

07-0523-P01

May 23, 2007

**AMEND BOARD REPORT 06-0726-PO9**

**ADJUST A NEW MEMORIAL PROGRAM FOR VETERANS AND WOMEN OWNED BUSINESS**

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[REDACTED]

[REDACTED]

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[REDACTED]

3. The Office of Business Diversity's administrative responsibilities in monitoring activity under the new program;
4. The allocation of responsibilities for all aspects of the Program;
5. Methods of fulfillment of contract specific goals for M/WBE participation;
6. Methods of demonstrating program compliance in bid documents; and
7. Recommended sanctions for non-compliance.

The principal components of the Program include:

~~And unless there is a finding that the essential purposes of the Program have not been fully~~

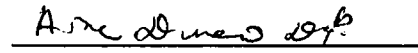
Revised for Consideration:

Respectfully Submitted:

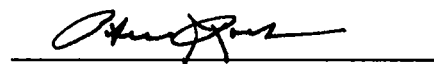
  
Barbara Eason-Watkins  
Chief Education Officer

Noted:

  
John Maiorca  
Chief Financial Officer

  
Arne Duncan  
Chief Executive Officer

Approved as to Legal Form: 

  
Patrick J. Rocks  
General Counsel

Board of Education of the City of Chicago



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

*July 2006*  
*Revised - May 2007*

The Office of Business Diversity  
105 S. Clark Street, 10th Floor

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

This Program is adopted 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 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 Economic Participation in January 1991. The Plan provided measures to assist Minority and Women Business Enterprises in the procurement of goods and services by the Board. The benefits of

the Plan were provided to Black, Hispanic, Asian, and Women-owned firms whose principal

- 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

remedial measures.

- 1.9 Private companies that contract on public projects continue to discriminate against minorities and women and financial institutions that provide necessary funding to minority and women contractors continue to maintain lending practices that have a disparate discriminatory impact on minorities and women. As result of this discrimination, the Board has been a passive

Based upon a thorough review of the results of the Board's 1991 Remedial Plan; the evidence

presented and findings made at the DAQO trial; the information presented to the City Council

and its consequent decision to revise the City of Chicago's ordinance; other recent judicial

effects, skill and knowledge and in which the MBE or MBE is responsible for a distinct, clearly

defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is equal to its ownership interest. Partners to

a joint venture must have a written agreement specifying the terms and conditions of the relationships between them and their relationship and responsibilities to the contract.

**2.11 Minority:** The Board adopts the definition of "minority" contained in the City of Chicago's M/WBE ordinance:

(a) any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:

(i) African Americans or Blacks, which includes persons having origins in any of the



**IV. ADMINISTRATION, MONITORING, AND REVIEW OF THE PROGRAM**

**4.1 Aspirational Goals**

Upon the effective date of this article, the annual Aspirational Goals shall be to award thirty percent (30%) of the annual dollar value of all construction contracts to qualified MBEs and seven percent (7%) of the annual dollar of all construction contracts to qualified WBEs.

**4.2 Contract Specific Goals**

The City shall establish Contract Specific Goals for MAMBE participation for all contracts over \$1 million

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Contracts and School Support Services on its administration of the Program, its Progress in meeting the Aspirational Goals, and any recommendations it may have for improving the Program.

- d. Assuring that MWBEs are informed of CPS contracting opportunities.
- e.. Providing MWBEs information and assistance related to CPS procurement practices and procedures, and bid specifications, requirements and prerequisites.
- f.. Providing interested Prime Construction Contractors or Suppliers with information regarding MWBE directories.
- g. ~~Providing training and assistance to CPS staff and other interested persons on~~

Program objectives and requirements.

- h.. Establishing "Contract Specific Goals" for any contracts over \$1,000,000.

- d. unbundling of contracts so as to facilitate the participation of smaller businesses.

review of bonding, insurance and retention requirements to eliminate unnecessary barriers

to contracting with the Board, consistent with the Board's interest in financial security.

- f. reduction of bid deposit requirements, or arrangements for a standing bid deposit to cover multiple procurements.
- g. closing out of construction contracts in a timely manner.

reduction of award amount procedure that require Prime Construction Contractors or

materials or services for the work from one or more MBEs or WBEs, or by any combination of the foregoing;

- b. a requirement that prime contractors on Board construction contracts notify MBEs and WBEs utilized on those contracts about opportunities on contracts without affirmative action contracting goals;
- c. a requirement that where the contractor cannot achieve the contract specific goals, it must document its good faith efforts to do so.

**6.2 Compliance Proposal**

- a. The Department of Procurement and Contracts 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 Compliance Plan become part of each contract between CPS and the Prime Construction Contractor or Supplier.
- b. For all solicitations, the Prime Construction Contractor or Supplier shall submit an M/WBE Compliance Proposal (Compliance Plan) identifying all M/WBE and non-M/WBE subcontractors from which the Prime Construction Contractor or Supplier solicited bids or quotations, and detailing its plan to achieve the Goals or its Good Faith Efforts to do so. MBEs and WBEs proposed by the Prime Construction Contractor or Supplier must be certified by the City of Chicago and/or any other governmental certifying agencies as of the

Construction Contractor or Supplier did not make sufficient Good Faith Efforts, OBD shall communicate its finding to the School Support Services and Purchasing and recommend

▲.

<sup>1</sup> Supplier may protest this determination 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

political or social affiliations are not legitimate reasons for rejecting or failing to solicit bids to meet the goals;

5. make a portion of the work available to MWBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MWBE subcontractors and suppliers, as to facilitate meeting the goals;
6. make good faith efforts, despite the ability or desire of the contractor to perform the work of a contract with its own organization. A contractor who desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals

have been met;

7. select portions of the work to be performed by MWBEs in order to increase the

**VII. CONTRACT PERFORMANCE PROCEDURES**

**7.1 School Support Services Responsibilities**

To achieve the Contract Specific Goals, the School Support Services shall undertake, in addition to other measures provided herein, the following measures:

1. permits the Board to terminate the contract:

i. upon the disqualification of the contractor as an MBE or WBE, if the 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

subcontractor verifying receipt of payment or other format specified by the

OBD. For example:

Payment request submitted by Prime Contractor

processed by the Board and paid.  
Third and all subsequent pay requests submitted by Prime Contractor  
include proof of payment to subcontractors listed on all  
previous pay requests

to require approval or ratification of all change orders by the



- a. A Prime Construction Contractor or Supplier may not substitute a M/WBE subcontractor

**8.2 MBE or WBE Subcontractors and Suppliers**

OBD shall count toward a Prime Construction Contractor's Contract Specific Goal only the amount that has actually been paid to an 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 toward the 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 Contract Specific Goal only expenditures to an 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,

**9.2 Sanctions for Non-compliance and Failure to Make Good Faith Efforts**

- a. Sanctions for non-compliance may include, but are not limited to the following:
  - 1. Withholding of payments under the contract
  - 2. Termination of the contract
  - 3. Debarment from future business with the Board
- b. A Prime Construction Contractor or Supplier may protest the OBD's determination of Section 9.2 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.
- c. 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 processed until the CEO's final decision has been made.

- d. All debarment recommendations will be processed according to the Board's debarment policy.

**9.3 Sanctions for Fraudulent Misrepresentations, Acts Involving a Lack of Business**