

The Board of Education of the City of Chicago



**REMEDIAL PROGRAM
FOR
MINORITY AND WOMEN OWNED BUSINESS
ENTERPRISE PARTICIPATION
IN
GOODS AND SERVICES CONTRACTS**

**Effective
*March 1, 2007***

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REMEDIAL PROGRAM FOR MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE

PARTICIPATION IN GOODS AND SERVICES CONTRACTS

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**REMEDIAL PROGRAM FOR
MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE
PARTICIPATION IN GOODS AND SERVICES CONTRACTS**

POLICY STATEMENT

The Board of Education of the City of Chicago ("the Board") recognizes the responsibility it has to the communities it serves and believes that it is important to help create and sustain an equitable business environment in our communities by promoting the participation in public contracting and procurement of all qualified and available businesses owned and controlled by minorities and women. The development and maintenance of a stable and diverse business community will contribute to overall economic growth in the City of Chicago and by extension, will benefit the students who attend the Chicago Public Schools and their families who work in Chicago. Accordingly, it is in the best interest of the Chicago Public Schools to foster the full participation of minorities and women in the Board procurement process.

This Remedial Program for Minority and Women Owned Business Enterprises ("Program") is adopted by the Board, upon the recommendation of the Chief Executive Officer ("CEO"), based upon (1) the Board's findings that it has been a passive participant in discriminatory practices against racial and ethnic minorities and women in the procurement of goods and services industry in Chicago, and that it has a compelling interest in remedying that passive discrimination, and (2) its desire to adopt narrowly tailored remedies to address that compelling interest.

I. FINDINGS

- 1.1 The Board adopted a Remedial Plan for Minority and Women Business Enterprise ("M/WBE") Participation in January 1991 ("1991 Plan"). The 1991 Plan was adopted following the District's review of a Report Concerning Consideration and Adoption of the Revised Remedial Plan for Minority and Women Business Enterprise Economic Participation ("Report"). The Report included extensive Discrimination Findings ("Findings") that examined the barriers faced by M/WBEs in the construction, purchasing, and professional service industries.
- 1.2 At the same time, the Board adopted a Resolution that set forth its rationale for developing the 1991 Plan. The Resolution specifically references the Findings, which indicated the following:
 - M/WBEs in these industries faced significant institutional challenges not faced by their majority-owned competitors;
 - The District underutilized M/WBEs, despite the fact that M/WBEs appeared to be available to provide construction, purchasing, and professional services for the District; and
 - Governmental and private discrimination in the Chicago metropolitan area caused M/WBEs to suffer competitive disadvantages in forming and operating viable businesses.
- 1.3 The Resolution specifically indicated that, after weighing the evidence, including the Findings, related to discrimination against Black, Hispanic, Asian, and Women-owned businesses in the construction, purchasing, and professional services industries, the Board determined that there was a sufficient basis for and a compelling interest in the adoption of a remedial plan encompassing each of those combinations of race, ethnic, and gender groups and industries and that to remedy the discrimination and resulting competitive disadvantages suffered by those businesses, it was necessary to adopt the 1991 Plan.

- 1.4 The 1991 Plan addressed the requirements and procedures for monitoring the compliance of M/WBE goals for both goods and services contracts and construction projects and provided measures to assist M/WBEs in the Chicago Public Schools' ("CPS") procurement of goods and services. The benefits of the Plan were provided to Black-, Hispanic-, Asian- and Women-owned firms whose principal place of business was within the six-county Chicago metropolitan area. The Plan provided for race-neutral remedial measures and for non-restrictive affirmative action measures to alleviate the effects of discrimination. The plan further mandated flexible goals for M/WBE participation on particular contracts for overall CPS annual spending. Waivers were available for prime contractors unable to meet the goals.
- 1.5 In April 2006 and again in October 2006, the Board advertised and convened public focus groups, facilitated by an expert, Colette Holt, to address whether, and if so, to what extent, barriers exist to M/WBE participation in the CPS procurement process of goods and services. A review of information presented during the April and October 2006 CPS focus groups, and written reports that set forth the findings from the focus groups, reveal the existence of past and current discriminatory practices that disadvantage racial and ethnic minorities and women seeking to enter into CPS prime contracts and subcontracts for goods and services.
- 1.6 The focus groups conducted by Ms. Holt confirm that M/WBEs continue to face barriers to participation in the CPS procurement process for goods and services. Specifically, the findings from the focus groups demonstrate that those barriers include:
- Difficulty obtaining public sector prime contracts
 - Difficulty obtaining bonding and insurance
 - Difficulty securing subcontracting opportunities in the public sector
 - Difficulty obtaining contracts in the private sector
 - Difficulty working with vendors who use M/WBE information for purposes of securing a bid or putting together a proposal submission and who do not ultimately utilize the services of the M/WBEs
- 1.7 A review of the April 2006 focus group information and the related reports from expert Colette Holt further demonstrates that the following race- and gender-neutral measures help the narrow tailoring aspect of a race-conscious preferential procurement program and should be used to overcome those barriers and assist in the growth and development of financially stable M/WBEs (see Section VII):
1. Improving the timeliness of payments.
 2. Creating a small and local business target market program.
 3. Implementing contract specific subcontracting goals.
 4. "Unbundling" or downsizing contracts to facilitate participation by smaller businesses, such as M/WBEs.
 5. Providing longer bid lead times.
- 1.8 Based upon a thorough review of information presented during the April and October 2006 CPS focus groups and the written reports submitted by expert Colette Holt, the Board hereby adopts the following Remedial Program for Minority And Women Owned Business Enterprise Participation in Goods and Services Contracts (the "Program") which builds upon the 1991 Plan.

