contacting potential MBE/WBE partners or subcontractors, Attachment A to the Special Conditions lists the assist agencies that work with the City in implementing its affirmative action programs for City contracts.

Meeting Contract Commitments

MBE/WBE contract commitments can be met by:

- Firm's status as an MBE/WBE
- Forming a joint venture with an MBE/WBE that will work on the project
- Subcontracting a portion of the work to an MBE/WBE
- Purchase of materials used in the performance of the contract from an MBE/WBE.

Key Documents

Specific schedules and certifications regarding contract commitments are required when submitting a bid or proposal. Below are a few key examples of this type of documentation.

Affidavit of Joint Venture (Schedule B)

When a bidder includes the participation of any MBE/WBE as a joint venture partner, it must submit a Schedule B along with the proposed joint venture agreement. These documents are evaluated to determine whether a commercially useful function is being performed by reviewing factors such as whether the MBE/WBE joint venture partner is accountable for a clearly defined portion of the work and its responsibilities and risks are proportionate to its ownership percentage.

Letter of Intent to Perform as a Subcontractor or Supplier (Schedule C)

A bidder must submit a Schedule C for each MBE/WBE for which it seeks credit towards compliance with its contract goals. Each Schedule C must state the work to be performed by the MBE/WBE, agreed upon prices and a detailed description of the proposed scope of work, including a description of the commercially useful function being performed by the MBE/WBE in its certified area of specialty.

Compliance Plan Regarding MBE/WBE Utilization (Schedule D)

A bidder must submit a Schedule D that commits to the utilization of each listed MBE/WBE, conforms to its Schedule(s) C and calculates the dollar equivalent of the contract specific goals as percentages of the total base bid amount. Except under very limited circumstances, a bidder cannot modify its Schedule D after bid opening or reduce the dollar commitment made to any MBE/WBE to achieve conformity between the Schedule Cs and Schedule D. In addition, all terms and conditions for MBE/WBE participation must be agreed to between the bidder and vendor prior to submission of the Schedule D.


Letters of Certification

A copy of each proposed MBE's and WBE's Letter of Certification from the City must be submitted as part of the bid. Letters of Certification include a statement of the firm's area of specialty, which must conform to the scope of work provided in the Schedule C.



IMPORTANCE OF THE COMPLIANCE PLAN

A bid may be rejected if it does not include a compliance plan demonstrating a vendor's commitment to meet the contract specific goals or documentation of good faith efforts to do so.



Counting MBE/WBE Participation Towards Goals

Only payments made to MBE/WBE firms that meet both the commercially useful function and area of specialty requirements described above will be counted toward the contract goals. The following chart summarizes how participation is credited.

MBE/WBE Role	Percentage Counted Towards Goals
Prime Contractor	100% of value of work performed by own forces
Manufacturer	100% of expenditures for items needed for the contract
Distributor or Supplier	60% of expenditures for materials or supplies
Member of Joint Venture Contractor	Portion of total dollar value of contract equal to distinct portion of work performed by own forces

If an MBE/WBE subcontracts out any of its work, then 100% of the value of the work subcontracted to other MBEs/WBE may be counted towards contract goals. However, 0% will be counted if it is subcontracted to a non-certified firm.

Non-Compliance

Some acts of non-compliance constitute a material breach of contract with the City, such as if the contractor fails to demonstrate good faith efforts to meet the contract goals or any contractor, joint venture partner, subcontractor or supplier is disqualified as an MBE/WBE and this status was a factor in the award of the contract (and misrepresented). A material breach of the contract entitles the City to declare a default, terminate the contract or exercise those remedies provided in the contract at law or in equity. The contractor has the right to protest the final determination of non-compliance. Disputes between the contractor and MBE/WBE are resolved by binding arbitration before the American Arbitration Association.

Other Special Conditions Provisions

For a more in-depth discussion of the above topics or information regarding additional Special Conditions provisions not discussed here, such as demonstrating good faith efforts, regulations governing reductions/waiver of goals, post award requirements and reporting and record keeping, please see the Resource Guide: MBE/WBE Compliance available at www.chicago.gov/dps.

In addition, for information regarding the City's DBE Program, which is governed by 49 C.F.R. Part 26 and the City's DBE Program Document, please visit DPS's website.

C. ECONOMIC DISCLOSURE STATEMENT (EDS)

All firms are required to complete an EDS prior to award of a City contract through the City's online EDS system and must be kept current as the contract requires. The EDS becomes part of any contract between the applicant and the City. If the City determines that any information provided in the EDS is false or inaccurate the contract may be rescinded, voided or the City may pursue remedies under the contract. EDSs are made available to the public online.

Summary of Key Definitions

For purposes of the EDS submission, the following key definitions apply:

Applicant – Any entity or person making an application to the City for action requiring City Council or other City agency approval. This does not include owners and parent companies.

Disclosing Party – Any entity or person submitting an EDS. This includes owners and parent companies.

