

# REPORT OF THE FOREST PRESERVE DISTRICT COMMITTEE ON FINANCE

SEPTEMBER 11, 2012

The Honorable,  
The Forest Preserve District  
Board of Commissioners of Cook County

## ATTENDANCE

Present: President Preckwinkle and Chairman Goslin, Vice Chairman Steele, Commissioners Butler, Daley, Fritchey, Garcia, Gorman, Reyes, Schneider, Silvestri, Sims, Suffredin and Tobolski (13)

Absent: Commissioners Beavers, Collins, Gainer and Murphy (4)

Ladies and Gentlemen:

## SECTION 1

Your Committee has considered the following disbursements submitted by the Administration of the Forest Preserve for payments.

Your Committee, therefore, recommends that the Forest Preserve District Comptroller and Forest Preserve District Treasurer be, and by the adoption of this report, authorized and directed to issue checks to said vendors in the amounts recommended.

12FINA0140 **RELIABLE AND ASSOCIATES**, Chicago, Illinois, submitting invoice totaling \$65,550.96 for Contract Number: 10-80-62B. Total Contract Awarded: \$924,886.00. Capital Improvement Account Number: 090200-670061. Purchase Order Number: 038983. Original Board Approval Date: December 15, 2011. Description: Thatcher Woods Pavilion Renovation  
District: 9

12FINA0141 **PATH CONSTRUCTION**, Arlington Heights, Illinois, submitting invoice totaling \$171,956.70 for Contract Number: 10-80-62C. Total Contract Awarded: \$737,360.00. Capital Improvement Account Number: 090200-670061. Purchase Order Number: 038984. Original Board Approval Date: December 15, 2011. Description: Dan Ryan Woods Pavilion Renovation  
District: 3

12FINA0142 **GATEWAY JV**, Chicago, Illinois, submitting invoice totaling \$171,713.35 for Contract Number: 10-80-62A. Total Contract Awarded: \$531,700.00. Capital Improvement Account Number: 090200-670061. Purchase Order Number: 038982. Original Board Approval Date: December 15, 2011. Description: Eggers Grove Comfort Station Renovation  
District: 4

FOREST PRESERVE DISTRICT FINANCE COMMITTEE REPORT

SEPTEMBER 11, 2012

PAGE 2

- 12FINA0143 **CHICAGOLAND PAVING**, Lake Zurich, Illinois, submitting **(FINAL PAYMENT)** invoice totaling \$81,204.24 for Contract Number: 10-80-79E. Total Contract Awarded: \$189,900.00. Capital Improvement Account Number: 091000-670061. Purchase Order Number: 038965. Original Board Approval Date: November 2, 2011. Description: 40 Acre Woods Horse Trail Realignment  
District: 17
- 12FINA0144 **BROADWAY ELECTRIC, INC.**, Elk Grove Village, Illinois, submitting invoice totaling \$51,435.00 for Contract Number: 11-80-65. Total Contract Awarded: \$221,800.00. Capital Improvement Account Number: 090200-670061. Purchase Order Number: 038980. Original Board Approval Date: December 15, 2011. Description: Replace Underground Electrical Cables for five (5) Comfort Stations at Bunker Hill  
District: 13
- 12FINA1045 **MATTHEW PAVING**, Oak Lawn, Illinois, submitting **(FINAL PAYMENT)** invoice totaling \$116,248.25 for Contract Number: 12-80-03. Total Contract Awarded: \$847,600.10. Construction & Development Account Number: 608000-670058 & 618000-670057. Purchase Order Number: 039180 & 039178. Original Board Approval Date: March 8, 2012. Description: Resurfacing Thorn Creek Bike Trail, North Creek Meadow & Plum Creek Play Meadow Parking Lots  
District: 6
- 12FINA0146 **PAVEMENT SYSTEMS**, Blue Island, Illinois, submitting **(FINAL PAYMENT)** invoice totaling \$246,868.16 for Contract Number: 12-80-01. Total Contract Awarded: \$737,630.00. Construction & Development Account Number: 618000-670057. Purchase Order Number: 039220. Original Board Approval Date: April 4, 2012. Description: Resurfacing Parking Lots at Yankee Woods, Burr Oak Woods, Rubio Woods, Bachelor's Grove & Elizabeth A. Conkey Forest South  
District: 6
- 12FINA0147 **J & R FIRST IN ASPHALT**, Hickory Hills, Illinois, submitting **(FINAL PAYMENT)** invoice totaling \$30,438.62 for Contract Number: 10-80-79F. Total Contract Awarded: \$400,318.36. Construction & Development Account Number: 598000-670058. Purchase Order Number: 038665. Original Board Approval Date: July 13, 2011. Description: Dan Ryan Woods Bicycle Trail Improvements  
District: 3
- 12FINA0148 **GREENPLAY LLC**, Lafayette, Colorado, submitting invoice totaling \$33,596.18 for Contract Number: 12-80-18. Total Contract Awarded: \$230,000.00. Construction & Development Account Number: 618000-620040. Purchase Order Number: 039233. Original Board Approval Date: April 4, 2012. Description: Consulting Services-Recreation Master Plan  
Districts: Districtwide

- 12FINA0149 **URS CORPORATION**, Chicago, Illinois, submitting invoice totaling \$66,137.51 for Contract Number: 11-80-46. Total Contract Awarded: \$192,500.00. Land Acquisition Account Number: 066000-680010. Purchase Order Number: 038974. Original Board Approval Date: July 13, 2011. Description: Review & Update of 1994 Land Acquisition Plan  
Districts: Districtwide
- 12FINA0150 **ENCAP, INC**, Sycamore, Illinois, submitting invoice totaling \$138,403.72 for Contract Number: 11-31-111C. Total Combined Contract Awarded: \$2,100,000.00. Capital Improvement, Restoration Landscape Account Number: 090200-670055. Purchase Order Number: 039037. Original Board Approval Date: January 19, 2012. Description: Prescribed Burning & Vegetation Management - Central  
Districts: 16 & 17
- 12FINA0151 **ENCAP, INC**, Sycamore, Illinois, submitting invoice totaling \$183,027.70 for Contract Number: 11-31-112S. Total Combined Contract Awarded: \$2,100,000.00. Capital Improvement, Restoration Landscape Account Number: 090200-670055. Purchase Order Number: 039030. Original Board Approval Date: January 19, 2012. Description: Prescribed Burning & Vegetation Management - South  
Districts: 5, 16 & 17
- 12FINA0152 **PIZZO AND ASSOCIATES**, Leland, Illinois, submitting invoice totaling \$68,991.45 for Contract Number: 11-31-110N. Total Combined Contract Awarded: \$2,100,000.00. Capital Improvement, Restoration Landscape Account Number: 090200-670055. Purchase Order Number: 039017. Original Board Approval Date: January 19, 2012. Description: Habitat Enhancement & Maintenance – North  
Districts: 12, 13, 14, 15 & 17
- 12FINA0153 **GROUNDSKEEPER LANDSCAPE**, Orland Park, Illinois, submitting invoice totaling \$50,000.00 for Contract Number: 12-31-107. Total Contract Awarded: \$105,805.00. Restoration Landscape Account Number: 090200-670055. Purchase Order Number: 039374. Original Board Approval Date: July 11, 2012. Description: Tree Removal Due to Emerald Ash Borer  
Districts: 5 & 6
- 12FINA0154 **FRIENDS OF THE FOREST PRESERVE**, Skokie, Illinois, submitting invoice totaling \$151,606.00 for Contract Number: Total Contract Awarded: \$300,000.00. Restoration Landscape Account Number: 090200-670055. Purchase Order Number: 039278. Original Board Approval Date: May 2, 2012. Description: Prescribed Burning & Vegetation Management  
Districts: Districtwide
- 12FINA0155 **ARIENS CO.**, Brillion, Wisconsin, submitting invoice totaling \$167,128.52 for Contract Number: GS-21F-0080V. Total Contract Awarded: \$167,128.52. Vehicles and Trucks Account Number: 090200-660051. Purchase Order Number: 039332. Original Board Approval Date: July 11, 2012. Description: Seventeen (17) Gravely Riding Mowers  
Districts: Districtwide

12FINA0156 **SASAFRASNET, LLC**, Chicago, Illinois, submitting invoice totaling \$217,031.25 for Contract Number: 11-53-063R. Total Contract Awarded: \$4,708,095.00. Corporate Gasoline and Oil Account Number: 015100-640170. Purchase Order Number: 039124. Original Board Approval Date: December 15, 2011. Description: Motor Fuel for Vehicles and Trucks  
Districts: Districtwide

12FINA0157 **STANLEY SECURITY SOLUTIONS**, Lombard, Illinois, submitting invoice totaling \$25,752.50 for Contract Number: GS-07F-5835R. Total Contract Awarded: \$100,000.00. Capital Outlays Account Number: 618000-630000. Purchase Order Number: 038675. Original Board Approval Date: April 7, 2011. Description: Locks and Hardware for District Buildings  
Districts: Districtwide

12FINA0158 **R.J. THOMAS MANUFACTURING**, Cherokee, Iowa, submitting invoice totaling \$239,660.00 for Contract Number: GS-07F-9714G. Total Contract Awarded: \$239,660.00. Capital Outlays Account Number: 618000-630000. Purchase Order Number: 039193. Original Board Approval Date: April 4, 2012. Description: 1,000 – ADA Accessible Metal Leg Picnic Tables  
Districts: Districtwide

12FINA0159 **SYSTEM SOLUTIONS**, Northbrook, IL submitting invoice totaling \$50,799.00 for Contract Number: 11-84-167 A&C. Total Contract Awarded: \$200,000.00. District Wide Computer Equipment Account Number: 090200-660021. Purchase Order Number: 039343. Original Board Approval Date: July 11, 2012. Description: Computer Software and Hardware  
Districts Districtwide

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER SILVESTRI, MOVED APPROVAL OF THE DISBURSEMENTS. THE MOTION CARRIED.**

**SECTION 2**

Your Committee has considered the following communications with reference to the proposed settlements.

Your Committee, concurring in the recommendations of the District Counsel, recommends that the Forest Preserve District Comptroller and Forest Preserve District Treasurer prepare checks in the amounts recommended by the District Counsel in order that the payments may be set in accordance with the request of the upon proper release from the District Counsel.

12FINA0160

Finance Subcommittee on Litigation of the  
Forest Preserve District.....July 11, 2012

<b>Proposed Settlements Approved Fiscal Year 2012 To Present:</b>	<b>\$291,809.00</b>
<b>Proposed Settlements To Be Approved:</b>	<b>\$26,516.19</b>
<b>Legal Fees Approved Fiscal Year 2012 To Present:</b>	<b>\$824,357.65</b>
<b>Legal Fees for 7/11/12 To Be Approved:</b>	<b>\$98,650.16</b>

\*For details on payment approvals by the Litigation Subcommittee, refer to the Litigation Subcommittee Report for July 11, 2012.

**COMMISSIONER SILVESTRI, SECONDED BY COMMISSIONER TOBOLSKI,  
MOVED APPROVAL OF THE PROPOSED SETTLEMENTS. THE MOTION  
CARRIED.**

Finance Subcommittee on Litigation of the  
Forest Preserve District.....September 10, 2012

<b>Proposed Settlements Approved Fiscal Year 2012 To Present:</b>	<b>\$318,325.19</b>
<b>Proposed Settlements To Be Approved:</b>	<b>\$175,000.00</b>
<b>Legal Fees Approved Fiscal Year 2012 To Present:</b>	<b>\$923,007.81</b>
<b>Legal Fees for 9/10/12 To Be Approved:</b>	<b>\$148,869.79</b>

\*For details on payment approvals by the Litigation Subcommittee, refer to the Litigation Subcommittee Report for September 10, 2012.