- (i) African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
- (ii) Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean islands, regardless of race;
- (iii) Individual members of other groups, including but not limited to Asian-Americans, Arab Americans and Native Americans, found by the District to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Board; and
- (iv) any other group or individual that is recognized by the City of Chicago as part of its M/WBE program for goods and services contracts.

2.11. **Minority Business Enterprise (MBE):** A business that is certified as a Minority Business Enterprise by the City of Chicago (the "City"), or such other government entity recognized by the Board. Such certification shall designate the race or ethnicity of the firm's ownership.

2.12. **M/WBE:** A collective term used when the context includes both MBEs and WBEs.

2.13. **Prime Vendor or Supplier:** A person or entity that enters into a Goods and Services Contract or purchase order.

2.14. **Office of Business Diversity (OBD):** The department with primary responsibility for administering and monitoring the business diversity programs at the Board.

2.15. **Subcontractor or Supplier:** A person or entity that enters into a Goods and Services related contract with a Prime Vendor to provide goods or services pursuant to a contract between the Prime Vendor and CPS.

2.16. **Women Business Enterprise (WBE):** A business that is certified as a Women Business Enterprise by the City of Chicago, or such other government entity recognized by the Board.

III. EFFECTIVE DATES

3.1 The Program is effective as of March 1, 2007 and on that date shall supersede the 1991 Plan entirely.

3.2 If the Board determines that the District no longer has a compelling interest in retaining the Program or that the Program is no longer sufficiently narrowly tailored to accomplish that interest, and does not reauthorize the Program, it shall expire on December 31, 2012.

IV. PROGRAM ADMINISTRATION

4.1 Administrative Responsibilities

4.1.1 The CEO is the principal implementation and management officer with respect to the Program.

4.1.2 The OBD is the office responsible for the administration and monitoring of the Program. OBD's duties shall include:

1. Formulating and enforcing rules and regulations for the Program.
2. Assuring that M/WBEs are informed of CPS contracting opportunities.
3. Requesting the assistance of other public and private agencies and organizations in referring M/WBEs.
4. Providing information and assistance to M/WBEs related to CPS procurement practices and procedures, and bid specifications, requirements and prerequisites.
5. Providing copies of M/WBE directories to interested Prime Vendors or Suppliers of goods and services.
6. Providing training and assistance to CPS staff and other interested persons on Program objectives and requirements.
7. Working with the Department of Procurement and Contracts and user departments to establish Contract Specific Goals.
8. Participating as a voting member on the Good & Service Awards Evaluation Committee.
9. Monitoring contracts to ensure compliance with Contract Specific Goals, contractual commitments, and Program objectives.
10. Reviewing and facilitating the resolution of issues concerning the Program.
11. Collecting data to evaluate the Program, including data on Prime Vendors and Subcontractor bids, awards and utilization on CPS contracts.
12. Evaluating overall and departmental progress towards meeting Program goals.
13. Identifying opportunities to increase M/WBE participation and improve overall CPS and departmental performance.
14. Providing CPS departmental personnel with training on the requirements and procedures of the Program.

4.1.3 The user department, with the assistance of OBD, will be responsible for the implementation of Contract Specific Goals, including the collection of contract data.

4.1.4 The CEO shall promulgate a set of guidelines to govern the implementation of the Program.

4.2 Staff Reports

OBD will submit quarterly and annual reports to the Board on the administration and results of the Program. The reports shall include data on MWBE participation and progress towards achieving the Annual Aspirational Goals; current Program implementation initiatives and problems; and recommendations for corrective action and may include such additional information as the Board may request.

V. APPLICATION OF THE PROGRAM TO CONTRACT CATEGORIES

The Board shall determine, from time to time, the contract categories by which the Program shall be administered and monitored.

The following contract categories may be further defined by the Board, the CEO, or the Department of Procurement and Contracts to resolve any ambiguity or reflect changes in CPS' purchasing requirements.

Although the budget object codes usually associated with certain categories are indicated below, the textual definitions determine the categorization of a transaction, regardless of the budget object code that may be assigned to that transaction.