Legal Entity or Entity – A legal entity such as a corporation, partnership, joint venture, limited liability company or trust.

Person – A human being.

Parties Required to Submit an EDS

An EDS must be submitted by the following parties:

- Applicants – An Applicant must file an EDS.
- Entities Holding a Beneficial Interest – Whenever a Legal Entity has a direct or indirect beneficial interest (i.e. ownership) of more than 7.5% in the Applicant, each such Legal Entity must file an EDS on its own behalf.

Example: If Company B owns 15% of Company A (Disclosing Party), and Company C owns 55% of Company B, then Company C owns an indirect interest in Company A, which is of greater than 7.5% and must file an EDS along with Company A and B unless an exemption applies.

- Controlling Entities – Whenever a Legal Entity directly or indirectly controls the day-to-day management of the Applicant, each such controlling Legal Entity must file an EDS on its own behalf.

Required Disclosures

The EDS form requires disclosure of information, such as the organizational structure of business entities, ownership interests, interests of City officials and employees, retained parties and certifications of compliance with federal, state and local laws. Below is a summary of some of the key disclosures.

Disclosure of Controlling Persons and Entities

If the Disclosing Party is a Legal Entity, then it is required to provide information regarding any Person or Entity that directly or indirectly controls its day-to-day management. In the case of general or limited partnerships, LLCs, LLPs, or joint ventures, this includes each general partner, managing member and manager. For corporations, this includes all executive officers and directors. There is no ownership threshold used to determine control. For example, a general partner who owns a 1% interest in a general partnership but controls the day-to-day operation of the partnership, must be disclosed. Any controlling party that is also a Legal Entity must submit its own EDS. If the controlling party is a Person, he/she is not required to submit an EDS.

Disclosure of Persons and Entities Holding a Beneficial Interest

If the Disclosing Party is a Legal Entity, then it is required to provide information regarding any Person or Entity having a beneficial interest (including ownership), of more than 7.5% in the Applicant. This includes direct, indirect, current and prospective beneficial interests. Examples of beneficial interests are shares of a corporation, partnership interest in a partnership or joint venture and interest of a member or manager in an LLC. Any party with a beneficial interest that is also a Legal Entity must submit its own EDS. If the party with a beneficial interest is a Person, he/she is not required to submit an EDS.

Disclosure of Interests Involving City Officials and Employees

The Disclosing Party must provide the disclosures below to the best of its knowledge and after reasonably inquiry:

- Any income or compensation that has or will be given to a City elected official during the 12 months before or after filing the EDS.
- Financial interests of City elected officials, and their spouses or domestic partners, in the Disclosing Party. Per Section 2-156-010(l) of the MCC, a financial interest is an interest with a value of more than \$1,000 with limited exceptions.
- A list of current employees who were a City official or employee during the 12 months prior to the date of the EDS.
- A list of all gifts, with limited exceptions, given to City officials or employees during the 12 months prior to the date of the EDS.

In addition, familial relationships with City Officials and Department Heads must be reported by the Applicant and any Legal Entity that has a direct ownership interest in the Applicant exceeding 7.5%.

Disclosure of Subcontractors and Other Retained Parties

The Disclosing Party must provide the name, business address, nature of the relationship and the total amount of fees paid or estimated for any Person or Entity retained or expected to be retained in relation to the contract. This includes subcontractors, attorneys, lobbyists, accountant and consultants. Employees who are paid solely through the disclosing party's regular payroll are not required to be disclosed.

Required Certifications

As part of the EDS, the Disclosing Party is required to make certifications regarding compliance with federal, state and local law. The certifications may concern the Disclosing Party, affiliated entities, contractors, subcontractors and responsible officials, all of which are defined in Section V(B)(5) of the EDS. In addition, specific certifications apply only to financial institutions or federally funded matters.

A few examples of the EDS certifications are as follows:

- Compliance with child support obligations
- Prohibitions on wage and salary history screening
- Prohibitions on building code scofflaws/problem landlords
- Disclosure regarding financial interests of City officials and employees
- Disclosure of records of investment or profits from slavery or slaveholder insurance policies during the slavery era, including records of predecessor entities
- No violations of local base wage, minimum wage and debarment regulations
- No debts owed to the City
- No debarment, suspension or proposal for debarment
- No convictions of criminal offenses or civil judgments for certain violations involving public contracts, such as fraud, embezzlement, theft or false statements
- No bribery or attempted bribery of a government officer or employee
- No convictions for pricing fixing, bid-rigging or bid-rotating.

For more information regarding EDS disclosures and certifications or how to complete the online form, please visit: www.chicago.gov/EDS.

D. PROCUREMENT METHODS

1. Invitations for Bids (IFB)

Most of the goods and services procured by the City are procured through competitive bidding. The formal bid process begins with the publication by the City of an invitation for bids.