**COMMISSIONER SILVESTRI, SECONDED BY COMMISSIONER REYES,  
MOVED APPROVAL OF THE PROPOSED SETTLEMENTS. THE MOTION  
CARRIED.**

Finance Subcommittee on Workers' Compensation  
of the Forest Preserve District.....September 10, 2012

<b>Workers' Compensation Claims Approved Fiscal Year 2012 To Present:</b>	<b>\$148,431.70</b>
<b>Workers' Compensation Claims To Be Approved:</b>	<b>\$5,500.00</b>

\*For details on payment approvals by the Workers' Compensation Subcommittee, refer to the Workers' Compensation Subcommittee Report for September 10, 2012.

**COMMISSIONER SCHNEIDER, SECONDED BY COMMISSIONER REYES,  
MOVED APPROVAL OF THE WORKERS' COMPENSATION CLAIMS. THE  
MOTION CARRIED.**

**SECTION 3**

Your Committee has considered the bids submitted on the items hereinafter described in accordance with the specifications on file in the Office of the Forest Preserve District Purchasing Agent. Communications from the Forest Preserve District Purchasing Agent submitting recommendations on the award of contracts for said item, be and by the adoption of this Report, awarded as follows. Any money if deposited will be returned to the unsuccessful bidders at once and to the successful bidder upon the signing of the contract.

12FINA0161

**PROPOSED CONTRACT FOR THE REMOVAL OF TREES  
DUE TO THE EMERALD ASH BORER INFESTATION IN REGION 8**

Transmitting a Communication dated, September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with Vega Tree Service, Stone Park, Illinois.

Reason: Contract 12-31-109 consists of the removal of eight hundred and twenty-one (821) trees in Region 8, Tinley Creek Division, due mostly to impacts from the Emerald Ash Borer, in accordance with the specifications of the Forest Preserve District of Cook County (the "District"). Vega Tree Service, Stone Park, Illinois, was the lowest responsive and responsible of seven (7) bidders.  
The District Board granted permission to advertise this project for bid on April 7, 2011.

Sealed bids were received, opened and publicly read at the Bid Opening on July 27, 2012.

The bid results were as follows:

<b>1. Vega Tree Service</b>	<b>\$52,600.00</b>
2. Clean Cut Trees	\$83,500.00
3. Groundskeeper Landscape	\$84,958.00
4. Homer Tree Service	\$99,656.00
5. Winkler's Tree & Landscaping	\$107,234.00
6. Custom Tree Care	\$150,398.50
7. Trees R Us, Inc.	\$174,200.00

Vega Tree Service is in good standing with the State of Illinois.

Estimated Fiscal Impact: **\$52,600.00**

Contract period: Fifty-days (50) from issuance of purchase order

Account: Capital Improvement Fund/090200-670055

The District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Districts: 5 & 6

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN,  
MOVED APPROVAL OF BID RECOMMENDATION (12FINA0161). THE  
MOTION CARRIED.**

12FINA0162

**PROPOSED CONTRACT FOR THE REHABILITATION  
OF POPLAR CREEK WILDLIFE HEADQUARTERS**

Transmitting a Communication dated September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with Path Construction Co., Arlington Heights, Illinois, for Rehabilitation of Poplar Creek Wildlife Headquarters.

Contract Number 10-80-61 consists of selective demolition, concrete, masonry, miscellaneous metals, carpentry, casework, metal walls and panels, insulation, doors, frames and hardware, overhead doors, windows, drywall, flooring, painting, appliances, walk-in cooler, overhead rail and trolley system, clean agent extinguishing system, mechanical, electrical, plumbing, septic system and other related incidental work necessary to complete this improvement according to Plans, Standard Specifications and Detail Specifications. Path Construction Co. was the lowest responsive and responsible of six (6) bidders.

Sealed bids were received, opened and publicly read at the Bid Opening on August 15, 2012. The Forest Preserve District of Cook County staff requests approval to award a contract to Path Construction Co.

The bid results were as follows:

1. <b>Path Construction Co.</b>	<b>\$2,222,000.00</b>
2. Pacific Construction Services, Inc.	\$2,415,000.00
3. Simpson Construction Co.	\$2,469,000.00
4. Efraim Carlson & Son, Inc.	\$2,480,000.00
5. Tyler Lane Construction Inc.	\$2,653,087.00*
6. Paul Borg Construction	\$3,041,544.00

\*Note: The bid amount announced at the bid opening contained a mathematical error. The bid amount listed herewith has corrected that error.

Path Construction Co. is in good standing with the State of Illinois.

The Forest Preserve District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Board Approval to solicit bids: January 19, 2012

Estimated Fiscal Impact: \$2,222,000.00

Contract Period: Three-Hundred and Ninety-Five (395) Days from Notice to Proceed

Account: Construction and Development/588000-670061 & Capital Improvement/091000-670061 & 090200-670061

District: 15

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN,  
MOVED APPROVAL OF BID RECOMMENDATION (12FINA0162). THE  
MOTION CARRIED.**

12FINA0163

**PROPOSED CONTRACT FOR SIGNAGE MAINTENANCE SERVICES**

Transmitting a Communication dated September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with Western Remac Inc., Woodridge, Illinois, for Signage Maintenance Services in the Forest Preserve District of Cook County (the "District").

Contract Number 12-80-16-Rebid consists of all labor, equipment and materials including, but not limited to, furnishing and installing new and replacement signage throughout the District. Signage furnished includes various sizes of recycled plastic posts, aluminum panels, corrugated plastic panels, aluminum tee extrusions, panel frames and display cases. Furnished items will replace District stock and be installed at various locations throughout the District upon request as specified in the Plans, Standard Specifications and Detailed Specifications.

Sealed bids were received, opened and publicly read at the Bid Opening on August 24, 2012, after posting for a second time due to the lack of more than one bid at the first Bid Opening date on August 8, 2012. The Forest Preserve District of Cook County staff requests approval to award a contract to Western Remac Inc. Western Remac Inc. was the only responsive and responsible bidder after two bid postings.

The bid results were as follows:

<b>1. Western Remac Inc.</b>	<b>\$ 428,453.00</b>
------------------------------	----------------------

Western Remac Inc. is in good standing with the State of Illinois.

The Forest Preserve District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Board Approval to solicit bids: January 19, 2012

Estimated Fiscal Impact: \$428,453.00

Contract Period: Twenty-Four (24) Months from Notice to Proceed with option to extend for an additional twelve (12) months

Accounts: Planning & Development - Construction & Development Site Identification/588000-670065, 608000-670065, 618000-670065, and 528000-670065 & Capital Improvement Fund, Building, Bridges & Misc. Structures/090200-670061

Districts: Districtwide

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN,  
MOVED APPROVAL OF BID RECOMMENDATION (12FINA0163). THE  
MOTION CARRIED.**

12FINA0164

Transmitting a Communication dated September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

**PROPOSED CONTRACT FOR FENCE REMOVAL**

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with Northern Illinois Fence, Inc., Cortland, Illinois, for Fence Removal.

Contract Number 12-80-51 (Revised) consists of all labor, equipment and materials for the demolition and removal of approximately 12,000 lineal feet of existing chain link fence at various locations within the Forest Preserve District of Cook County (the "District") and other related incidental work necessary to complete this improvement according to plans, Standard Specifications and Detailed Specifications.

Sealed bids were received, opened and publicly read at the Bid Opening on August 8, 2012. District staff requests approval to award a contract to Northern Illinois Fence, Inc. Northern Illinois Fence, Inc., was the lowest responsive and responsible of nine (9) bidders.

The bid results were as follows:

<b>1. Northern Illinois Fence, Inc.</b>	<b>\$ 78,269.60</b>
2. Anthem Excavation & Demolition	\$129,764.00
3. Earthwerks	\$130,360.00
4. Standard Fence Co.	\$139,300.00
5. Pro-Fence, Inc.	\$184,920.00
6. The Construction & Design Group, Inc.	\$234,898.40
7. Beverly Environmental	\$258,960.00
8. Anchor Mechanical, Inc.	\$293,628.00
9. AGAE Contractors, Inc.	\$457,665.20

Northern Illinois Fence, Inc. is in good standing with the State of Illinois.

The District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Board Approval to solicit bids: January 19, 2012

Estimated Fiscal Impact: \$78,269.60

Contract Period: Fifty-Three (53) Days from Notice to Proceed

Account: Construction & Development Fences, Gates & Concrete Units/598000-670256, 618000-670256, 528000-670256

Districts: 9, 16 & 17

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN, MOVED APPROVAL OF BID RECOMMENDATION (12FINA0164). THE MOTION CARRIED.**

12FINA0165

**PROPOSED CONTRACT FOR THE  
REMOVAL OF TREES DUE TO THE EMERALD ASH  
BORER INFESTATION IN REGION 2**

Transmitting a Communication dated, September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with Clean Cut Tree Service, Lake Villa, Illinois.

Reason: Contract 12-31-111 consists of the removal of two-thousand three hundred and eighty-eight (2,388) trees in Region 2, Northwest Division, due mostly to impacts from the Emerald Ash Borer, in accordance with the specifications of the Forest Preserve District of Cook County (the "District").

The District Board granted permission to advertise this project for bid on April 7, 2011. Sealed bids were received, opened and publicly read at the Bid Opening on August 10, 2012. Clean Cut Tree Service, Lake Villa, Illinois, was the lowest responsive and responsible of seven (7) bidders.

The bid results were as follows:

1. Clean Cut Trees	\$149,000.00
2. Central Forestry	\$163,000.00
3. Groundskeeper Landscape	\$227,890.00
4. Homer Tree Service	\$247,838.20

5. Trees R Us, Inc.	\$248,590.00
6. Nature Tree	\$261,960.00
7. Winkler's Tree & Landscaping	\$344,000.00

Clean Cut Tree Service is in good standing with the State of Illinois.

Estimated Fiscal Impact: **\$149,000.00.**

Contract period: Ninety (90) working days from issuance of purchase order.

Account: Capital Improvement Fund/090200-670055

The District's Chief Financial Officer has reviewed and approved the proposed expenditures.

District: 14

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN,  
MOVED APPROVAL OF BID RECOMMENDATION (12FINA0165). THE  
MOTION CARRIED.**

12FINA0166

**PROPOSED CONTRACT FOR REMOVAL AND CONSTRUCTION OF  
NEW CONCRETE PATHS AT PERKINS WOODS**

Transmitting a Communication dated September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with A. Lamp Concrete Contractors, Inc., Schaumburg, Illinois, for concrete paths at Perkins Woods.

Contract Number 12-80-38 (Revised) consists of removal of existing damaged asphalt paths and construction of new portland cement concrete paths. Work includes portland cement concrete paving, culverts removal and replacement, and other related incidental work necessary to complete this improvement according to Plans, Standard Specifications and Detail Specifications.

Sealed bids were received, opened and publicly read at the Bid Opening on August 15, 2012. The Forest Preserve District of Cook County staff requests approval to award a contract to A. Lamp Concrete Contractors, Inc. A Lamp Concrete Contractors, Inc., was the lowest responsive and responsible of four (4) bidders.

The bid results were as follows:

1. Whiteline Construction Inc.	\$120,932.50*
2. Chicagoland Paving	\$165,101.25
<b>3. A Lamp Concrete Contractors Inc.</b>	<b>\$166,731.00**</b>
4. Oakk Construction	\$222,418.65

\* Whiteline Construction Inc. withdrew their bid.