5.1 Included Categories

5.1.1 Professional Services

This category includes both educational and business consulting services provided by businesses, institutions or independent contractors. Professional services are exemplified by, but not limited to, the following:

- Architectural and Engineering
- Auditing and Accounting
- Computer Systems and Training
- Financial and Brokerage
- Guard, Patrol, Security and Safety
- Laboratory
- Legal
- Mailing
- Medical and Health

Transactions in this category are usually charged to the "professional services" object code (54125) of the District's budget classification system.

This category does not include temporary employees, parent advisors or other individuals to whom the District pays stipends, even though such purchase orders may be charged to Object Code 54125

The Professional Services category is divided into two sub-categories, to reflect procurement approval methods:

- a. Approval required by the Chief Purchasing Officer (*presently up to \$75,000.*); and
- b. Approval required by the Board (*presently \$75,001 and above*).

If the district increases the dollar level for which Board approval is not-required, the definition of these sub-categories shall be automatically adjusted accordingly.

5.1.2 Office and Educational Supplies

This category includes all procurements charged to Object Code 53305.

5.1.3 Student Transportation

This category includes all procurements charged to Object Code 54210.

5.1.4 Other Purchases

This category includes all other procurements of goods and services, apart from the categories established above and the exclusions set forth below.

The range of goods and services included in this category is exemplified by, but not limited to, the following object codes:

53405	Commodities – Supplies
53205	Commodities – Food Supplies
53130	Heating Fuel
54105	Services-Contractual
54505	Seminar Fees, Subscriptions, Professional Memberships
54510	Services- Equipment Rental
54515	Services – Advertising
54520	Services – Printing
56105	Services – Repair Contracts
57705	Services – Space Rental
54530	Services – Insurance – Tort Claims
54205	Travel Expense
54560	Freight and Cartage
57905	Employee Life Insurance
56205	Property – Equipment
56215	Property – Permanent improvements
57940	Miscellaneous Charges
54125	Professional Technical Services
54130	Non-Professional Services
54120	Refuse Removal

5.1.5 To reflect differences in procurement methods, the Biddable Goods category is divided into two subcategories:

- a. Other Purchases at \$10,001 and above. These transactions usually are awarded by public competitive bidding.
- b. Other Purchases \$10,000 and under. These transactions are exempt from competitive bidding.

If the District increases the dollar level for which competitive bidding is not required, the definition of these sub-categories shall be automatically adjusted accordingly.

5.2 Excluded Transactions

Contract Specific Goals generally do not apply to transactions in which there are no subcontracting opportunities. The list of presumptive categories or subcategories of such excluded transactions is listed below. However, the Chief Officer of the Department of Procurement and Contracts or designee may add categories or subcategories to the list, further define the parameters of any excluded category, or determine that any particular transaction is not excluded. Contract Specific Goals may be set on a contract if the CEO or designee determines that subcontracting opportunities are available for a particular transaction.

5.2.1 Non-Competitive Utilities

53105	Commodities – Electricity and Gas
53510	Commodities – Postage
54405	Services – Cellular Phone, Telephone and Telegraph

5.2.2 Employee Payments: Direct or indirect employee payments, including:

54130	Non-professional services
57105	Pensions
57505	Unemployment compensation

5.2.3 Tuition: Tuition payments to other educational institutions where the District exercises no significant procurement discretion.

54305	Tuition
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5.2.4 Unique Transactions: Instances where the unique nature of the item makes it inappropriate to apply other vendor selection criteria, including: real estate purchases and leases and insurance carriers.

5.2.5 School Management Contracts

5.2.6 Textbooks

VI. PROGRAM GOALS

6.1 Annual Aspirational Goals

6.1.1 Upon the effective date of this article, the OBD shall establish the Annual Aspirational Goals for the first full year of the Program and for each year thereafter.

6.1.2 The Annual Aspirational Goals shall be based on a review of available data concerning the District's past overall performance toward M/WBE goals in contracts for goods and services.

6.1.3 The Annual Aspirational Goals shall include a goal for MBE participation, a goal for WBE participation, and where practicable, subgoals for participation by each minority specifically defined in Section 2.10.

6.1.4 Any contract for which the District does not assign an Industry Specific or Contract Specific Goal and is not an excluded transaction as defined in Section 5.2, shall be subject to the established, applicable Annual Aspirational Goal.

6.2 Industry Specific Goals

6.2.1 The OBD, in consultation with the Department of Procurement and Contracts and the user department, shall establish Industry Specific Goals for M/WBE participation that shall apply to eligible contracts for goods and services over \$75,000 within a specific industry.

6.2.2 Industry Specific Goals shall consist of one goal for MBE participation and one goal for WBE participation in various industries, including: (1) food services; (2) student transportation; (3) educational materials; (4) professional technical services; (5) commodities - supplies; (6) property - equipment; (7) services - contractual; and (8) services - equipment rental.