Developing the IFB

The day-to-day operations of City government take place through the actions of its User Departments, including the Police, Fire, Aviation and Water Management Departments. Since the User Departments are responsible for City operations, they are also responsible for determining the City's needs and requirements for goods and services. There is a lot of work that must be completed by the City to develop the IFB prior to its advertisement. This work involves the efforts of the User Department(s), DPS, the Law Department, and may include a consultant that works directly for the User Department.

DPS is not responsible for determining the City's needs and requirements for goods and services. DPS is responsible for entering into contracts to acquire those goods and services through fair and open procurement processes. Thus, all procurements begin with the identification of a need by a User Department. The User Department then typically works with DPS to determine the most appropriate and effective means of meeting that need. When the User Department and DPS determine that competitive bidding is the most appropriate means of procurement for a need, the User Department will prepare a detailed specification that describes its requirements.

User Departments sometimes work with a consultant to develop the detailed specification. Consultants who assist in bid package preparation are generally precluded from bidding on, participating in or assisting others in that solicitation. DPS incorporates the detailed specifications within the IFB document, which includes other information such as invitation for bids, instructions for bidders, and other contract documents. An invitation for bids is advertised in a newspaper of general circulation at least ten days before bids must be submitted.

The Bid Package

The invitation for bids that is published in the newspaper of general circulation (presently the Chicago Tribune) provides potential bidders with a general description of the City's need, the place where a bid package may be obtained (typically, on DPS's eProcurement dedicated website, iSupplier, and DPS's Bid and Bond Room, Room 103, City Hall, 121 North LaSalle Street), and the deadline for submitting the bid to the Bid and Bond Room or on the eProcurement website.

If a prospective bidder obtains a bid package at the Bid and Bond Room, they will be asked to sign for the bid package and provide contact information. The contact information is necessary in the event there are any changes to the bid package through an addendum. With respect to

bidding through eProcurement, all information and documents are available online and can be downloaded. As the City's eProcurement system requires vendor registration all relevant vendor contact information is already in the system for any solicitation. Bidders will be required to acknowledge their receipt of any and all addenda that may be issued for a bid package whether the bid is submitted online or in hard copy. Failure to acknowledge receipt of the addenda may result in the bid being deemed non-responsive, and not eligible for award of a contract.

DPS generally provides a checklist for bidders in every IFB. Bidders should review its bid documents and the checklist before submitting its bid. A bidder should be sure to provide all of the information requested so that its bid is complete. Incomplete bids may be found non-responsive and can be rejected. A bidder should always check and re-check math and bid pricing. DPS staff may correct obvious mistakes in math, but if there is a mistake, and the reason for the mistake or the quoted price is ambiguous, the bid may be deemed non-responsive. Non-responsive bids are not eligible for award of a contract.

Bid Opening

Bids are opened publicly in the Bid and Bond Room at the date and time published in the IFB, or as subsequently provided in any addendum. Bids, both electronic and in paper form, will be read aloud in the Bid & Bond Room (City Hall Room 103, 121 N. LaSalle, Chicago, IL 60602) and broadcast on www.youtube.com/ChicagoDPS. Electronic bids are encrypted and sealed until the bid opening. Paper bids remain sealed until the bid opening. Neither City staff nor other bidders can access a bid before the bid opening.

The bids are read aloud by DPS personnel, and bid tabulations are made available online within 48 hours. Limited additional information such as proposed subcontractors and joint venture partners may be made available online in connection with the bid tabulation. Requests for other information regarding bids will be treated as requests under the Illinois Freedom of Information Act, which means that any information pertaining to a bid beyond what appears on the bid tabulation is typically not available until after a contract has been awarded. The identity of the apparent low bidder will be revealed when the bids are opened. This bidder may be the lowest responsible bidder submitting a responsive bid, but that is not always the case.

Contract Award

After the bids are opened and read, DPS personnel review each set of documents submitted by the bidders to ascertain that the documents are complete and that the bids are responsive. The City will also determine if the lowest bidder is also a responsible bidder. The lowest responsible bidder submitting a responsive bid is issued a notice of award from DPS. The notice of award indicates that DPS has begun processing the bid for award of a contract. The contract is not in effect until it is fully executed by the City, and is released by DPS to the User Department and the contractor.

REMEMBER:

- It is illegal to engage in any form of collusion with respect to bids.
- It is illegal for City officials and personnel to disclose information regarding an IFB or a bid that may provide a bidder with a material advantage over other bidders.
- It is a breach of contract, and possibly a violation of the law, for City consultants to disclose information regarding bid specifications.
- The City will pursue all its rights under the law and its contracts against those that betray the City's confidence

2. Requests for Qualifications (RFQ)

DPS issues RFQs for requirements that are not adapted to competitive bidding. In some instances, RFQs are used rather than Requests for Proposals because the City's interest in the capabilities of the vendor is far more important than the price of the service. RFQs are also used to procure the services of architects and engineers for federally-funded projects and when the City cannot provide potential vendors with sufficient detail of its requirements to enable the vendors to provide the City with informed pricing.