**\*\* A Lamp Concrete Contractors Inc. was selected based on the fact they are a bona fide local business within Cook County. Chicagoland Paving is based in Lake County. Per Section 1-8-2.E, preference may be given to the lowest bid from a responsive and responsible local business which does not exceed the lowest bid from a responsive and responsible non local business by more than 2%.**

A Lamp Concrete Contractors Inc. is in good standing with the State of Illinois.

The Forest Preserve District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Board Approval to solicit bids: January 19, 2012

Estimated Fiscal Impact: \$166,731.00

Contract Period: Sixty (60) Days from Notice to Proceed

Account: Construction & Development Parking Project 598000-670045, 608000-670045, 618000-670045, 528000-670045 and Capital Improvement Funds/090200-670045

Districts: 13

**THE ABOVE COMMUNICATION NO. 12FINA0166 WAS WITHDRAWN AT THE REQUEST OF THE SPONSOR.**

12FINA0167

**PROPOSED CONTRACT TO REPLACE WATER PIPES  
FOR THE BOATING CONCESSION BUILDING AT TAMPIER LAKE**

Transmitting a Communication dated September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

Requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with Patnick Construction, Inc., Bensenville, Illinois to replace existing water pipes for the boating concession building at Tampier Lake.

Contract Number 12-80-49 consists of replacing existing water pipes for boating concession building at Tampier Lake and other related work to complete this improvement as specified in the Plans, Standard Specifications & Detail Specifications.

Sealed bids were received, opened and publicly read at the Bid Opening on August 10, 2012. District staff requests approval to award a contract to Patnick Construction, Inc. Patnick Construction, Inc., was the lowest responsive and responsible of three (3) bidders.

The bid results were as follows:

<b>1. Patnick Construction, Inc.</b>	<b>\$184,800.00</b>
2. Calumet City Plumbing	\$189,700.00
3. Century Contractors	\$337,600.00

Patnick Construction, Inc., is in good standing with the State of Illinois.

The District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Board Approval to solicit bids: January 19, 2012

Estimated Fiscal Impact: \$184,800.00

Contract Period: Forty (40) Days from Notice to Proceed

Account: Capital Improvement Fund/091000-670061 and 090200-670061

District: 17

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN,  
MOVED APPROVAL OF BID RECOMMENDATION (12FINA0167). THE  
MOTION CARRIED.**

12FINA0168

**PROPOSED CONTRACT TO REPLACE DROP GATES**

Transmitting a Communication dated September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into four (4) contracts with Neetz Brothers Construction, Inc., Lemont, Illinois, for replacing drop gates.

Informal bid requests were issued for removal and replacement of drop gates and other related incidental work necessary to complete this improvement according Detailed Specifications.

Sealed bids were received and opened on July 25, 2012 for all four contracts. The Forest Preserve District of Cook County (the "District") staff requests approval to award the following contracts to Neetz Brothers Construction, Inc., the lowest responsible bidder on all four informal contracts. Neetz Brothers Construction, Inc. was the lowest responsive and responsible of six (6) bidders.

The bid results were as follows:

	North East	North West	South East	South West
<b>1. Neetz Brothers Construction Inc.</b>	<b>\$9,763.00</b>	<b>\$15,847.00</b>	<b>\$11,119.00</b>	<b>\$16,279.00</b>
2. Pan-Oceanic	\$14,650.00	\$33,500.00	\$19,900.00	\$44,550.00
3. Law Ventures Ltd.	\$17,300.00	\$35,725.00	\$20,200.00	\$38,800.00
4. Robe Inc.	\$17,380.00	\$35,500.00	\$20,290.00	\$34,610.00
5. B&T Services*	\$19,900.00	\$41,850.00	\$19,750.00	\$34,300.00
6. Mathew Paving, Inc.	No Bid	No Bid	\$13,525	\$25,850.00

\*B&T Services are debarred by the Illinois Department of Labor from an award of a contract or a subcontract for public works projects.

Neetz Brothers Construction Inc. is in good standing with the State of Illinois.

The District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Board Approval to solicit bids: January 19, 2012

Estimated Fiscal Impact: \$53,008.00

Contract Period: One (1) Year from Notice to Proceed

Account: Construction & Development Parking Project/598000-670045, 608000-670045, 618000-670045, 528000-670045 and Capital Improvement Funds/ 090200-670045

Districts: Districtwide

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN,  
MOVED APPROVAL OF BID RECOMMENDATION (12FINA0168). THE  
MOTION CARRIED.**

12FINA0169

**PROPOSED CONTRACT FOR BOARDWALK IMPROVEMENTS AT  
SAND RIDGE NATURE CENTER**

Transmitting a Communication dated September 11, 2012 from

ARNOLD L. RANDALL, General Superintendent

requesting authorization for the Forest Preserve District of Cook County (the "District") to enter into a contract with Industria, Inc., Chicago, Illinois, for boardwalk improvements at Sand Ridge Nature Center.

Contract Number 12-80-23 consists of replacing a timber boardwalk at Sand Ridge Nature Center. The proposed improvements consist of site grading, construction of a timber boardwalk and other related incidental work necessary to complete this improvement according to Plans, Standard Specifications and

Detail Specifications. Sealed bids were received, opened and publicly read at the Bid Opening on August 15, 2012. The Forest Preserve District of Cook County (the "District") staff requests approval to award a contract to Industria, Inc. Industria, Inc. was the lowest responsive and responsible of three (3) bidders.

The bid results were as follows:

<b>1. Industria, Inc.</b>	<b>\$375,446.00</b>
2. Engineered Constructors	\$428,157.00
3. CMM Group, Inc.	\$539,667.00

Industria, Inc. is in good standing with the State of Illinois.

The District's Chief Financial Officer has reviewed and approved the proposed expenditures.

Board Approval to solicit bids: January 19, 2012

Estimated Fiscal Impact: \$375,446.00

Contract Period: Two-Hundred and Ten (210) Days from Notice to Proceed

Account: Construction & Development Parking Project/598000-670045, 608000-670045, 618000-670045, 528000-67004, Capital Improvement Fund, Trails, Shelters and Ramp Account/090200-670045

District: 4

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN,  
MOVED APPROVAL OF BID RECOMMENDATION (12FINA0169). THE  
MOTION CARRIED.**

12FINA0170

**REJECT AND REBID**  
**GENERAL HEADQUARTERS EXTERIOR RENOVATION**

Transmitting a Communication, dated September 11, 2012 from

ARNOLD RANDALL, General Superintendent

requesting authorization for the Purchasing Agent to reject all bids and advertise to re-bid General Headquarters Exterior Building Renovations.

Reason: Contract 11-80-56A consists of the restoration of some of 79 existing historic wood windows, furnishing and installing new wood screen/storm windows for energy efficiency improvements, abating existing asbestos and lead containing materials, selective rehabilitation and staining of existing wood trim and siding, masonry cleaning, painting, minor stucco repairs, minor slate roofing repairs for the District's

General Headquarters including all work necessary to complete this improvement according to Plans, Standard Specifications and Detail Specifications.

The Forest Preserve District Board of Cook County granted permission to re-advertise this project for bid on January 19, 2012. Sealed bids were received, opened and publicly read at the Bid Opening on August 8, 2012.

All bids exceeded the estimated cost of the project. The bid results ranged from \$975,320.00 to \$987,000.00

The District will include the scope of this work in a larger building rehabilitation project with revised specifications and General Conditions.

District: 9

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER GORMAN, MOVED APPROVAL OF BID RECOMMENDATION (12FINA0170). THE MOTION CARRIED.**

12FINA0171

**REJECT AND REBID**  
**CONSTRUCTION OF FIVE FLUSH TOILETS**

Transmitting a Communication, dated September 11, 2012 from

ARNOLD RANDALL, General Superintendent

requesting authorization for the Purchasing Agent to reject all bids and advertise to re-bid Construction of Five Flush Toilets at Various Sites Throughout the District

Reason: Contract Number 12-80-28 consists of excavation, concrete, masonry, carpentry, roofing, electrical, plumbing and other related work necessary to complete this improvement according to Plans, Standard Specifications and Detail Specifications.

The Forest Preserve District Board of Cook County posted this project for bid and sealed bids were received, opened and publicly read at the Bid Opening on May 23, 2012.

All bids exceeded the estimated cost of the project. The bid results ranged from \$994,000.00 to \$1,070,809.00 Since the bid opening, the District has also determined specific locations and utility requirements for the new flush toilets. The District seeks to gain efficiencies by combining utility and building construction work and encourage additional bidders by revising the specifications to bid each location

separately. The locations of the proposed buildings are dispersed throughout Cook County.

The District will rebid with revised specifications and General Conditions.

Districtwide

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER TOBOLSKI, MOVED APPROVAL OF BID RECOMMENDATION (12FINA0171). THE MOTION CARRIED.**

**SECTION 3**

12FINA0172

Your Committee was presented with the Revenue Report for the period ended July 31, 2012 for the Corporate Fund, as presented by the Finance and Administration Department.

**VICE CHAIRMAN STEELE, SECONDED BY COMMISSIONER SIMS, MOVED TO RECEIVE AND FILE THE REVENUE REPORT. THE MOTION CARRIED.**

**SECTION 4**

Your Committee has considered the following item and upon adoption of this report, the recommendation is as follows:

12FINA0112

Submitting a Proposed Ordinance Amendment sponsored by

LARRY SUFFREDIN, Forest Preserve District of Cook County Board Commissioners

**BE IT ORDAINED**, by the Forest Preserve District of Cook County Board of Commissioners, that Title I, Chapter 8, Section 1-8-2 of the Forest Preserve District of Cook County Code is hereby enacted as follows:

1-8-2: - CONTRACTS AND PURCHASES.

S. *Responsible bidder for bids for construction, maintenance, and repair of public works* shall mean a bidder who meets all of the job specifications, the following applicable criteria, and submits evidence of such compliance:

1. All applicable laws prerequisite to doing business in the State of Illinois.
2. Evidence of compliance with:

- (a) Federal Employer Tax Identification Number or Social Security Number (for individuals);
  - (b) Provision of Section 2000 (E) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer Provisions).
3. Certificates of insurance indicating the following coverage; general liability, workers compensation, completed operation, automobile, hazardous occupation, product liability and professional liability insurance.
4. Compliance with all provisions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance, and retirement for those trades covered in the Act.
5. For contracts over \$150,000, ~~A~~-active apprenticeship and training programs approved and registered with the United States Department of Labor Bureau of Apprenticeship and Training for each of the trades of work contemplated under the awarded contract for all bidders and subcontractors.
6. Certified payrolls as specified in 820 ILCS 130/5 for all contractors and subcontractors.

For purposes of this Section 1-8-2 S., the terms "public works" and "construction" shall have the meanings set forth in the Illinois Prevailing Wage Act, 820 ILCS 130/2. Moreover, it is expressly understood that the term "public works" shall not include snow removal, landscaping, tree trimming, and tree removal unless such activities are done in conjunction with, or in preparation for, new construction or the repair, maintenance, assembly or disassembly of equipment owned or leased by the District.