6.2.3 Industry Specific Goals shall be based upon: (1) availability of certified firms within a specific industry and where applicable, in the Region; (2) historical level of M/WBE participation at CPS within a particular industry; (3) normal industry practices; and (4) the District's progress towards meeting the Annual Aspirational Goals

6.3 Contract Specific Goals

6.3.1 The OBD, at its discretion and in consultation with the Department of Procurement and Contracts and the user department, may elect to establish Contract Specific Goals for M/WBE participation for eligible contracts for goods and services over \$75,000.

6.3.2 Contract Specific Goals shall consist of one goal for MBE participation and one goal for WBE participation.

6.3.3 Each Contract Specific Goal shall, where practicable, include subgoals for participation by each minority specifically defined in Section 2.10.

6.3.4 Contract Specific Goals shall be based upon: (1) the availability of at least three MBEs and three WBEs to perform the anticipated subcontractable scopes of work of the contract; (2) normal industry practices; and (3) the District's progress towards meeting the Annual Aspirational Goals.

VII. RACE AND GENDER NEUTRAL MEASURES

The Board shall implement race- and gender-neutral measures to the greatest extent feasible to facilitate the participation of all firms, including M/WBEs and other small Prime Vendors and Subcontractors, in its contracting activities. These measures shall include, but are not limited to:

7.1 Arranging solicitation times for the presentation of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested contractors and subcontractors.

7.2 Unbundling contracts to facilitate the participation of smaller businesses.

- 7.3 Providing timely information on contracting procedures, bid preparation, and specific contracting opportunities.
- 7.4 Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Prime Vendors to use all available firms as Subcontractors.
- 7.5 Adopting prompt payment procedures that require Prime Vendors to agree in writing to pay Subcontractors promptly.
- 7.6 Reviewing bonding, insurance, and retainage requirements to eliminate unnecessary barriers to contracting with CPS, consistent with CPS' interest in financial security.
- 7.7 Collecting and maintaining information on all firms bidding on CPS prime contracts and subcontracts.
- 7.8 Closing out goods and services contracts in a timely manner.
- 7.9 Reducing bid deposit requirements or arrangements for a standing bid deposit to cover multiple procurements.
- 7.10 Simplifying documentation required by the user departments and the Department of Procurement and Contracts.
- 7.11 Providing technical assistance concerning CPS procurement policies and procedures.
- 7.12 Advertising invitations to bid and the existence and purposes of the Program in minority, women's, and small business media.
- 7.13 Encouraging commitments from bonding, insurance, and financial companies through CPS' business relationships with those institutions to aid M/WBEs and other small Prime Vendors or Suppliers of goods and services.
- 7.14 Referring complaints of discrimination against M/WBEs to appropriate authorities for investigation and resolution.
- 7.15 Considering the creation of pooled risk bonding or insurance packages that would be available to the District's Prime Vendors.
- 7.16 Considering whether it is practical for the District to self-insure with respect to certain business risks now covered by bonding and insurance, in the same manner as the District chooses to be self insured in other areas (e.g., tort liability).
- 7.17 Developing and maintaining a list of diverse, qualified and pre-approved vendors for certain contracts for goods and services of less than \$75,000.
- 7.18 Contacting private sector organizations and non-profit groups engaged in economic development activities and M/WBE trade and commercial associations, and soliciting their assistance in obtaining M/WBE participation.
- 7.19 Seeking recommendations of additional M/WBEs from private industry M/WBE programs and from local government agencies.

- 7.20 On larger contracts, conducting pre-bid conferences between potential contractors and pre-qualified M/WBEs to promote joint ventures and subcontractor and supplier relationships.

VIII. METHODS OF FULFILLMENT OF CONTRACT SPECIFIC GOALS FOR M/WBE PARTICIPATION

8.1 M/WBE Prime Vendors

OBD shall count toward the Industry Specific or Contract Specific Goal the amount paid to a M/WBE Prime Vendor for self-performing work, general conditions, overhead and profit. A MBE or WBE Prime Vendor must make Good Faith Efforts to meet the remaining portion of the M/WBE goals through subcontracting with other MBEs or WBEs.

8.2 M/WBE Subcontractors and Suppliers

OBD shall count toward the Industry Specific or Contract Specific Goal, the entire amount of that portion of a contract that is performed by the M/WBE's own forces, including the cost of supplies and materials obtained by the M/WBE for the work of the contract, and supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE purchases or leases from the Prime Vendor or the Prime Vendor's Affiliate).

OBD shall count the entire amount of fees or commissions charged by a M/WBE for providing a *bona fide* service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

OBD shall count towards a Prime Vendor's Industry Specific or Contract Specific Goal only the amount that has been paid to a MBE or WBE subcontractor or supplier.