RFQs are typically used to award master consulting agreements to a pool of qualified vendors. For example, the development of customized software or technology solutions for problems confronting a User Department or multiple departments may require an RFQ. DPS and the User Department(s) would work together to select a pool of qualified vendors pursuant to an RFQ process. The parties would then engage in discussions regarding the User Department's requirements and negotiate a price and scope of the contract once the vendor has a better idea of both the need and the level of effort that will be necessary to meet that need. In the case of a pool of qualified vendors, when a User Department(s) has a specific need, DPS and the User Department(s) develop a task order request incorporating the User Department's requirements and the pre-qualified vendors provide proposals in response to the task order request. The proposals are reviewed by User Department(s) and DPS representatives and the vendor providing the proposal with the best value is chosen.

RFQ Document

The RFQ document issued by DPS resembles a bid package. It includes a solicitation of qualifications that states the date of advertisement, describes the City's requirements, provides

the date that qualifications must be submitted, and announces where and when any pre-submittal meeting will be held. The RFQ also provides a detailed statement of the form and substance of the qualifications that respondents must provide. RFQs also include Special Conditions Regarding MBE/WBE or DBE Participation, the City's EDS, and the terms and conditions that will be included in the contract. A respondent may furnish additional information should it choose, but it must be sure to provide the information in the form requested.

RFQ Evaluation and Award

Responses to RFQs are reviewed for responsiveness and responsibility. Respondents' qualifications are evaluated by a team of City personnel that is typically comprised of members of the User Department, DPS, and any other City Department or Sister Agency that may be pertinent to the procurement. The evaluation team may also be supported by other City consultants as technical advisors who are not entitled to vote. Once the evaluation team has identified the most qualified respondent(s), DPS and the User Department, often assisted by the Law Department, will negotiate compensation and other terms and conditions of the contract. If negotiations are successful a contract will be awarded to those respondents. Typically, multiple respondents are awarded contracts to create a prequalified pool to respond to task order requests. However, an RFQ may also be used to select a single or limited number of vendors to provide proposals for a specific project.

3. Requests for Proposals (RFP)

An RFP is a form of competitive procurement similar to an RFQ except that in addition to vendor qualifications, price or costs are also included in the evaluation criteria that are considered by the City's evaluation team to determine the most advantageous proposal. As one might anticipate, RFPs are used when bidding is not required, but the City's requirements may be articulated in sufficient detail to enable proposers to provide meaningful and useful pricing information along with their qualifications. Aside from the inclusion of documents pertaining to price, the RFP document advertised by DPS and the evaluation process used to determine the proposer that the City wishes to work with are very similar to the documents and processes for RFQs.

4. Small Orders

For procurements with an estimated cost of no more than \$250,000, a small order procurement process can be used. Under this process, bids may be solicited through DPS eProcurement (an electronic online-based system). While small order procurements are not publicly advertised they are available on-line for viewing and/or downloading.

5. Job Order (JOC) Contracts

JOC contracts are a firm, fixed price, competitively bid, indefinite quantity contract specifically designed for each department's construction program. Each advertised JOC specification contains a unit price book with various construction tasks that include a corresponding description, unit of measure, and unit price for each task. General contractors are solicited to

respond to an advertised JOC specification by proposing an adjustment factor to the prices in the unit price book. Award is made to the responsible bidder(s) proposing the lowest responsive adjustment factor.

JOC is a procurement method used to solicit bids from companies who possess a high degree of technical expertise and knowledge in specific disciplines and is used to accomplish small- to medium-size projects. Instead of bidding every small or medium construction job and developing plans and technical specifications, departments can use JOC. The value of a JOC contract depends upon departmental needs and budget.

6. Reference Contracts

DPS strongly encourages the procurement of goods and services through competitive procurement processes. However, DPS recognizes that in limited cases, this may not be feasible or the best vehicle by which to procure. This may be the case where a governmental entity other than the City has already awarded a contract for the same goods or services as a result of a public procurement process. Section 2-92-649 of the MCC authorizes the CPO to enter into a new contract based on a "Reference Contract" if the Reference Contract was entered into by a vendor with a governmental entity other than the City as a result of a public procurement process, the Reference Contract is for the same goods and services, and the vendor provides the City with pricing equal to or more favorable than the pricing contained in the Reference Contract.

7. Joint Procurement

Section 2-92-600 of the MCC authorizes the CPO to procure goods or services in conjunction with one or more governmental entities ("Joint Procurement"). The CPO may procure by executing a multi-party purchasing agreement or issuing a purchase order. A multi-party purchasing agreement is executed among the City, one or more other governmental entities and a vendor. A purchase order is issued under a contract previously awarded by another governmental entity.