**\*Referred to the Committee on Finance on 6/6/12.**

**\*\*Deferred at the Finance Committee Meeting on 7/11/12 to the September 11, 2012 Finance Committee Meeting.**

**COMMISSIONER SUFFREDIN, SECONDED BY COMMISSIONER SILVESTRI, MOVED TO RECEIVE & FILE COMMUNICATION NO. 12FINA0112. THE MOTION CARRIED.**

SECTION 5

Your Committee has considered the following item and upon adoption of this report, the recommendation is as follows:

11FINA0194

Submitting a Proposed Ordinance Sponsored By

EDWIN REYES, JESUS G. GARCIA and ROBERT B. STEELE, Forest Preserve District of Cook County Board of Commissioners

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES**

**WHEREAS**, currently, the Forest Preserve District of Cook County does not have an ordinance requiring a percentage of District contracts and construction contracts be with Minority-and Women-owned Business Enterprises (M/WBE); and

**WHEREAS**, minority and women's businesses have contributed significantly to the economic development of the community, and played a similar role in increasing employment, including that of minorities; and

**WHEREAS**, M/WBE continue to be awarded prime contracts and subcontracts in dollar amounts that are disproportionately lower than the availability of such businesses willing and able to perform Forest Preserve District contracts; and

**WHEREAS**, in 1988, Cook County adopted the Minority-and Women-Owned Business Enterprises Ordinance establishing an affirmative action program to ensure the full and equitable participation of minority and female owned businesses in the County's procurement process as both prime contractors and subcontractors; and

**WHEREAS**, in 1993, Cook County amended the Minority-and Women-Owned Business Enterprises Ordinance to include specific minority and women participation goals in construction contracts, which was declared unconstitutional in *Builders Association of Greater Chicago v. Cook County*, 123 F.Supp.2d 1087 (N.D. Ill. 2000); and

**WHEREAS**, to ensure that the County did not passively participate in discrimination against Minority-and Women-owned Business Enterprises, Cook County adopted the Minority-and Women-owned Business Enterprise Construction Interim Ordinance in 2006; and

**WHEREAS**, the District is committed to a policy of preventing discrimination in the award of or participation in District contracts and eliminating arbitrary barriers to full participation in such contracts by all persons regardless of race, sex or ethnicity; and

**WHEREAS**, with the absence of affirmative action remedies for both procurement and construction contracts, the Forest Preserve District of Cook County is allowing itself to be a passive participant in discrimination against Minority-and Women-owned Business Enterprises; and

**WHEREAS**, it is the District's desire to affirm its commitment to full and fair opportunities for all firms to participate in its procurement and construction contracts.

**NOW, THEREFORE, BE IT ORDAINED**, by the Forest Preserve District of Cook County Board of Commissioners that Title 1 Administration, Chapter 8 District Finances, Section 1-8-5 Minority and Women Owned Business Enterprises of the Code of the Forest Preserve District of Cook County hereby is enacted as follows:

**1-8-5: MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES**

**1-8-5a: SUBDIVISION I. GENERAL PROVISIONS**

A. *Short Title.* This division shall be known and may be cited as the Forest Preserve District of Cook County Minority- and Women-Owned Business Enterprise Ordinance.

B. *Purpose; Policy and Findings.*

1. It is the public policy of the District to ensure the full and equitable participation of minority and female owned businesses in the District's procurement process as both prime and subcontractors.
2. The District is committed to a policy of preventing discrimination in the award of or participation in District contracts and eliminating arbitrary barriers to full participation in such contracts by all persons, regardless of race, sex, or ethnicity.
3. Minority and women's businesses have contributed significantly to the economic development of the community, and played a similar role in increasing employment, including that of minorities.
4. Various Federal, State and local legislative bodies and governmental agencies have adopted affirmative action programs in order to eradicate the practice of racial, ethnic and sexual discrimination in the award of public contracts.
5. The District has heretofore adopted a Minority Business Enterprise Ordinance to ensure that minority and women's businesses are provided full and equal opportunity to participate in District contracts.
6. The Supreme Court of the United States in *City of Richmond v. Croson*, 488 U.S. 469 (1989), has enunciated certain standards which are necessary to maintain effective affirmative action programs in compliance with constitutional requirements.
7. The District is committed to implementing its affirmative action program in conformance with the United States Supreme Court's decision in *City of Richmond v. Croson*.

C. *Definitions.* The following words, terms and phrases, when used in this division shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Bona fide resident of the District" means a person whose legal and actual residency is within the borders of Cook County.

2. "Certified" or "certification" means registration of the Minority Business Enterprises or Women's Business Enterprise status of a business in Cook County's Directory of Minority Business Enterprises, Women's Business Enterprises and Disadvantaged Business Enterprises ("PCE Directory").
3. "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor. The contractor must perform a distinct element of work which the business has the skill and expertise to perform and have the responsibility of actually performing, managing and supervising such element of work.
4. "Contract Compliance Administrator" (CCA) means the Contract Compliance Administrator of Cook County.
5. "Contractor" means any person or business entity that bids on or enters into a Contract with the District, and includes all partners and all joint ventures of such person or entity.
6. "Controlled", for purposes of determining whether a business is a minority business enterprise or women's business enterprise, means the minority or the female owner shall:
  - a. Possess and exercise the legal authority and power to manage business assets, good will and daily operations of the business; and
  - b. Actively and continuously exercise such managerial authority and power in determining the policies and directing the daily operations of the business. If the owners who are not minorities or females are disproportionately responsible for the operation of the business, then the business is not controlled by minorities or females.
7. "District contracts" means any contract, purchase order or agreement (other than a lease or collective bargaining agreement):
  - a. Where the cost is to be paid from funds belonging to or administered by the District, including such funds subject to Federal reimbursement or which requires that monies be paid to the District; and
  - b. That is Board-valued at more than \$25,000.00.
8. "Joint venture" means an association of two or more businesses formed to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skills and knowledge.
9. "Minority Business Enterprise" (MBE) means a certified participating business at least 51 percent of which is owned and controlled by one or more members of one or more minority groups or, in the case of a publicly held corporation, 51 percent of the stock is owned by one or more members of one or more minority groups and whose daily business operations are controlled by one or more such individuals. A minority group member is an individual who is one of the following:

- a. African-American or Black (persons with origins in any of the Black racial groups of Africa);
  - b. Hispanic American (persons of Spanish culture with origins from Puerto Rico, Mexico, Cuba, South or Central America, Spain, Portugal, or the Caribbean Islands regardless of race);
  - c. Native American (American Indian);
  - d. Asian Pacific American (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian subcontinent); or
  - e. Any other ethnically or racially identifiable group found by the Contract Compliance Administrator to have suffered actual racial or ethnic discrimination resulting in a competitive disadvantage or decreased opportunities to do business with the District.
10. "Owned" means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risks and profits commensurate with the degree of ownership interest.
  11. "Participating business" means a business located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State (the "Six-County Region") that has the majority of its regular, full-time work force located within the Six-County Region and/or a business which has been placed on the vendors list maintained by the Purchasing Agent and/or has bid on or sought District work.
  12. "Program" means the Minority and Women Owned Businesses Enterprise Program established herein.
  13. "Protected Class Enterprise" (PCE), for the purposes of this Program, shall mean those businesses qualifying under the definitions of Minority Business Enterprise and Women's Business Enterprise contained in this section.
  14. "Purchasing Agent" means the Purchasing Agent of the District.
  15. "Women's Business Enterprise" (WBE) means a certified participating business at least 51 percent of which is owned and controlled by one or more women, or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women and whose daily business operations are controlled by one or more such individuals. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws.

D. *Staffing and Responsibilities for Affirmative Action.*

1. *Contract Compliance Committee.* The members of the District Board shall elect, from the Board membership, a Contract Compliance Committee ("CCC") which shall consist of seven members of the District and which shall hereinafter become and remain a permanent Standing Committee of the District Board.
2. *Contract Compliance Administrator.*
  - a. The provisions of this division and the affirmative action/procurement program ("program") established hereunder shall be administered, supervised and monitored by a Contract Compliance Administrator ("CCA") and staff.
  - b. The Contract Compliance Administrator's duties shall include (but not be limited to) the following areas:
    - (i) Devising a certification procedure to assure that businesses taking advantage of this division are legitimate minority-owned or female-owned businesses.
    - (ii) Maintaining a list of all bona fide, certified businesses.
    - (iii) Recommending guidelines and regulations for the use of Protected Class Enterprise participation procedures which shall be approved by the Contract Compliance Committee prior to submission to the District Board. These guidelines shall include, but shall not be limited to, definition of goals; conditions warranting and limiting waivers; and establishment of procedures for participation in the program.
    - (iv) Recommending enforcement procedures which shall be approved by the Contract Compliance Committee prior to submission to the District Board, whereby the Committee may recommend to the District's Legal Department that the District exercise its legal remedies to ensure reasonable and timely progress toward established goals and to prevent prime contractors from engaging in any practices through which they qualify for protected participation on the basis of misrepresentation of subcontracts or qualifications of subcontractors.
    - (v) Insuring the District's conformance with Federal and State affirmative action and equal employment opportunity laws and regulations.
    - (vi) Participating in all purchasing, bidding, and awards processes.
    - (vii) Participating in all precontract conferences.
    - (viii) Maintaining liaison with community groups.
    - (ix) Investigating affirmative action complaints, and reporting findings to the Contract Compliance Committee for presentation to the District Board.

- (x) Maintaining liaison with contractor, professional, and supplier groups and associations.
  - (xi) Providing technical assistance to appropriate District departments, offices, and divisions in drawing specifications to include opportunities for minority- and women-owned businesses.
  - (xii) Generating publicity, through media appearances and public speaking engagements, to provide information and clarification about the program to as broad-based an audience as possible.
  - (xiii) Recommending measures for revision and updating of the program as the need is indicated.
- c. Various parts of this program require information on the District's business and contracting activities be widely disseminated throughout the protected class community.
3. *Purchasing Agent.* The Purchasing Agent shall take whatever steps are necessary to ensure that the purchasing staff views the implementation of this division as a priority. The Purchasing Agent shall report quarterly to the Contract Compliance Administrator on the status of the program and shall be responsible for the following duties:
- a. A listing of minority vendors and suppliers shall be prepared by the Purchasing Department and continually updated. This listing may use, but shall not be limited to, the County's Protected Class Enterprise Directory; and updating of this list should be forwarded to the Contract Compliance Administrator;
  - b. All new vendors on this list shall be forwarded bidders list forms and instructions; these forms and instructions shall also be distributed to protected class vendors at conferences and workshops;
  - c. All Protected Class Enterprise vendors who complete the bidders list forms shall become part of the bidders list and shall be sent notice of upcoming bids related to the Protected Class Enterprise's business at the same time that such notice is sent to all prospective bidders;
  - d. All Protected Class Enterprise vendors who become part of the bidders list shall have their records coded so that the vendor's history kept by the Purchasing Department will show a monthly accounting of Protected Class Enterprise purchases which can be reviewed by the Contract Compliance Administrator;
  - e. All staff in the Purchasing Department shall take part in periodic training, with respect to making purchases from protected class companies; the Contract Compliance Administrator shall be consulted by the Purchasing Agent with regard to these training efforts and shall monitor both the training content and procedures;

- f. The Purchasing Agent, in conjunction with the Contract Compliance Administrator, shall set up procurement "best effort" guidelines for the various members of the procurement staff; these guidelines shall set the standards by which Purchasing Department staff will seek to make purchases from protected businesses; they shall also serve as a measure for the compliance review of the department with respect to the protected class program; these "best effort" guidelines shall include, but shall not be limited to, the following:
  - (i) Assist in identifying protected class suppliers and/or vendors located in greater Cook County area, by product or service line, and assessing their present capability and long-term business potential with the District.
  - (ii) Aggressively pursue protected class suppliers, seeking out qualified and qualifiable protected class businesses in deliberate outreach efforts.
  - (iii) Review expected purchases on a continuous basis with the aim of matching potential protected class vendors and projected needs.
  - (iv) Arrange meetings with management of vendors, and make facility visits where appropriate.
  - (v) Provide information to potential protected class suppliers regarding the District's purchasing policies and requirements.
  - (vi) Provide information to protected class suppliers or vendors regarding the District's competitive standards and prices.
  - (vii) Maintain accurate recordkeeping of all efforts and actual purchases made from protected class companies.