8.3 Joint Ventures

When a M/WBE performs as a participant in a Joint Venture, OBD shall count towards the Industry Specific or Contract Specific Goal only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that the M/WBE performs with its own forces and for which it is separately at risk.

8.4 Limitation to Commercially Useful Functions

OBD shall count toward the Industry Specific or Contract Specific Goal only expenditures to a M/WBE that is performing a Commercially Useful Function. To determine whether a firm is performing a Commercially Useful Function, OBD will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors. To perform a Commercially Useful Function, the M/WBE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself. A M/WBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the contract through which funds are passed in order to obtain the appearance of M/WBE participation. If a

M/WBE subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to be performing a Commercially Useful Function, but it may present evidence to rebut this presumption.

8.5 Counting M/WBE Participation

In determining achievement of Industry Specific or Contract Specific Goals, the participation of a M/WBE shall not be counted until the amounts due for work done by the M/WBE have been paid.

8.6 Effect of Decertification

If a firm ceases to be a certified M/WBE during its performance on a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted toward the Industry Specific or Contract Specific Goal.

IX. CONTRACT AWARD PROCEDURES

9.1 M/WBE Special Conditions

The Department of Procurement and Contracts will specify M/WBE participation requirements as special conditions in invitations for bids, requests for proposals, and all relevant documents. These specifications will include a listing of all documentation that must be submitted with the bid or proposal and will describe the reporting requirements applicable during the contract period. All solicitation and contract documents will also stipulate that the requirements of the Compliance Plan become conditions of the contract between CPS and the Prime Vendor.

9.2 M/WBE Compliance Demonstration Plans

9.2.1 For all solicitations, the Prime Vendor must submit a M/WBE Compliance Demonstration Plan ("Compliance Plan") detailing all M/WBE and non-M/WBE subcontractors from which the Prime Vendor solicited bids or proposals, and its plan to achieve the Industry Specific or Contract Specific Goals or its Good Faith Efforts to do so. M/WBEs proposed by the Prime Vendor must be certified as of the date of the bid submittal. The Compliance Plan shall be due at the time and in the manner set out in the solicitation documents.

9.2.2 OBD has the authority to reject as non-responsive any bid or quotation that does not include an appropriate Compliance Plan.

9.2.3 Any agreement between a Prime Vendor and a M/WBE in which the Prime Vendor requires that the M/WBE not provide subcontracting quotations to other Prime Vendors is prohibited.

9.2.4 The Compliance Plan must demonstrate that each MBE or WBE will perform a Commercially Useful Function.

9.3 Incorporation into Contract Provisions

- 9.3.1 The Compliance Plan, as finally approved by OBD, will constitute the compliance agreement for the Prime Vendor or Supplier for goods and services and will be incorporated as part of the contract.
- 9.3.2 All CPS contracts will include an obligation on the part of the Prime Vendor to pay any attorneys' fees and costs incurred by CPS, if CPS is the prevailing party in litigation by or against the Prime Vendor or Supplier.
- 9.3.3 All CPS contracts will provide that in the event of default (or any other transfer of performance responsibility for the contract), as a condition of an assignment, any successor to the Prime Vendor shall be bound to comply with the Compliance Plan.

9.4 Review of Compliance Plans

- 9.4.1 Prior to contract award, OBD shall conduct a timely review of the Compliance Plan, including the scope of work and the letters of intent from M/WBEs. OBD may request clarification in writing of items listed in the Compliance Plan, provided such clarification shall not include the opportunity to augment listed M/WBE participation or Good Faith Efforts.
- 9.4.2 If OBD determines that the Compliance Plan demonstrates that the Industry Specific or Contract Specific Goals have been achieved or Good Faith Efforts made, OBD shall recommend to the Department of Procurement and Contracts that the bidder be deemed to be responsive.
- 9.4.3 If the Prime Vendor or Supplier for goods and services fails to meet the Industry Specific or Contract Specific Goal(s), OBD will review its Good Faith Efforts to do so. If OBD determines that a Prime Vendor or Supplier for goods and services did not make sufficient Good Faith Efforts, OBD shall communicate its finding to the Department of Procurement and Contracts and recommend that the bid or proposal be deemed to be non-responsive. A Prime Vendor or Supplier for goods and services may protest this determination pursuant to CPS' bid protest procedures.

9.5 Good Faith Efforts to Meet Contract Specific Goals

Where the Prime Vendor or Supplier for goods and services cannot achieve the Industry Specific or Contract Specific Goals, OBD will determine whether it has made Good Faith Efforts to do so.

A Prime Goods and Services Vendor or Supplier may also submit to the OBD Director a request for reduction or waiver of the obligations created under the Compliance Plan or related requirements. Any such request must be accompanied by documentation evidencing the Prime Vendor or Supplier for goods and services Good Faith Efforts.