8. Sole Source Contracts - Non-Competitive Review Board ("NCRB")

The NCRB is a five-member panel that reviews requests by City Departments that seek to procure goods and/or services outside of the standard competitive bid processes, which by their nature, are not adapted to award by competitive bidding because there is only one unique and exclusive source. City Departments making such a request are required to provide detailed supporting documentation and are given the opportunity to appear before the NCRB to present the rationale for requesting the non-competitive procurement. All requests to award sole source contracts must be reviewed and approved by the NCRB prior to entering into a contract.

9. Emergency Procurements

When bona fide emergencies arise, or where there is a credible, identifiable, and imminent threat to public health, public safety, or City property or operations, the Act and the MCC allow DPS to enter into emergency contracts up to \$1,000,000 with one or more vendors for the provision of any particular goods, work, or service to address that emergency or threat.

10. Innovative Procurement Methods

The MCC also authorizes the use of innovative procurement methods when it is in the best interest of the City such as pilot procurement programs that result in no cost to the City.

E. Change Orders, Modifications, and Amendments

All City contracts contain the terms and conditions that must be met in order to change any provision of the contract. Unless provided otherwise by the contract, for changes to be binding on the City and the contractor, they must be memorialized in writing and executed by both parties. For electronic solicitations changes can also be processed online. Generally, changes to construction contracts are called change orders, while changes to commodities, work services, and professional services agreements are referred to as modifications or amendments.

City's Obligations in Absence of Written Agreement

There is a long history of case law that provides that the City is not obligated to pay for work performed in the absence of a duly authorized and executed written agreement. This applies to change orders, modifications, and amendments. A contractor that proceeds with changed work without a change order, modification, or amendment to its contract does so at its own risk.

Changes to Contracts for Public Works

For public works contracts, the Public Works Contract Change Order Act, 50 ILCS 525/5, requires that any additional work that requires a change order that would increase the original contract price (or subcontract price) by 50% or more must be competitively bid rather than awarded via change order.

CPO Certification

The Illinois Criminal Code requires that the CPO must certify for all change orders on public contracts which authorize or necessitate an increase or decrease in either the cost of a public contract by a total of \$10,000 or more or the time of completion by a total of 30 days or more that:

- The circumstances requiring the change order were not reasonably foreseeable at the time the contract was signed, or;
- The change is germane to the original contract as signed, or;
- The change order is in the best interest of the City and is authorized by law.

F. Bid Protests

DPS will consider protests that involve fraud, corruption, illegal acts or other conduct that undermine the objective and integrity of its procurement processes and may, depending upon the allegations, refer the matter to the Inspector General.

Types of Allowed Protests

There are three types of protests that the City will consider:

- Protests regarding the solicitation itself (pre-bid or pre-proposal protests)—these must be filed no less than 5 days before the opening of the bid or due date of proposals.
- Protests regarding the evaluation of bids, qualifications or proposals (pre-award protests) – these must be filed within 10 days of the opening of bids or due date of the RFQ or RFP or notification that the protestor's status as a bidder/responder has changed, such as notification that a bid or proposal has been rejected.
- Protests regarding award of contract (post-award protests)—these must be filed within 10 days of the date of award of a contract.

A protest is considered filed when physically received by the CPO or duly appointed designee.

The CPO has adopted rules regarding solicitation and bid protests procedures, which include the process for submitting a bid protest, and are available online at: www.chicago.gov/dps (click on Rules and Regulations).

G. Disputes

Nearly all of the contracts that DPS awards contain provisions regarding the resolution of disputes between the User Department and the contractor. The CPO has adopted rules regarding contract disputes that will be followed except to the extent inconsistent with the contract. The rules are available on the DPS website.

General Dispute Process

The detailed steps regarding the submission and processing of disputes appears in the contracts and in the rules. In general, a dispute is initiated by a notice from the contractor to the User Department. If the Commissioner of the User Department is unable to resolve the dispute, the contractor may appeal to the CPO through the notice required by the contract. A dispute cannot be initiated later than 120 days after contract expiration.

The User Department is provided with the opportunity to submit its own statement of the facts and issues. If necessary, the CPO may meet with the parties or determine to call a hearing. While the CPO is a City employee, disputes are addressed with the same level of fairness, integrity, and transparency that characterize all of DPS's actions.

Decisions regarding disputes by the CPO are appealable to the Circuit Court of Cook County by writ of certiorari, which is a court process by which a decision of an administrative agency is reviewed. While such an appeal is pending the parties must comply with the CPO's dispute determination.

H. eProcurement

The City is well-advanced in transitioning its procurement processes from a paper-based system to an electronic online-based system (eProcurement). eProcurement is an advancement to business-to-government procurement that applies digital technology to the City's acquisition of goods and services. The portal for vendors, iSupplier, is a resource for vendors interested in doing business with the City of Chicago. This tool allows users to:

- Respond to bids, RFPs, and RFQs online
- Self-maintain and update their businesses' pertinent information
- View and track payments and invoices online
- In limited circumstances, submit invoices electronically.