E. *Application of Division.* This division shall be applied to all District contracts, including those contracts under which there are residency qualifications, except to the extent it may be inconsistent with any applicable State or Federal statute, regulation or program.

F. *Program Goals.*

- 1. In fulfillment of its policy to promote equal opportunity in its procurement process, the District establishes the goal that Protected Class Enterprises shall participate in not less than 35 percent of the annual aggregate value of all contracts awarded by the District. District procurement personnel will make their best efforts to recruit and solicit bids and make purchases from qualified Protected Class Enterprises.
  - a. Not less than 25 percent of the annual total dollar amount of District contracts will be established as a goal to be awarded to Minority Business Enterprises.
  - b. Not less than ten percent of the total dollar amount of District contracts, will be established as a goal to be awarded to Women's Business Enterprises.

- c. The above stated percentages relate to the total dollar amount of District contracts during each fiscal year calculated by examining independently each type of contract.
- 2. The District shall comply with all applicable Federal and State policies requiring affirmative action to increase the employment opportunities of minority and female workers on its construction projects.
- 3. No goal shall be treated as a quota nor shall it be used to discriminate against any person or business enterprise on the basis of race, color, national origin, religion or sex.

*G. Implementation.*

*1. Contract Goals.*

- a. To achieve the goals stated in Section 1-8-5a(F), the Purchasing Agent, except as provided in Subsection (1)(b) of this section, shall include in the bid specifications a requirement that each contractor commit that Minority Business Enterprise and Women's Business Enterprise participation in the contract will equal at least 25 percent and ten percent, respectively, of the total dollar value of the contract.
- b. The Contract Compliance Administrator shall evaluate the applicability of the Minority Business Enterprise and Women's Business Enterprise goals to a specific contract. Where the Contract Compliance Administrator, in consultation with the Purchasing Agent and the user Departments, determines that the established goals are not appropriate for a specific contract because of its particular requirements, the Contract Compliance Administrator shall set an appropriate goal for the contract, based upon the availability of Protected Class Enterprises which are capable of providing the goods and/or services required by the particular contract, the past level of Protected Class Enterprise participation in similar contracts, the specifications of the contract and any other criteria adopted by the Contract Compliance Administrator.
- c. The applicable goals for a specific contract shall be designated in the contract specifications.

*2. Contractor Responsibility and Requirements.*

- a. As a precondition to selection, each contractor shall submit with its bid a completed and signed utilization plan which lists the names, addresses and contact persons of businesses intended to be used as Protected Class Enterprises on the contract, the type and scope of work or service each business will perform and the dollar amount to be allocated to each Protected Class Enterprise. Such listing shall not be duplicative (e.g., two or more entities each listed as performing 100 percent of the same work or service). Within three business days following submission of bids, a bidder shall submit its letters of intent to Protected Class Enterprises listed on its utilization plan, provided that no substitutions shall be permitted prior to bid award. Each contractor's utilization plan shall commit to Protected Class Enterprise participation equal to or greater than each of the applicable Protected Class

Enterprise goals, unless the contractor requests a partial or total waiver of the requirement that it file a utilization plan or achieve a particular goal for Protected Class Enterprise participation by submitting with the filing of its bid a signed waiver request form.

- b. Notwithstanding its compliance with any other requirement of District ordinances and contract specifications, no bidder or offeror shall be awarded an eligible contract unless the Contract Compliance Administrator has approved its utilization plan or granted a waiver on the contract. Such utilization plan shall be designed to meet the applicable Minority Business Enterprise and Women's Business Enterprise goals set for such project and shall be incorporated into the contract.
- c. A contractor may achieve the applicable Protected Class Enterprise goals by its status as a Protected Class Enterprise or by joint venture with one or more Protected Class Enterprises or by subcontracting a portion of the work to one or more Protected Class Enterprises or by purchase of materials or services from one or more Protected Class Enterprises or by the indirect participation of Protected Class Enterprises in other aspects of the contractor's business such as through a Mentor/Protégé agreement as provided herein (in accordance with applicable guidelines and provided that such Protected Class Enterprise indirect participation may not be credited toward goal attainment on more than one contract subject to this article) or by any combination of the above, subject to the following guidelines:
  - (i) *Joint ventures.* Where a contractor engages in a joint venture to satisfy its affirmative action commitment, the Contract Compliance Administrator shall review the profits and losses, initial capital investment, actual participation of the joint venture partners in the performance of the contract, and other pertinent factors to determine the amount of credit to be granted for the joint venture toward attainment of the applicable Minority Business Enterprise and Women's Business Enterprise goals. The Contract Compliance Administrator may review all records pertaining to joint venture agreements before or after the award of a contract in order to assess compliance with this article. A contractor shall receive credit towards achievement of the applicable goals in proportion to the percentage of the contract to be performed by the Protected Class Enterprise, provided that the Contract Compliance Administrator may deny or limit Protected Class Enterprise credit to a contractor where the Protected Class Enterprise joint venture partner is found not to be performing a commercially useful function or not to have duties, responsibilities, management control or risk with respect to the joint venture commensurate with or in proportion to its joint venture ownership.
  - (ii) *Subcontracts.* A contractor may count toward its Protected Class Enterprise goals only expenditures to Protected Class Enterprises that perform a commercially useful function in the performance of a contract for work actually performed or materials supplied by the Protected Class Enterprise. To determine whether a Protected Class Enterprise is performing a commercially useful function, the Contract Compliance Administrator may evaluate the amount of work subcontracted, industry practices, whether the Protected Class Enterprise has the skill and experience to perform the work for which it is being utilized and other relevant factors. Consistent with

normal industry practices, a Protected Class Enterprise subcontractor may enter into second tier subcontracts. However, if a Protected Class Enterprise contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the Minority Business Enterprise or Women's

Business Enterprise shall be presumed not to be performing a commercially useful function.

- (iii) *Manufacturers and suppliers.* Where a contractor utilizes one or more suppliers to achieve its Protected Class Enterprise goals, such Protected Class Enterprise supplier participation may be 100 percent credited toward goal attainment where the Protected Class Enterprise supplier manufactures the goods supplied or where such Protected Class Enterprise supplier owns or operates a store, warehouse or other establishment (and related distribution equipment) in which it maintains, consistent with industry standards, an inventory of the materials or supplies required for performance of the contract for sale in the normal course of business. The participation of a Protected Class Enterprise supplier who acts as a broker (i.e., who performs no manufacturing or warehousing) shall be credited toward the applicable Protected Class Enterprise goals at a rate equal to ten percent of the payments to such Protected Class Enterprise broker.
- (iv) *Protected Class Enterprise prime contractors or joint ventures.* A Minority Business Enterprise or Women's Business Enterprise contractor may count its own participation toward the achievement of the applicable Minority Business Enterprise or Women's Business Enterprise goal, respectively, but such a contractor will be required to meet all other applicable goals by joint ventures, subcontracting or purchase of materials or services. Where a contractor is a business owned and controlled by minority women ("M/WBE") or where the contractor utilizes a M/WBE in a joint venture, as a subcontractor or a supplier, the contractor may count the M/WBE participation either toward the achievement of its Minority Business Enterprise or Women's Business Enterprise goal but not both.
- (v) *Mentor/protege agreements.* Where a contractor enters into a written agreement ("mentor/protégé" agreement) with a Protected Class Enterprise to improve or develop certain aspects of the business of the Protected Class Enterprise, such an agreement may be evaluated by the Contract Compliance Administrator to assess appropriate credit toward the Protected Class Enterprise goals of the contractor. The contractor and Protected Class Enterprise shall remain separate and independent business entities under the agreement. The mentor/protege agreement may provide for the contractor to assist the Protected Class Enterprise in such areas as technical aspects of its business, improving financial management, or providing on-the-job training. No such credit shall be available unless:
  - (1) The Protected Class Enterprise provides a commercially useful function in the performance of its agreement with the contractor;

- (2) The agreement is in writing and is submitted to the Contract Compliance Administrator before the award of the contract; and
- (3) The agreement clearly defines the respective responsibilities of the contractor and the Protected Class Enterprise and includes specific, measurable goals to be attained by both parties through the performance of the agreement. Upon recommendation by the Contract Compliance Administrator, the Contract Compliance Committee shall determine the amount of credit to be counted toward the applicable goals of this division. The Contract Compliance Administrator shall require the contractor to submit periodic reports summarizing the progress of the execution of the mentor/protege agreement, and shall notify both parties of any deficiencies in performance. In order to qualify for credit, the mentor/protege agreement must coincide in duration with, or not be for a shorter length of time than, the contract between the contractor and the District.

- d. Where a contractor seeks relief from all or part of a contract's goals, the contractor shall submit with its bid a proposal or request for a waiver.
- e. A contractor's submission of a utilization plan which commits to a Protected Class Enterprise participation goal equal to or greater than the applicable goals shall not provide a basis for a higher bid, an increase in contract price or later change order.

3. *Review of Bid or Offer.*

- a. The Contract Compliance Administrator shall review each bid or offer to determine if the contractor has included in its submission a completed and signed utilization plan which meets the Protected Class Enterprise goals for the contract, and approve or reject the plan.
- b. The Purchasing Agent, at the direction of the Contract Compliance Administrator, shall declare the bid or offer nonresponsive where the Contract Compliance Administrator determines that a contractor:
  - (i) Failed to submit with its bid a completed utilization plan;
  - (ii) Failed to identify in its plan sufficient Minority Business Enterprises and/or Women's Business Enterprises by name, scope of work and dollar value of work to meet the applicable goals for the contract; or
  - (iii) Failed to submit with its bid a request for a total or partial waiver of the applicable goals.
- c. Where a partial or total request for waiver of a goal is made, the Contract Compliance Administrator shall determine whether a bidder or offeror has made good faith efforts to meet the applicable Protected Class Enterprise goals and whether a total or partial waiver of a goal should be granted. Good faith efforts, as defined herein, shall include, but are not limited to, the following:

- (i) Attend any prebid conference conducted by the District to acquaint contractors with Protected Class Enterprises available to provide relevant goods and services and to inform Protected Class Enterprise's of subcontract opportunities on the contract;
- (ii) Review lists of available Protected Class Enterprises maintained by the District, County and other State and local governments and agencies prior to the bid opening to identify qualified Protected Class Enterprises for solicitation for bids;
- (iii) Advertise, not less than 15 calendar days before the bid opening date, in one or more daily newspapers and/or trade publications, for bids by Protected Class Enterprises for subcontracts or the supply of goods and services on the contract;
- (iv) Make timely written solicitations of available Protected Class Enterprises identified on the District and County's list as providing relevant services for bids for subcontracts or the supply of goods and services; and provide Protected Class Enterprises with a convenient and timely opportunity to review and obtain relevant plans, specifications or terms and conditions of the contract to enable such Protected Class Enterprises to prepare an informed response to a contractor solicitation;
- (v) Divide total contract requirements into small tasks or quantities and adjust performance bond and insurance requirements or otherwise assist Protected Class Enterprises in obtaining the required bonding, insurance or financing, where economically feasible, to encourage participation of Protected Class Enterprises;
- (vi) Follow up initial solicitation of Protected Class Enterprises by contacting Protected Class Enterprises to determine if the enterprises are interested in making bids;
- (vii) Negotiate in good faith with Protected Class Enterprises prior to the bid opening and do not reject as unsatisfactory any bids submitted by Protected Class Enterprises without justifiable reason;
- (viii) Establish delivery schedules, where the requirements of the work permit, which will encourage participation by Protected Class Enterprises;
- (ix) Establish joint ventures with Protected Class Enterprises;
- (x) Use the services and assistance of the Contract Compliance Administrator's staff, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce and where the contractor seeks a waiver, make timely notice of the need for Protected Class Enterprise subcontractors to an appropriate community and minority and women's business organization identified as an assist agency with respect to this article.

