

December 7, 2016

**EXTEND THE REMEDIAL PROGRAM FOR MINORITY AND WOMEN-OWNED BUSINESS
ENTERPRISE PARTICIPATION IN CONSTRUCTION PROJECTS**

THE CHIEF EXECUTIVE OFFICER RECOMMENDS:

That the Board extend the Remedial Program for Minority and Women-Owned Business Enterprises Participation in Construction Projects, as amended, which is attached hereto for a period of five years.

HISTORY: In 1990, the Board adopted the original version of the then entitled "Remedial Program for Minority and Women-Owned Business Enterprises Participation in Construction Projects".

adopted by the Board in 1991. Following this review, the Board determined that implementation of various race-neutral and gender-neutral measures would help the construction procurement program to

Approved for Consideration:

[Handwritten signature]

Respectfully submitted:

[Handwritten signature]

Approved as to Legal Form:

[Handwritten signature]

Department of Public Administration of the City of Chicago



**REMEDIAL PROGRAM
FOR
MINORITY AND WOMEN OWNED BUSINESS**

**REMEDIAL PROGRAM FOR
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE
PARTICIPATION IN CONSTRUCTION PROJECTS**

This Program is continued by the Chicago Board of Education (the "Board") upon 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 construction industry in Chicago, and that it has a compelling interest in remedying that passive discrimination, and (2) its desire to continue

1.5 In the *BAGC* case, Judge James B. Moran held that the City has a compelling interest in implementing a remedial race- and gender-conscious affirmative action program in the Chicago construction market, but that its 1990 ordinance was not sufficiently narrowly tailored as applied to construction in 2003.

1.6 There is ample availability of ready, willing and able minority- and women-owned firms to

participate in Board and private-sector construction contracting and subcontracting opportunities.

1.7 Minority and women workers' participation in the Chicago construction marketplace declined from 1980 to 1990.

1.8 Other jurisdictions, including Cook County, Illinois, have experienced drastic reductions in

minority and women business participation after terminating race and gender conscious

1.15 Based upon a thorough review of the results of the Board's 1991 Remedial Plan; the evidence presented and findings made at the BACC trial; the information presented to the City Council

decisions regarding the constitutional standards for affirmative action programs; information

2.6 **Contractor:** Any person or business entity that seeks to enter into a construction contract with

2.7 **Contract Specific Goals:** The subcontracting goals for Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) participation established for a particular contract based upon the availability of MBEs and WBEs to perform the anticipated scopes of work of the contract, and the Board's progress towards meeting its aspirational goals. Contract Specific Goals shall be established for all contracts.

2.8 **Economically Disadvantaged:** An individual whose personal net worth is less than \$2,000,000.00, adjusted annually for inflation, such annual adjustment to begin January 2017.

2.15 **Owner's Representative:** Consists of Construction Manager, Program Manager, Project Manager, and Design Manager.

2.16 **Personal Net Worth:** The net value of the assets of an individual after total liabilities are

2.17 **Personal Net Worth:** The net value of the assets of an individual after total liabilities are

4.3 Appeals Process

The CAO or his or her designee shall have the authority to create rules or guidelines reviewing

a. Promulgating administrative rules to implement the provisions of the Program.

b. Forecasting procurement opportunities annually.

h. Monitoring contracts to ensure compliance with Contract Specific Goals contractual

commitments and Program objectives.

i. Determining whether contractors have made Good Faith Efforts.

j. Reviewing and facilitating the resolution of dispute issues concerning the Program with

i. holding of pre-bid conferences to explain the projects and to encourage contractors to use small business enterprises as subcontractors.

j. letting of a representative sample of Board construction contracts without goals to

k. limitation of the self performance of Prime Contractors or Suppliers where appropriate

h. a requirement that where the contractor cannot achieve the Contract Specific Goals, it must

document its Good Faith Efforts to do so.

6.2 M/WBE Compliance Proposal

g. The Department of Procurement will specify M/WBE participation requirements as special

conditions in invitations for bids and bid documents. These specifications will include a listing of all documentation that must be submitted with the bid or proposal and a description of the reporting requirements applicable during the contract period. All

solicitation and contract documents will also stipulate that the requirements of the M/WBE Plan become part of each contract between CPS and the Prime Construction Contractor or Supplier.

h. For all solicitations, the Contractor shall submit an M/WBE Compliance Report of M/WBE

6.4 Good Faith Efforts to Meet Contract Specific Goals and Waiver Requests

Where the Contractor cannot achieve the Contract Specific Goals, OBD will determine

whether the Prime Construction Contractor or Supplier has made Good Faith Efforts to do

so.

- b. A Contractor may also submit to OBD a written request for reduction or waiver of the obligations created under the M/WBE Plan or related requirements. Any such request must be accompanied by documentation evidencing the Prime Construction Contractor or

8. assist interested M/WBEs in obtaining necessary equipment, supplies, materials or related assistance or services;
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;

10. 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 Construction Contractor or Supplier

i. upon the disqualification of the Prime Construction Contractor or Suppliers

as an MBE or WBE, if that contractor's status as MBE or WBE was a factor in the award of the contract and the contractor misrepresented that status; and

ii. upon the disqualification of any MBE or WBE, if the subcontractor's or supplier's status as an MBE or WBE was a factor in the award of the contract, and the Prime Construction Contractor or Supplier misrepresented the status of the subcontractor or supplier. If Facilities or OBD determines that contractor was not involved in any such misrepresentation, then that contractor shall discharge the disqualified subcontractor or supplier and make good faith efforts to engage a qualified MBE or WBE replacement

ii. any additional work and/or change orders requested by the Prime Construction Contractor or Supplier should not affect the contractors who have already completed work on the project; and

~~iii. no change orders shall affect the Prime Construction Contractor or~~

Supplier's obligation to make good faith efforts to meet the original M/WBE goals.