Key Objectives

eProcurement offers expanded services to the City's vendors and user departments that will modernize Chicago procurement and become an efficient resource. eProcurement:

- Streamlines the creation and approval of contracts, amendments, modifications, and extensions.
- Ensures all contracts/modifications are processed quickly and in accordance with all ordinances, law, and regulations.
- Allows vendors to download, bid and respond to solicitations electronically.
- Eliminates some paper-based processes, including physical routing of documents internally among DPS staff and managers.
- Consolidates procurement data tracking which is currently done through multiple systems.
- Enables online processes to capture and store vendor registration information, communication, and solicitation/contract processing.

eProcurement requires registration and navigating computer systems. To assist vendors with the transition to online bidding, the City has developed within the DPS website the iSupplier portal, that includes information about the entire eProcurement process. The site is updated regularly and includes training manuals and videos to guide vendors through every step. The iSupplier portal can be found here: www.chicago.gov/eProcurement.

I. Other Requirements for City Contractors

The Act and the MCC include several additional requirements that vendors and the City must comply with for City procurements.

Workforce Requirements

For City-funded construction projects with an estimated value of \$100,000 or more, 50% of the total labor hours be performed by actual residents of the City of Chicago and at least 7.5% by project area residents.

Wage Requirements

Executive Order 2014-1 requires a certain Minimum Wage to be paid under City contracts to all employees of the contractor regularly performing work on City property or at a City jobsite and all employees whose regular work entails performing a service for the City.

Construction Contracts are also subject to the Illinois Prevailing Wage Act or if federally funded, the Davis Bacon Act.

All City Contractors are also subject to Chapter 1-24 of the MCC, which specifies a minimum wage to be paid to all workers within the City of Chicago, not just employees of City contractors. Contractors need to pay employees the highest of the applicable wage requirements. Chicago's minimum wage goes up every July 1st and is dependent on the number of employees at a business. For more information and updates regarding Chicago's minimum wage rate, please visit: https://www.chicago.gov/city/en/depts/bacp/supp_info/minimumwageinformation.html.

Prohibition on Wage Disclosure

City contractors are prohibited from inquiring about an applicant's prior wage or from requiring disclosure of such information as a condition of being interviewed or as a condition of employment or as a condition of an offer of employment or compensation. City contractors are required to adopt a policy consistent with these requirements.

Sexual Harassment Policy

City contractors must have a written policy prohibiting sexual harassment and makes a failure to do so an event of default under the contract. The policy must include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment; and (iii) the legal recourse available for victims of sexual harassment.

Retainage

Under the Mayor and City Council's leadership, the City no longer withholds retainage on construction contracts and contractors are not authorized to withhold retainage from their subcontractors, unless retainage is required by a funding agency.

Performance Bonds

Per Section 2-92-030 of the MCC any contract for construction or public works with a value of more than \$100,000 requires a bond with sufficient sureties to insure the performance of the work and indemnify the City against all liabilities, judgments, costs, and expenses, which may accrue against the City as a consequence of granting the contract or result from the neglect of the contractor's agents, employees or workmen.

7. ETHICS AND CAMPAIGN CONTRIBUTIONS

Governmental Ethics Ordinance

Chapter 2-156 of the MCC is the City's Government Ethics Ordinance. It contains provisions that restrict the interactions between persons and entities doing or seeking to do business with the City and City employees and officials to avoid impropriety and promote transparency.

Summary of Key Definitions

- Person: Any individual, entity, corporation, partnership, firm, association, union, trust, estate, as well as its parent or subsidiary, including non-profits.
- City Contractor: Any person, including his agents or employees acting within the scope of their employment, who is paid by the City for services provided.
- Financial Interest: An ownership interest held by an official or employee valued at more than \$1,000, but subject to limited exceptions, such as compensation for employment, or the purchase or ownership of stock of a publicly-traded company if that stock represents not more than .5% (1/2 of 1%) of the company's outstanding common stock.
- Doing Business: Any one or combination of sales, purchases, leases or contracts with the City in an amount over \$10,000 in any 12 consecutive months.
- Seeking to do Business: (i) Taking action within the past six months to obtain a contract or business from the City when, if successful, it would result in the person's doing business with the City and the contract or business sought has not been awarded to any person; or (ii) Having had any matter pending in the six months prior to or after a political contribution to a City elected official or candidate for City office, if that matter involves the award of loan or grant funds, bond proceeds, bond inducement ordinances, leases, land sales, zoning matters, the creation of tax increment financing districts ("TIFs"), concession agreements, or the establishment of a Class 6(b) Cook County property tax classification.

Duty to Report Misconduct

Section 2-156-018 of the MCC states that City Contractors are required to promptly report any corrupt activity to the City's Inspector General. A City Contractor's failure to report corrupt activity is an event of default under the contract. Corrupt activity includes, but is not limited to, bribery of any officer or employee of the City or sister agency and theft, fraud, forgery and perjury committed against the City or a sister agency. Section 2-156-019 of the MCC provides protection to whistleblowers and states that retaliatory action for reporting corrupt activity as described above, or any other violation of law, related to work performed for the City is prohibited.