- d. A contractor seeking a total or partial waiver shall, in accordance with guidelines issued by the Contract Compliance Administrator, be required to submit evidence of its good faith efforts to achieve the applicable Protected Class Enterprise goals and in support of its reasons for seeking a waiver. Performance of all the actions set out in Subsection (G)(3) of this section by the contractor shall create a rebuttable assumption that the contractor has made good faith efforts to meet the applicable Protected Class Enterprise goals. The determination of the adequacy of a contractor's good faith efforts will be evaluated on the basis of the contractor's actions as of the date of the bid opening.
- e. The Contract Compliance Administrator may grant the waiver request of a contractor based upon the following criteria:
  - (i) Sufficient qualified Protected Class Enterprises capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the contractor;
  - (ii) The specifications of and the reasonable and necessary requirements for performing the contract make it impossible or economically infeasible to divide the contract into sufficiently small tasks or quantities to enable the contractor to utilize Protected Class Enterprises in accordance with the applicable utilization goals;
  - (iii) The price quoted by any potential Protected Class Enterprise source of goods or services is more than ten percent above competitive levels; and
  - (iv) Any other factor determined to be relevant by the Contract Compliance Administrator.
- f. Where a partial waiver is granted, the Contract Compliance Administrator shall specify the amount of the applicable goal.
- g. Where the Contract Compliance Administrator determines that a contractor has not made a good faith effort to meet the applicable goals and/or comply with the provisions herein, including, but not limited to, failing to timely submit the required letters of intent or other information request and/or has not otherwise met the requirements for a total or partial waiver, the Purchasing Agent may declare the contractor nonresponsive and reject the bid and reject any waiver request which may have been filed.
- h. Where the Contract Compliance Administrator determines that the utilization plan submitted by a contractor is false or fraudulent, the Purchasing Agent shall reject the bid or, if such a determination is made after the bid award, the contract may be forfeited and canceled.

4. *Subcontract Requirements.* Within 30 days after demand, the prime contractor shall furnish fully executed copies of all protected class subagreements and these shall be reviewed by the Contract Compliance Administrator and submitted to the Contract Compliance Committee of the District Board. Subsequently, the prime contractor shall obtain and submit a copy of all Minority Business Enterprise or Women's Business Enterprise related subtier contracts on demand.
  
5. *Review of Contract Performance.*
  - a. The Contract Compliance Administrator shall review the contractor's efforts during the performance of the contract to achieve its Protected Class Enterprise commitments as stated in its utilization plan. If the contractor meets or exceeds its stated goals, it shall be presumed to be in compliance. Where the Contract Compliance Administrator finds that the contractor has failed to achieve its stated goals or otherwise has failed to comply with the requirements of the division, including failure to provide any documentation required by the Contract Compliance Administrator, has not satisfactorily demonstrated good faith efforts, and/or has deviated without authorization from the compliance related portions of the contract as originally approved, the Contract Compliance Administrator shall report findings to the Contract Compliance Committee.
  
  - b. The Contract Compliance Administrator may establish such requirements for periodic periodic contractor reporting on the fulfillment of its goals and its utilization of Protected Class Enterprises as the Contract Compliance Administrator determines appropriate and necessary for effective enforcement of this division. A contractor also shall be required to provide the Contract Compliance Administrator any additional requested compliance documentation within 14 days of such request.
  
  - c. If the Contract Compliance Committee determines that the contractor has failed to comply with its contractual commitments or any portion of this division, the Contract Compliance Committee will notify the contractor of such noncompliance and may take any of the following actions:
    - (i) Instruct the Comptroller to withhold 50 percent of the current progress payment due the prime contractor.
  
    - (ii) Withhold up to 100 percent of further progress payments until the contractor demonstrates that it is in compliance with the requirements of this division.
  
    - (iii) Debar the contractor from future bids or offers until the contractor demonstrates that it is in compliance with the requirements of this division.
  
6. *Protected Class Enterprise Bid and Target Market Programs.* To address more specifically the barriers to Protected Class Enterprise participation as prime contractors in District work, the Contract Compliance Administrator may direct the Purchasing Agent to institute the following special Protected Class Enterprise bidding provisions, following determination of the appropriateness of such provisions.

- a. In connection with the award of a contract subject to competitive bidding on which a Protected Class Enterprise has bid and where the Protected Class Enterprise meets the following criteria:
- (i) It is bidding on the item in question for the first time; and
  - (ii) It never has successfully bid on a Forest Preserve District of Cook County purchasing contract, the Contract Compliance Administrator may, at the opening of the bids on the item, compare the Protected Class Enterprise bid with the lowest bid, and, if the Protected Class Enterprise's bid is closely competitive as defined by guidelines to be established by the Contract Compliance Administrator with that of lowest actual bids, direct the Purchasing Agent to declare the Protected Class Enterprise the successful bidder. A Protected Class Enterprise may use this procedure only once to become the successful bidder on any particular item. Thereafter, the Protected Class Enterprise must be totally competitive in terms of price to be the successful bidder.
- b. The Contract Compliance Administrator shall develop and coordinate a target market program as follows:
- (i) The Contract Compliance Administrator shall review the availability of Protected Class Enterprises providing various goods and services and shall identify for inclusion in a potential program for bidding among Protected Class Enterprise firms certain commodity areas with sufficient Protected Class Enterprise availability to ensure that the County receives a competitive price. The Contract Compliance Administrator shall report his/her findings and recommendations to the Contract Compliance Committee;
  - (ii) Upon a determination by the Contract Compliance Committee that such a program is advisable for any particular commodity procurement, the Contract Compliance Administrator will institute the following procedures:
    - (1) The Contract Compliance Administrator will notify the Purchasing Agent of identification of those commodity codes appropriate for a target market program;
    - (2) To the extent practicable, the Purchasing Agent, with the aid of the Contract Compliance Administrator, shall divide procurement in the designated commodity areas into economically feasible sizes to facilitate bids or offers from Protected Class Enterprises and shall designate contracts to be offered under the target market program;
    - (3) The Purchasing Agent shall offer Protected Class Enterprises the opportunity to bid on such contracts in a limited competition;

- (4) All standard District rules for bidding will then become effective and, provided that at least three Protected Class Enterprises bid or make an offer on the contract, the lowest responsive and responsible bidder among the Protected Class Enterprise firms will receive the contract;
  - (5) In the event less than three Protected Class Enterprises bid or make an offer on the contract or if there is no responsive bid or offer received from a responsible Protected Class Enterprise, the Purchasing Agent shall rebid the contract not subject to the target market program.
    - (ii) Participation in the target market program shall be limited to Minority Business Enterprises, Women's Business Enterprises and joint ventures consisting exclusively of Minority Business Enterprises, Women's Business Enterprises or both. The Protected Class Enterprise contractor on a target market contract may subcontract up to 50 percent of the dollar value of the target market contract to subcontractors who are not Minority Business Enterprises or Women's Business Enterprises.
7. *Fifty Percent Protected Class Enterprises Required for Informal Bid Solicitations.* All buyers shall solicit 50 percent PCEs in their informal bid solicitations for materials under \$10,000.00, which are not bid by formal advertising.
8. *Buyers to Use Protected Class Enterprises in Requisitions.* All buyers will make every effort to use *Protected Class Enterprises* whenever possible in their requisitions for materials under \$10,000.00, which are not bid.
9. *Division of Large Contracts to Facilitate Offers from Protected Class Enterprises.* With respect to large contracts for which subcontracting possibilities are impracticable, all buyers will, to the extent practicable, divide such contracts into economically feasible sizes to facilitate bids or offers from *Protected Class Enterprises*.
10. *Technical Assistance.* The contractor is bound by all the requirements, terms, and conditions of this article. Subsequent to the acceptance of an awarded contract, there will be no waiver of the requirements, terms and conditions. The District Board, through its Contract Compliance Committee and the Contract Compliance Administrator, will make technical assistance in meeting the terms and conditions of this article available to all interested bidders.
11. *Finance; Measures for Reduction of Cash Flow Problems of Protected Class Contractors.*
  - a. As needed, the Contract Compliance Administrator shall assist *Protected Class Enterprises* with training seminars in the technical aspects of preparing a bid for a District contract.

- b. All prime contractors shall be urged to follow the District's example by making prompt and timely payments to Protected Class Enterprise subcontractors working on Forest Preserve District of Cook County projects. The timeliness of such payments shall be monitored by the Contract Compliance Administrator on a regular basis, and an investigation shall be made of every complaint or charge of excessive delay in payment. Reports of these investigations shall be made to the Contract Compliance Committee and to the District Comptroller.
  - c. If at any time during the progress of the work, the contractor shall fail or neglect to pay a Protected Class Enterprise subcontractor for any labor performed, furnished, or tools, machinery, appliances, fuels, provisions or supplies of any sort or kind used or consumed upon, in or on account of the work for ten days after payment for same shall become due, then the County shall have the power and authority to pay such indebtedness, and the amount so paid shall be retained out of the money due or to become due the contractor. The District Comptroller may refuse to make the payment hereinafter specified to the extent of such indebtedness, until satisfactory evidence in writing has been furnished that the indebtedness has been discharged. In any such case, the Purchasing Agent is hereby authorized and empowered by the contractor to ascertain the amount due or owing from the contractor to any laborer or laborers, or to any person or persons, or corporation, for labor, equipment, material, tools, machinery, appliances, provisions, fuels, or supplies of any sort or kind consumed upon, in or on account of the work covered by this contract in such manner and upon such proofs as may be deemed sufficient.
  - d. The District Board shall encourage major prime contractors to make available to Protected Class Enterprise subcontractors working on their projects their sources of financial assistance.
12. *Contract Award Considerations.* Where the lowest responsive contractor submits a bid/offer which exceeds by ten percent or more the bid/offer of the lowest PCE nonresponsive contractor ["PCE nonresponsive" for purposes of this subsection means nonresponsive pursuant to Subsection (G)(3)(b) of this section, but otherwise responsive to the contract specifications], the District shall have the right to reject all bids/offers and rebid or request further offers.
13. *Intergovernmental Agreement Between District and County.* The Forest Preserve District of Cook County shall provide staff and/or reimbursement to Cook County as set out in an intergovernmental agreement for the Contract Compliance Administrator of Cook County to also act as the Contract Compliance Administrator for the Forest Preserve District of Cook County.