The OBD has the discretion to approve or deny a request for a waiver. Approval of a waiver may be conditioned upon the agreement to undertake additional Good Faith Efforts as specified by OBD.

If the Prime Vendor or Supplier for goods and services fails to meet the Industry Specific or Contract Specific Goals, but meets or exceeds the average M/WBE participation obtained by other Prime Vendors or Suppliers, this may be evidence of its Good Faith Efforts.

In making the determination of Good Faith Efforts, OBD will consider, at a minimum, the efforts of a Prime Vendor or Supplier for goods and services to:

- 9.5.1 Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all M/WBEs that have the capability to perform the work of the contract and/or that are certified in the scopes of the contract work; to make this solicitation within sufficient time to allow the M/WBEs to respond; and to take appropriate steps to follow up initial solicitations with interested M/WBEs.
- 9.5.2 Provide interested M/WBEs adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
- 9.5.3 Negotiate in good faith with interested M/WBEs that have submitted bids. Documentation of negotiation must include the names, addresses, and telephone numbers of M/WBEs that were solicited; the date of each such solicitation; a description of the information provided about the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with M/WBEs to perform the work.

A Prime Vendor or Supplier may not reject M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. A Prime Vendor or Supplier may not use the fact that additional costs may be involved in soliciting and using M/WBEs as a reason for failing to meet the Industry Specific or Contract Specific Goals, as long as such additional costs are reasonable. The ability or desire of a Prime Vendor to perform the work of a contract with its own organization does not relieve it of the responsibility to make Good Faith Efforts on all subcontractable scopes of work.

- 9.5.4 Not reject M/WBEs as being unqualified without sound reasons based upon a thorough investigation of their capabilities. The M/WBEs' standing within its industry, membership in specific groups, organizations, or associations, or its political or social affiliations are not legitimate reasons for rejecting or failing to solicit bids to meet the goals.
- 9.5.5 Make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available M/WBE subcontractors and suppliers, as to facilitate meeting the Industry Specific or Contract Specific Goals.
- 9.5.6 Select portions of the work to be performed by M/WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, unbundling contract work items into economically feasible units to facilitate M/WBE participation, even when the Prime Vendor or Supplier might otherwise prefer to perform these work items with its own forces.

- 9.5.7 Assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the Board or the Prime Vendor.
- 9.5.8 Assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- 9.5.9 Effectively use the services of OBD, minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of M/WBEs.
- 9.5.10 Employ CPS graduates.
- 9.5.11 Implement a strategy for the training, employment, or continuing education of present or former CPS students. The proposed program must involve substantial numbers of students and commit Prime Vendor or Supplier resources; meet significant training, employment or continuing education objectives; and be feasible and effective.
- 9.5.12 Participate in CPS' Mentor-Protégé Program ("Mentor Program") to provide technical assistance to increase M/WBEs' self-sufficiency, competitiveness, and profitability.
- 9.5.13 Donate objectively measurable resources to M/WBE business development or participate in M/WBE business development activities.
- 9.5.14 Demonstrate through objective evidence the consistent use of M/WBEs as suppliers or vendors on work not related to the District.
- 9.5.15 Demonstrate participation with M/WBEs in private sector joint ventures that would not otherwise occur or the participation of the Prime Vendor or Supplier for goods and services in M/WBE business development activities, such as those contemplated by the Program.

X. SHELTERED MARKET CONTRACTS

10.1 Eligibility

The sheltered market program shall be one of several means to achieve the District's Annual Aspirational Goals and to achieve increased M/WBE participation. A contract or portion of a contract may be sheltered if doing so is the only reasonable means to level the playing field and provide M/WBEs with an opportunity to participate in the CPS procurement process for goods and services and to achieve the District's Annual Aspirational Goals.

10.2 Procedures and Program Review

- 10.2.1 The Department of Procurement and Contracts, in consultation with OBD, may designate a contract for the sheltered market program in accordance with the guidelines set forth below. The CEO's administration of the sheltered market program is subject to the approval of the Board.
- 10.2.2 OBD shall review and evaluate the use of Sheltered Market contracts annually and compare the program to use of Industry Specific or

Contract Specific Goals and Race- and Gender-Neutral methods, in terms of (a) effectiveness in creating opportunities for M/WBEs that would otherwise be unavailable; (b) effectiveness in attaining the remedial objectives of the Program, including the Annual Aspirational Goals; (c) burdens to non-M/WBE Prime Vendors and Suppliers; and (d) administrative convenience to the District.

10.2.3 OBD shall report to the Board the results of its evaluation, and propose any appropriate modifications to the extent or form of sheltered market contracts.

10.3 Guidelines for Sheltering Contracts

10.3.1 User departments, OBD, and the Department of Procurement and Contracts shall consult to determine, at an early stage in the procurement process and before advertisement of bids or proposals, which contracts should be eligible for the sheltered market program.