5. requires retainage amounts to ensure the proper and complete performance of the work covered by the contract and complete compliance with the terms and

conditions of the contract as follows:

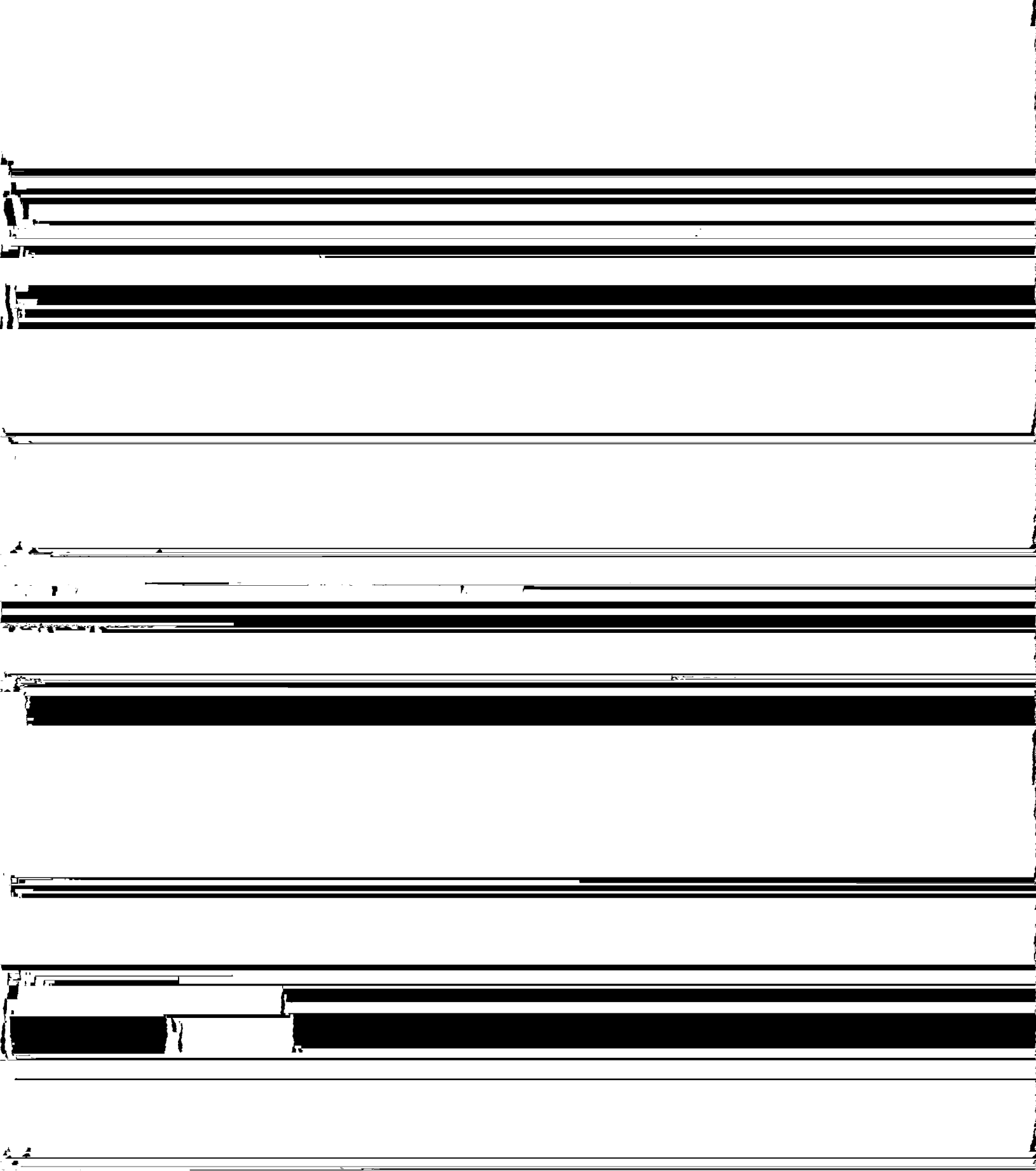
- i. the Board will retain 10% of the contract amount (including value of change orders) until work is 50% complete;
- ii. Upon 50% completion of the contract in accordance with accepted performance measures, as specified in the contract, the retainage will be reduced to 5% of the contract amount (including value of change orders);
- iii. The retainage amount(s) shall be retained from the various periodic payments according to a schedule specified in the contract.

agreement cannot be reached for a reasonable price for the correct scope of work.

- d. Unauthorized changes or substitutions, including performing the work with the Prime Construction Contractor's or Supplier's own workforce may constitute grounds for rejection

of the bid or proposal, cause termination of the executed contract for breach, result in the withholding of payment and/or subject the Prime Construction Contractor or Supplier to

specifies whether the amount the firm is to be paid under the contract is commensurate with,



2. Separation for Fraudulent Misrepresentation, Acts Involving a Lack of Business Integrity, Violation of Statutes or Regulations, or Repeated Failures to Make Good Faith Efforts

Integrity, Violation of Statutes or Regulations, or Repeated Failures to Make Good Faith Efforts

a. The following actions may be taken upon a finding that a firm has engaged in fraudulent misrepresentation, acts demonstrating a lack of business integrity, violations of statute or regulations, or has repeatedly failed to make good faith efforts as required by this Program:

1. Referral by OBD to the Board's Office of the Inspector General (OIG) for investigation.
2. Initiation of proceedings to debar the Prime Construction Contractor or Supplier and all persons or entities affiliated with them if warranted by an OIG investigation.