H. *Professionals and Consulting Services and Sole Source Agreements.* All Department heads who may employ the professional services of accountants, attorneys, physicians, dentists, statisticians, data analysts, engineers, and other such personnel or who require goods or services procured through sole source agreements shall implement this article and compliance programs in a "best effort" manner. In lieu of the requirements set forth in Section (G)(2), all providers of such professional services or goods or services are to be notified that:

1. In the case of term contracts (annually or for more than six months), they are to maximize the use of Protected Class Enterprises or individuals as subconsultants or subcontractors.
2. In the case of contracts instituted on an as-needed basis or lasting less than six months, they are to submit to the District affirmative action plans and goals and maximize the number of women and minority professionals in their firm who participate in various District projects.
3. In both of the above cases the internal affirmative action plans and goals of the providers shall be submitted to the Contract Compliance Administrator and shall be reviewed against the provider's actual affirmative action achievements and shall become a part of the provider's protected class compliance review; this twice yearly review by the Contract Compliance Administrator shall become a factor in the District's continued use of the services of providers.
4. The District sets a "best efforts" goal of 35 percent Protected Class Enterprise participation for the total professional services and consulting services utilized by the District. The District must be able to call upon those professionals whose particular training and experience most closely fit our needs. The District shall endeavor to increase utilization of protected class firms. Because use of such services is not programmed or predictable, a "best effort" standard shall be used for attainment of the goal amounts.

I. *Other Federal and State Regulations.* Nothing in this division shall be interpreted to diminish or supplant equal employment opportunity requirements contained in Federal or State grant funded contracts.

J. *Preference to Residents of County.* In addition to the goals established pursuant to Section 1-8-5a(F), there is established as a goal that on any contract approved by the District Board there will be utilization of at least 50 percent bona fide Cook County residents and 30 percent minorities in each trade for each project awarded by the District and in the aggregated workforce in each project five percent will be females.

K. *Preference to Service-Disabled Veteran Businesses.*

1. *Definitions.* For the purposes of this section:

- a. The term "service-disabled" means, with respect to disability, that the disability was incurred or aggravated in the line of duty in the active service in the United States Armed Forces;
- b. The term "service-disabled veteran" means a veteran who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable, with a disability that is service-connected, such that the disability was incurred or aggravated in the line of duty in the active military, naval, or air service;
- c. The term "service-disabled veteran business" means a small business concern owned and controlled by service-disabled veterans such that:

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- d. The term "small business concern" shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.
- 2. In addition to the goals established pursuant to Section 1-8-5a(F), there is established as a goal that on any contract approved by the District Board there will be utilization of at least three percent service-disabled veteran businesses of the annual aggregate value of all contracts awarded by the District.
  - 3. District procurement personnel will make their best efforts to recruit and solicit bids and make purchases from qualified service-disabled veteran businesses.
  - 4. The above-stated percentage relates to the total dollar amount of District contracts during each fiscal year calculated by examining independently each type of contract.
  - 5. The above-stated goal shall not be treated as a quota nor shall it be used to discriminate against any person or business enterprise on the basis of race, color, national origin, religion or sex.

L. *Reporting and Review.* The District Board directs the Contract Compliance Administrator to report to the District Board on a quarterly basis with respect to the following:

- 1. The level of Protected Class Enterprise participation achieved in each quarter in District contracts subject to this division , including monthly payment status reports for prime contractors for said contracts;
- 2. The then current estimated availability of *Protected Class Enterprises* to perform District contracts;
- 3. An evaluation of the effectiveness of the article in ensuring full and equitable participation by *Protected Class Enterprises* in District contracts and in mitigating the competitive disadvantage suffered by Minority Business Enterprises and Women's Business Enterprises due to the present effects of discrimination in the local economy and award public contracts;
- 4. An assessment of the continuing need for utilization goals for specific types of goods and services used in District contracts;
- 5. Identification of any enforcement problems; and

6. Any recommendations with respect to improving the District's effectiveness in remedying the effects of discrimination against Minority Business Enterprises and Women's Business Enterprises and/or discontinuing or modifying any affirmative action requirements in those cases where Minority Business Enterprises and Women's Business Enterprises no longer are disadvantaged by the effects of discrimination in their participation in District contracts.

**1-8-5b: SUBDIVISION II. CONSTRUCTION ORDINANCE**

A. *Title.* This subdivision shall be known as the "Minority- and Women-Owned Business Enterprise Construction Ordinance" and may be cited as such.

B. *Findings of discrimination.* The President and the Board of Commissioners of the Forest Preserve District of Cook County, after considering (i) evidence presented at trial in *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) and *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005);(ii) the Report titled, "The Status of Minority- and Women Owned Business Enterprises Relevant to Construction Activity In and Around Cook County, Illinois," submitted by Colette Holt & Associates, and NERA Economic Consulting, and dated June 22, 2010 (the "NERA Study"); adopts the following findings as a strong basis in evidence supporting a narrowly tailored, remedial affirmative action program in County construction contracting:

1. The District seeks to provide a level playing field and equal access for all prime contractors and subcontractors to participate in District construction contracting opportunities;
2. After Cook County's affirmative action program as it relates to construction projects was declared unconstitutional in 2000, the County witnessed a drastic reduction in M/WBE construction prime contract and subcontract participation;
3. In the absence of M/WBE participation goals the District would be a passive participant in a discriminatory marketplace;
4. The NERA Study made recommendations for a revised County Minority and Women owned business program for construction contracting, emphasizing the establishment of Project-specific goals, implementation of race and gender neutral measures, and enhancements to data gathering, implementation and performance monitoring of the program, which the District will use as a model;
5. The District has a compelling interest in preventing discrimination and desires to reaffirm its commitment to full and fair opportunities for all firms to participate in its construction contracts.

C. *Public Purpose.* It is hereby found, determined and declared that the purpose of this Ordinance is to ensure the full and equitable participation of Minority- and Women-Owned Business Enterprises in the District's procurement process as both prime and subcontractors in the District's construction contracts. The District is committed to a policy of preventing discrimination in the award of or participation in construction contracts and has recommended appropriate narrowly tailored remedies to eliminate any such discrimination.

D. *Applicability.* This subdivision shall apply to all construction contracts funded in whole or in part by County funds, regardless of the sources of other funds; provided that any contract with respect to which a goal for Minority-Owned Business Enterprise or Women-Owned Business Enterprise participation is inconsistent with or prohibited by State or Federal law shall be exempt from the goals included in this subdivision.

E. *Definitions.* The following terms shall have the following meanings:

1. "Affiliate of a person or entity" means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the District shall consider all appropriate factors, including common ownership, common management, and contractual relationships.
2. "Annual Participation Goals" mean the targeted levels established by the District for the annual aggregate participation of MBEs and WBEs in District construction contracts.
3. "Business" means a sole proprietorship, partnership, corporation, limited liability company Joint Venture or any other business or professional entity.
4. "Certified Firm" means a firm that has been accepted by the District as a certified MBE or WBE.
5. "Contractor" means any Business that seeks to enter into a construction contract with the District, other than for professional services, and includes all partners and Affiliates Business.
6. "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner.
7. "Director" or "CC Director" means the Contract Compliance Director.
8. "District" means the Forest Preserve District of Cook County and its participating User Departments.
9. "District's Marketplace" means the Metropolitan Statistical Area for Chicago, as established by the Bureau of the Census, currently the counties of Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry and Will.
10. "Doing Business" means having a physical location from which to engage in for profit activities in the scope(s) of expertise of the Business.
11. "Economically Disadvantaged" means an individual with a Personal Net Worth less than \$2,000,000.00 indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2011.
12. "Expertise" means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the Business as defined by normal industry practices, including licensure where required.

13. "Good Faith Efforts" means actions undertaken by a Contractor to achieve an MBE or WBE goal, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's goals.
14. "Joint Venture" means an association of two or more Businesses proposing to perform a for profit business enterprise. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.
15. "Local Business" means a Business located within the District's Marketplace which has the majority of its regular, full time work force located within the District's Marketplace.
16. "Local Small Business" means a Local Business which is also a Small Business.
17. "Manufacturer" means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
18. "Minority Business Enterprise (MBE)" means a Business:
  - a. Which is at least 51 percent owned by one or more Minority Individuals, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals;
  - b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more Minority Individuals;
  - c. Which performs a Commercially Useful Function;
  - d. Which is a Certified Firm; and
  - e. Which is a Local Small Business.
19. "Minority Individual" means:
  - a. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
  - b. Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American;
  - c. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or
  - d. Asian-Americans, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent; or

- e. Individual members of other groups, including but not limited to Arab-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 the District's marketplace or to do business with the District.
20. "Owned" means having all of the customary incidents of ownership, including the right of disposition, and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.
21. "Personal Net Worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other District certified MBE or WBE, provided that the other firm is certified by a governmental agency that meets the District's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.
22. "Program" means the Program established by the Minority- and Women- Owned Business Enterprise Ordinance.
23. "Project Specific Goals" means the Goals established for a particular project or contract based upon the availability of MBEs or WBEs in the scopes of work of the Project.
24. "Regular Dealer" means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular Business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.
25. "Small Business" means a small business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the firm seeks to perform on District contracts. A firm is not an eligible small business enterprise in any calendar fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 CFR Part 121.

26. "Socially Disadvantaged" means a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.
27. "User Department" means the department of the District or elected official responsible for initiating the procurement process.
28. "Utilization Plan" means the list of MBEs and WBEs that the Bidder/Proposer commits will be utilized, the scopes of the work and the dollar values or the percentages of the work to be performed.
29. "Woman" means a person of the female gender.
30. "Woman-Owned Business Enterprise" (WBE) means a Business:
  - a. Which is at least 51 percent owned by one or more Women, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Women;
  - b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Women;
  - c. Which performs a Commercially Useful Function;
  - d. Which is a Certified Firm; and
  - e. Which is a Local Small Business.

F. Program Administration.

1. The CC Director, who shall report to the President of the Board of Commissioners of Forest Preserve District of Cook County, shall administer the Program, whose duties shall include:
  - a. Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program.
  - b. Providing information and assistance to MBEs and WBEs relating to District procurement practices and procedures, and bid specifications, requirements, goals and prerequisites.
  - c. Establishing uniform procedures and criteria for certifying, recertifying and decertifying businesses as MBEs and WBEs, accepting certifications by other agencies, and maintaining a directory of Certified Firms.
  - d. Establishing Project Specific Goals in collaboration with the User Department.

- e. Evaluating Contractors' achievement of Project Specific Goals and Good Faith Efforts to meet Project Specific Goals.
  - f. Working with User Departments to monitor contracts to ensure prompt payments to MBEs and WBEs and compliance with Project Specific Goals and commitments, including gathering data to facilitate such monitoring.
  - g. Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
  - h. Collecting data to evaluate the Program and other District contracting initiatives.
  - i. Monitoring the Program and the District's progress towards the Annual Participation Goals. The CC Director shall report on a quarterly and annual basis to the President on the administration and operations of the Program.
2. The User Departments that receive appropriate delegation for project management, contract management, and/or construction and/or design contract responsibility shall have the following duties and responsibilities with regard to the Program:
- a. Assisting the CC Director with setting Project Specific Goals.
  - b. Assisting in the identification of available MBEs and WBEs, and providing other assistance in meeting the Project Specific Goals.
  - c. Performing other activities to support the Program.
  - d. Gathering and maintaining prime contracting and subcontracting data for those contracts which they manage.
  - e. Submitting subcontracting data as required to the CC Director.
3. *Intergovernmental Agreement Between District and County.* The Forest Preserve District of Cook County shall provide staff and/or reimbursement to Cook County as set out in an intergovernmental agreement for the Contract Compliance Administrator of Cook County to also act as the Contract Compliance Administrator for the Forest Preserve District of Cook County.