10.3.2 The following factors shall be considered in the determination whether to shelter a contract:

10.3.2.1 Size of the contract

10.3.2.2 Availability of at least three qualified M/WBEs to bid or propose on the contract. To qualify, the M/WBE must be willing to perform the contract, ready to perform at the time specified, and able to perform the contract.

10.3.2.3 Industry category of the contract

10.3.2.4 Availability of subcontracting opportunities on the contract or feasibility of subcontracting on the contract

10.3.2.5 District's progress towards meeting the overall Annual Aspirational Goals

10.3.2.6 Any additional relevant factors

10.3.3 If after issuance of invitations for bids or proposals for a contract that has been sheltered, no satisfactory bids or proposals are received or the District determines that there has not been sufficient competition, the contract may be removed from the sheltered market program and rebid using standard bidding and M/WBE participation methods.

XI. CONTRACT PERFORMANCE PROCEDURES

11.1 Payment Procedures

As a condition of each payment request, the Prime Vendor and Supplier shall provide proof of payment in a format specified by CPS, listing all M/WBE and non- M/WBE Subcontractors used in the performance of the contract. OBD shall monitor subcontractor participation during the course of the contract and shall have reasonable access to all contract-related documentation held by the Prime Vendor or Supplier for goods and services.

11.2 Records

Prime Vendor or Supplier shall maintain records of all relevant data with respect to the utilization of all subcontractors, and all other aspects of fulfillment of Compliance Plan requirements, including, without limitation, performance and financial documents concerning the contract; agreements and performance/payment records concerning subcontractors; payroll records; tax returns and records; and books of account. The Prime Vendor or Supplier for goods and services shall retain these records for at least five years after CPS' final acceptance of the work. Full access to these records shall be granted upon 48 hours notice by CPS or any duly authorized representative thereof or any law enforcement authority.

11.3 Inspections

OBD may, with or without notice, periodically conduct on-site inspections of any contract performance site, or the place of business of any Prime Vendor or Supplier for goods and services. OBD may be assisted in such inspections by other CPS staff, and shall be entitled to reasonable access to facilities, personnel, and records related to the Compliance Plan.

11.4 Substitutions

11.4.1 The Prime Vendor or Supplier cannot make changes to the Compliance Plan or substitute M/WBEs named in the Compliance Plan without the prior written approval of OBD and authorization by the Board following proper submission of a board report requesting a substitution. Unauthorized changes or substitutions may constitute grounds for rejection of the bid or proposal or cause termination of the executed contract for breach, the withholding of payment and/or subject the Prime Vendor or Supplier to contract penalties or other sanctions.

11.4.2 All requests for changes or substitutions of the Subcontractor named in the Compliance Plan shall be made to OBD in writing, and shall clearly and fully set forth the basis for the request. A Prime Vendor may not substitute a Subcontractor or perform the work designated for a Subcontractor with its own forces unless and until OBD approves such substitution in writing. A Prime Vendor or Supplier shall not allow a substituted Subcontractor to begin work until OBD has formally approved the substitution request.

11.4.3 The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the Compliance Plan. The Prime Vendor must negotiate with the Subcontractor to resolve the problem. If requested by either party, CPS shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the M/WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

11.4.4 The following are acceptable bases for the substitution of M/WBE Subcontractors:

11.4.4.1 Unavailability after receipt of reasonable notice to proceed.

- 11.4.4.2 Failure of performance.
- 11.4.4.3 Financial incapacity.
- 11.4.4.4 Refusal by the subcontractor to honor the bid or proposal price.
- 11.4.4.5 Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.
- 11.4.4.6 Decertification of the M/WBE by the City of Chicago or other certifying entity.
- 11.4.4.7 Failure of the Subcontractor to meet insurance, licensing or bonding requirements.
- 11.4.4.8 The Subcontractor's withdrawal of its bid or proposal.
- 11.4.5 OBD's final decision whether to permit or deny the proposed substitution, and the basis therefore, will be communicated as soon as practicable to the parties in writing by OBD.
- 11.4.6 Where the Prime Vendor or Supplier has established the basis for the substitution to the satisfaction of OBD, the Prime Vendor or Supplier shall make Good Faith Efforts to fulfill the Compliance Plan. The Prime Vendor or Supplier may seek the assistance of OBD in obtaining a new M/WBE Subcontractor. If the Industry Specific or Contract Specific Goal(s) cannot be reached and Good Faith Efforts have been made, the Prime Vendor or Supplier may substitute with a non-M/WBE.
- 11.4.7 If CPS requires the substitution of a M/WBE Subcontractor listed in the Compliance Plan, the Prime Vendor or Supplier shall undertake Good Faith Efforts to fulfill the Compliance Plan. The Prime Vendor or Supplier may seek the assistance of OBD in obtaining a new M/WBE Subcontractor. If the Industry Specific or Contract Specific Goal(s) cannot be reached and Good Faith Efforts have been made, the Prime Vendor or Supplier may substitute with a non-M/WBE.
- 11.4.8 Request for substitution shall include the name, address, and principal official of any proposed substitute M/WBE and the dollar value and scope of work of the proposed subcontract. All documentation required of bidders for the Compliance Plan must be attached.
- 11.4.9 OBD will evaluate the submitted documentation, and respond as soon as practicable to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. OBD may approve or reject any request in its entirety, or impose conditions upon any approval.