Improper Influence by City Officials and Employees

Per Section 2-156-030 of the MCC, City officials and employees may not use their position to influence City action if they have a financial interest in the action that is different from the general public's. In addition, City officials may not contact other City officials/employees regarding any person with whom they have a business relationship that creates a financial interest in them or their spouse or domestic partner. Also, City officials may not participate in any City Council Committee hearing involving a person with whom they have a business relationship that creates a financial interest in them, or their domestic partner or spouse. The above prohibitions also apply if any income was received or is expected to be received by the City official or employee during the last or next 12 months as a result of such financial interest.

Hiring Current City Officials and Employees

Section 2-156-142(e) of the MCC provides that City officials and employees and their spouses, domestic partners, and immediate family member cannot solicit or accept anything of value, including promises of future employment, in return for advice or assistance with City business. In addition, Section 2-156-110 of the MCC provides that City elected officials and employees cannot have a financial interest (e.g. ownership) in any contract, work, or business of the City if it is paid with City funds, administered by a City department, or authorized by City ordinance (there are limited exceptions).

Hiring Former City Officials and Employees

Sections 2-156-100 and 2-156-105 of the MCC provide the City's restrictions on post-employment. Former City officials and employees may not assist or represent any person – like a new employer or client – in the following:

- A transaction involving the City, if they were personally and substantially involved in either that transaction or the subject matter of that transaction for one year after leaving City service
- A City contract, for its entire term, if they exercised contract management authority in relation to such contract while in City service
- In a judicial, quasi-judicial, or administrative proceeding involving the City, if they were counsel of record or were personally and substantially involved in the proceeding.

In addition, Mayoral employees and Department Heads may not lobby their former City Department or Board for two years after leaving City service, former aldermen for one year after leaving office and former appointed officials and Shakman-exempt employees for two years after leaving City service. Also, per Section 2-156-111(c) of the MCC, City officials and employees may not negotiate the possibility of future employment with any person that has a matter pending before them.

Loans to City Officials and Employees

Section 2-156-111(a) of the MCC prohibits a City official or employee, their spouse or domestic partner, or any entity in which any of them have a financial interest, from applying for, soliciting, accepting or receiving a loan from any person doing business or seeking to do business with the City. This does not prohibit market rate loans from financial lending institutions, if made in the ordinary course of the lender's business.

Prohibited Business Relationships

Section 2-156-111(b) of the MCC, provides that City elected officials and department heads may not retain or hire as City contractors any person with whom any City elected official has a business relationship that creates a financial interest on the part of the elected official or department head, or their spouses or domestic partners.

Employment of Relatives or Domestic Partners

Section 2-156-130 of the MCC prohibits City officials or employees from exercising contract management authority where any relative or the domestic partner is employed by or has contracts with persons performing the city work under that contract. In addition, City officials and employees cannot use their position to assist any relative or domestic partner in securing employment or contracts with persons over whom or which they exercise contract management authority.

Limitations on Gifts

Sections 2-156-142 through 2-156-144 of the MCC prohibits certain types of gifts. No person, including a City contractor, potential contractor or lobbyist may:

- Give any anonymous gift to any City official, employee or candidate for City elected office
- Give or offer anything of value to any City official, employee, contractor or candidate for City elected office based on an explicit or implicit mutual understanding that the recipient's votes, official actions, decisions or judgments concerning City business would be influenced by it
- Give any cash or gift cards in any amount, to any City employee, official or candidate for City elected office
- Give any other items or services worth \$50 or more per year directly or indirectly to any City employee or official or candidate for City elected office.

The restrictions above also apply to gifts or other things of value offered or given to the spouses, domestic partners or other immediate family members of City employees, officials, and candidates for City elected office. There are limited exceptions to these restrictions such as gifts based on personal friendship, awards for public service provided they are not cash or cash equivalent, reasonable hosting expenses for events related to official City business, or educational materials or City-related business travel.

Per Section 2-156-120 of the MCC, subcontractors, or any person acting on their behalf, are prohibited from making any payment, gratuity, or offer of employment in connection with any City contract, to any prime or higher-tier contractor, or any individual associated with them, as an inducement for the award of a subcontract or order.

In addition, City Departments may adopt stricter gift rules. For example, DPS has adopted a zero-tolerance gift policy. This means that DPS employees cannot accept gifts from vendors in any amount.

If you have questions regarding whether a gift is prohibited, please contact the Board of Ethics at 312.744.9660 or visit www.chicago.gov/ethics for guidance.

Lobbying

Article IV of Chapter 2-156 regulates the registration and conduct of lobbyists. A lobbyist is defined as any person who, on behalf of someone else or their employer, undertakes to influence a legislative or administrative action regardless of whether such person is formally designated as a lobbyist by his employer or paid for such undertaking. Examples of legislative and administrative action include the preparation of contract specifications; the solicitation, award or administration of a contract; and any determination made by a City official or employee with respect to the procurement of goods or services.

Lobbyist Registration and Reporting

Section 2-156-210 of the MCC requires each lobbyist to register and file quarterly activity reports online with the Board of Ethics with limited exceptions. Section 2-156-230 of the MCC provides that by January 20th of each year, or within five business days of engaging in any activity which requires such person to register, every person required to register must file a certified written statement containing the following information:

- The registrant's name and address while lobbying
- For each client and business entity on behalf of which the registrant expects to act as a lobbyist:
 - The name, address and nature of the business of the client or business entity
 - Whether the relationship involves compensation or expenditures
 - The name of each City agency before which the registrant expects to lobby
- All gifts or political contributions made to City employees, officials or candidates for City elected office.

Per Section 2-156-465 of the MCC, a lobbyist's failure to register or file reports is subject to a fine of \$1,000 per each day the violation continues. Persons who hire unregistered lobbyists are subject to fines between \$1,000 and \$5,000. Contracts made by the City can be cancelled or voided if they result from unregistered lobbying activity.

Prohibited Political Contributions

Article VI of Chapter 2-156 of the MCC limits political or campaign contributions to any City elected official or candidate for elected office. A summary of these provisions is provided below.

Anonymous and Pseudonymous Contributions

Per Section 2-156-435 of the MCC, no person, including a City contractor, potential contractor, or lobbyist may give or offer any anonymous or other contribution to:

- Any candidate for City elected office or the candidate's political committee
- Any candidate's spouse, domestic partner or minor child
- Any person acting on behalf of the candidate or his/her committees.

Limitation of Contributing to Candidates and Elected Officials

Per Section 2-156-445 of the MCC, certain persons and entities are limited to \$1,500 in political contributions in a calendar year to any single candidate for City office, single elected City official of the government, or to any City official or employee seeking election to any other office. These persons and entities are:

- Lobbyists registered with the Board of Ethics
- Persons who have done business or are doing business with the City or its sister agencies in the preceding four calendar years
 - Sister agencies include the Chicago Transit Authority, Chicago Park District, Chicago Board of Education, Chicago City Colleges, or Metropolitan Pier & Exposition Authority
 - Visit www.chicago.gov/city/en/depts/doi.html for a list of all such contractors
- Persons seeking to do business with the City or its sister agencies.

Contributions to a candidate's political committees are considered contributions to the candidate. Also, an entity and its subsidiaries, parent or affiliated companies are considered the same "person" for purposes of the contribution limitation. However, any of their employees, officers, directors and partners who make a political contribution are considered the same "person" as the business entity only if they are reimbursed by the entity. Any person who exceeds these limits will not be in violation of the ordinance if they return or requests in writing the return of the contribution within 10 calendar days of the recipient's or contributor's knowledge of the violation.

Per Section 2-156-455 of the MCC, cash contributions in excess of \$250 to any candidate for City elected office are prohibited. In addition, political contributions to any candidate for City elected office based on a mutual understanding that the recipient's votes, official actions, decisions or judgments concerning City business would be influenced by it are prohibited.

Mayoral Executive Orders

Mayoral Executive Orders 2011-4 provide that:

- City contractors, subcontractors and their owners, owners' spouses or domestic partners, and their registered lobbyists, are prohibited from making any political contributions to the Mayor or her political fundraising committee.
- Contractors and subcontractors are prohibited from coercing their employees to make a contribution to the Mayor or her political committee or from bundling such contributions.

Additional Restrictions Imposed by State Law

The Illinois Election Code, 10 ILCS 5/1-1 *et seq.*, imposes additional reporting obligations on candidates' committees and limits the amount of political contributions that natural persons, corporations, labor organizations and Political Action Committees may make, even those not subject to the stricter limitations in MCC chapter 2-156.

Contract Provisions

City contracts contain provisions related to conflicts of interest. Below is a summary of a few such provisions:

- Government employees and officials who exercise any functions or responsibilities in connection with the Services to which a Contract pertains, may not have any personal interest, direct or indirect, in that Contract.
- No member of Congress of the United States or the Illinois General Assembly, City alderman or City employee is allowed to obtain any financial benefit from the Contract.
- The Contractor covenants that it, its officers, directors and employees, and the officers, directors and employees of each of its members if a joint venture, and subcontractors, have no interest and will acquire no interest, direct or indirect, in the project described in a contract that would conflict in any manner with the performance of the work.
- If the Contractor or any subcontractors assist the City in determining the feasibility of a project or in the creation of any procurement solicitation document, the Contracting Parties must not participate, directly or indirectly, as a prime, subcontractor, subconsultant or joint venture.

City Contracts also contain provisions regarding confidentiality, compliance with the Governmental Ethics Ordinance and Executive Order 2011-4.