11.5 Change Orders

- 11.5.1 The Industry Specific or Contract Specific Goals applicable to a contract are also applicable to change orders or contract modifications.

11.5.2 If a change order is within the scope of the M/WBE's subcontract performance, the dollar amount to be paid to the M/WBE must be adjusted by the Prime Vendor or Suppliers.

XII. NON-COMPLIANCE AND SANCTIONS

12.1 Determination of Non-Compliance

It shall be the responsibility of OBD to monitor the Compliance Plan, as well as the fulfillment of any special conditions, work order goals, or other obligations by contract awardees.

12.1.1 At contract closeout, OBD shall determine whether a Prime Vendor has complied with the obligations created under its Compliance Plan and other related requirements. The Prime Vendor or Supplier has the burden of proving compliance with all obligations and requirements.

12.1.2 If the Prime Vendor or Supplier fails to fulfill its Compliance Plan or other Compliance-related contractual obligations, OBD will notify the Prime Vendor or Supplier of the deficiencies. Following notification, the Prime Vendor or Supplier shall have sixty (60) days to cure the deficiencies. If the deficiencies are not cured, OBD shall make a determination of non-compliance and recommend the imposition of sanctions.

12.2 Sanctions for Non-Compliance and Failure to Make Good Faith Efforts

12.2.1 Sanctions for non-compliance may include but are not limited to the following:

12.2.1.1 Withholding of payments under the contract.

12.2.1.2 Recommendation not to exercise contract renewal option.

12.2.1.3 Termination of the contract.

12.2.1.4 Debarment from future business with CPS.

12.2.2 A Prime Vendor or Supplier may protest the OBD's determination of Section 12.1 sanctions by filing a written appeal in accordance with the Appeals Process within fourteen (14) business days of receipt of OBD's determination, stating the grounds for such appeal and including all relevant information and documentation.

12.2.3 The CEO's designees for the Appeals Process shall review the OBD's determination and make a recommendation to the CEO. The CEO's decision will be final. Sanctions will not be imposed until the CEO's final decision has been made.

12.2.4 All debarment recommendations will be processed according to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions, 00-0322-PO1 (Debarment Policy) as may be amended.

12.2.5 If OBD or any CPS department has reason to believe that a Prime Vendor or Supplier has committed any of these acts, or any act involving a lack of business integrity and/or a violation of

any relevant statute, rule or regulation, the matter will be referred for investigation to CPS' Inspector General or other appropriate law enforcement authorities. If the investigative findings so warrant, the Law Department and the Department of Procurement and Contracts will initiate proceedings to debar the Prime Vendor, together with any persons or entities affiliated with them, for a period of up to three years. All debarment proceedings will be conducted according to the Debarment Policy. The Board's list of debarred persons and entities shall be shared with other government agencies.

12.2.6

In addition to any penalties imposed by the Board, the Law Department may refer matters arising from violations of this Program to the appropriate state or federal authorities.

XIII. APPEALS

- 13.1** A Prime Vendor or Supplier may protest a determination that it has been non-responsive by filing a written appeal in accordance with the Appeals Process within five (5) business days of receipt of OBD's determination, stating the grounds for such appeal and including all relevant information and documentation.
- 13.2** A Prime Vendor or Supplier may protest the OBD's issuance of a sanction for non-compliance or failure to make good faith efforts by filing a written appeal in accordance with the Appeals Process within fourteen (14) business days of receipt of OBD's determination, stating the grounds for such appeal and including all relevant information and documentation.
- 13.3** The CEO's designee for the Appeals Process shall review the OBD's determination and make a recommendation to the CEO. The CEO's decision shall be final. However, sanctions will not be imposed until the CEO's final decision has been made.

XIV. PROGRAM REVIEW

The Board will review the Program every five years. The Review shall include an analysis of available evidence of any discriminatory barriers to full and fair participation by M/WBEs, and where practicable, specific subgroups as defined in Section 2.10, in District prime contracts and subcontracts, and the remedies adopted herein, to ensure that the District continues to have a compelling interest in not being a passive participant in the discriminatory market and that these measures remain narrowly tailored to accomplish that interest.

XV. SEVERABILITY

In the event that any section, subsection, paragraph, clause, provision or application of this article shall be held invalid by any court, the invalidity of such section, subsection, paragraph, clause, provision or application shall not affect any of the remaining provisions hereof.