G. *Race- and Gender-Neutral Measures to Ensure Equal Opportunities for all Contractors and Subcontractors.* The District shall develop and use measures to facilitate the participation of all firms in District construction contracting activities. These measures shall include, but are not limited to:

- 1. Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms;
- 2. Segmenting, structuring or issuing contracts to facilitate the participation of MBEs, WBEs and other Small Businesses;

3. Providing timely information on contracting procedures, bid preparation and specific contracting opportunities;
4. Providing assistance to Businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
5. Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available qualified firms as subcontractors;
6. Adopting prompt payment procedures, including, requiring by contract that prime Contractors promptly pay subcontractors;
7. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the District;
8. Collecting information from all prime Contractors on District construction contracts detailing the bids received from all subcontractors for District construction contracts and the expenditures to subcontractors utilized by prime Contractors on District construction contracts;
9. At the discretion of the District, letting a representative sample of District construction contracts without goals, to determine MBE and WBE utilization in the absence of goals;
10. Maintaining information on all firms bidding on District prime contracts and subcontractors; and
11. Referring complaints of discrimination to the appropriate authority, for investigation.

H. *Program Eligibility.*

1. Only Businesses that meet the criteria for certification as a MBE or WBE may participate in the Program. The applicant has the burden of persuasion by a preponderance of the evidence.
2. Only a firm owned by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.
  - a. The firm's ownership by a Socially and Economically Disadvantaged person must be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.
  - b. The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner(s) to acquire the ownership interest must be real and substantial. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of

work the firm performs and documented in the firm's records. The individual whose Expertise is relied upon must have a commensurate financial investment in the firm.

3. Only a firm that is managed and controlled by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.
  - a. A firm must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged person, from making any business decision of the firm, including the making of obligations or the disbursing of funds.
  - b. The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on management, policy, operations and work.
  - c. The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not Socially and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially and Economically Disadvantaged owner(s) must actually exercise control over the firm's operations, work, management and policy.
  - d. The Socially and Economically Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the firm's operations and work. The Socially and Economically Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.
  - e. If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially and Economically Disadvantaged owner(s) must possess the required license or credential. If state law, District ordinance or other law regulations or statute does not require that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner(s) actually controls the firm.
  - f. A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day to day activities.

4. Only an independent firm may be certified as a MBE or WBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent Business, the CC Director will:
  - a. Scrutinize relationships with non-Certified Firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - b. Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner(s) of the applicant and non-Certified Firms or persons associated with non-Certified Firms compromise the applicant's independence.
  - c. Examine the applicant's relationships with non-Certified Firms to determine whether a pattern of exclusive or primary dealings with non-Certified Firm compromises the applicant's independence.
  - d. Consider the consistency of relationships between the applicant and non-Certified Firms with normal industry practice.
5. An applicant shall be certified only for specific types of work in which the Socially and Economically Disadvantaged owner(s) has the ability and Expertise to manage and control the firm's operations and work.
6. The District shall certify the eligibility of Joint Ventures involving MBEs or WBEs and non-Certified Firms. To be considered an eligible Joint Venture, at least one partner of the Joint Venture must be a Certified Firm, with a share in the capital contribution, control, management, risks, and profits of the Joint Venture which is equal to its ownership interest.. Each Certified Firm partner must contribute property, capital, efforts, skill and knowledge and be responsible for a distinct, clearly defined portion of the work of the contract.
7. In lieu of conducting its own certifications, the CC Director by rule may accept formal certifications by other entities as meeting the requirements of the Program, if the CC Director determines that the certification standards of such entities are comparable to those of the District.
8. The certification status of all MBEs and WBEs shall be reviewed periodically by the Office of Contract Compliance. Failure of the firm to seek recertification by filing the necessary documentation with the CC Director as provided by rule may result in decertification.
9. It is the responsibility of the Certified Firm to notify the CC Director of any change in its circumstances affecting its continued eligibility for the Program, including decertification by another agency. Failure to do so may result in the firm's decertification.
10. The CC Director shall decertify a firm that does not continuously meet the eligibility criteria.

11. Decertification by another agency shall create a *prima facie* case for decertification by the District. The challenged firm shall have the burden of proving that its District certification should be maintained.
12. A firm that has been denied certification or recertification or has been decertified may protest the denial or decertification as provided by rule.
13. A firm found to be ineligible may not apply for certification for six (6) months after the effective date of the final decision.
14. A third party may challenge the eligibility of an applicant for certification or a Certified Firm as provided by rule. Such challenges shall be signed and sworn by the individual challenging the eligibility of an applicant for certification or a certified firm. The burden of proof shall rest with the complainant. Such challenges to eligibility shall be subject to an appeal. The CC Director shall be the final arbiter of all challenges. The presumption that the challenged firm is eligible shall remain in effect until the CC Director renders a final decision.

I. *Annual Aspirational Goals.* The Annual Aspirational Goals for the utilization of MBEs and WBEs on District construction contracts and subcontracts shall be 24 percent for MBEs and four percent for WBEs.

J. *Project Specific Goals.* The CC Director, in consultation with the User Department shall establish Project Specific Goals for construction Contracts based upon the availability of at least three MBEs and three WBEs to perform the anticipated subcontracting functions of the project and the District's utilization of MBEs and WBEs to date.

K. *Counting MBE and WBE Participation.*

1. The entire amount of that portion of a contract that is performed by the MBEs or WBEs own forces shall be counted, including the cost of supplies and materials obtained by the MBE or WBE for the work of the contract, and supplies purchased or equipment leased by the MBE or WBE (except supplies and equipment the MBE or WBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate).
2. The entire amount of fees or commissions charged by a MBE or 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, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
3. When a MBE or WBE performs as a participant in a Joint Venture, 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 is performed by the MBE or WBE with its own forces and for which it is separately at risk, shall be counted.

4. Only expenditures to a MBE or WBE that is performing a Commercially Useful Function shall be counted. To determine whether a MBE or WBE is performing a Commercially Useful Function, the District will evaluate the amount of work subcontracted, industry practices, whether the amount the MBE or WBE 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 MBE or 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 MBE or 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 MBE or WBE participation. If a MBE or 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 perform a Commercially Useful Function. When a MBE or WBE is presumed not to be performing a Commercially Useful Function, the Certified Firm may present evidence to rebut this presumption.
  
5. One hundred percent of the cost of the materials or supplies obtained from a MBE or WBE Manufacturer or Regular Dealer shall be counted. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services.
  
6. If a firm ceases to be a Certified Firm 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.
  
7. In determining achievement of Project Specific Goals, the participation of a MBE or WBE shall not be counted until that amount has been paid to the MBE or WBE.

*L. Contract Pre-Award Compliance Procedures.*

1. For all solicitations, the bidder/proposer shall submit a Utilization Plan detailing all subcontractors from which the Contractor solicited bids or quotations, and if Project Specific Goals have been established, its achievement of the Goals or its Good Faith Efforts to do so. The Utilization Plan shall be due at the time the bid proposal is due.
  
2. Any agreement between a Contractor and a MBE or WBE in which the Contractor requires that the MBE or WBE not provide subcontracting quotations to other Contractors is prohibited.
  
3. Where the Contractor cannot achieve the Project Specific Goal(s), the CC Director will determine whether the Contractor has made Good Faith Efforts to meet the Goal(s). In making this determination, the CC Director will consider, at a minimum, the Contractor's efforts to:

- a. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all MBEs and WBEs certified in the scopes of work of the contract. The Contractor shall provide interested MBEs and WBEs with timely, adequate information about the plans, specifications, and requirements of the contract to allow MBEs and WBEs to respond to the solicitation. The Contractor must follow up initial solicitations with interested MBEs and WBEs.
  - b. Select portions of the work to be performed by MBEs and WBEs in order to increase the likelihood that the Project Specific Goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE and WBE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces. It is the Contractor's responsibility to make a portion of the work available to MBEs and WBEs and to select those portions of the work or material needs consistent with the availability MBEs and WBEs to facilitate their participation.
  - c. Negotiate in good faith with interested MBEs and WBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs and WBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with MBEs and WBEs. The Contractor may not reject MBEs and WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself sufficient reason for a Contractor's failure to meet the Project Specific Goals, as long as such costs are reasonable. The ability or desire of a Contractor 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 scopes of work that could be subcontracted.
  - d. Make efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the District or the prime Contractor, where appropriate.
  - e. Make efforts to assist interested MBEs and WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.
  - f. Use the services of the Office of Contract Compliance, available minority/women community organizations, minority/women contractors' groups, government sponsored minority/women business assistance offices and other appropriate organizations to provide assistance in the recruitment and placement of MBEs and WBEs.
4. In determining whether a Contractor has made Good Faith Efforts, the performance of other Contractors in meeting the Project Specific Goals may be considered. For example, when the apparent successful Contractor fails to meet the Project Specific Goals but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Contractor could have met the Project Specific Goals. Similarly, if the apparent successful Contractor fails to meet the Project Specific Goals, but meets or exceeds the

average MBE or WBE participation obtained by other Contractors, this may be evidence that the apparent successful Contractor made Good Faith Efforts.

5. A signed letter of intent from each listed MBE or WBE, describing the work, materials, equipment or services to be performed or provided by the MBE or WBE and the agreed upon dollar value shall be due at the time of bid proposal or within three days after such submission.
6. The CC Director shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from MBEs and WBEs. The CC Director may request clarification in writing of items listed in the Utilization Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.
7. If the CC Director determines that the Utilization Plan demonstrates that the Project Specific Goals have been achieved or Good Faith Efforts made, with the concurrence of the User Department, the CC Director and User Department shall recommend award to Purchasing Agent.
8. If the CC Director finds that a Contractor did not make sufficient Good Faith Efforts, the CC Director shall communicate this finding to the Purchasing Department and recommend that the bid/proposal be rejected. A Contractor may protest this determination pursuant to the County's bid protest procedures.

*M. Contract Administration Procedures.*

1. Upon award of a contract by the District that includes Project Specific Goals, the Project Specific Goals become covenants of performance by the Contractors and incorporated in the contract.
2. The Contractor shall provide a listing of all subcontractors to be used in the performance of the contract, and detailed subcontractor information to the District with each request for payment submitted to the District or as otherwise directed by the District. The CC Director and the User Department shall monitor subcontractor participation during the course of the contract. The District shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the District for any purpose.
3. The Contractor cannot make changes to the Utilization Plan or substitute MBEs or WBEs named in the Utilization Plan without the prior written approval of the CC Director, Purchasing Agent and the User Department. Unauthorized changes or substitutions shall be a violation of this subdivision and a breach of contract, and 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 Contractor to contract penalties or other sanctions.

- a. All requests for changes or substitutions of a MBE or WBE Subcontractor(s) named in the Utilization Plan shall be made to the Director, Purchasing Agent and the User Department in writing, and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a MBE or WBE subcontractor or perform the work designated for a MBE or WBE subcontractor with its own forces unless and until the Director, Purchasing Agent in consultation with the User Department, approves such substitution in writing.
- b. The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Utilization Plan. Bid shopping is prohibited. The Contractor must negotiate with the MBE or WBE subcontractor to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
- c. Substitutions of the subcontractor shall be permitted only on the following bases:
  - (i) Unavailability after receipt of reasonable notice to proceed.
  - (ii) Failure of performance.
  - (iii) Financial incapacity.
  - (iv) Refusal by the subcontractor to honor the bid or proposal price.
  - (v) 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.
  - (vi) Failure of the subcontractor to meet insurance, licensing or bonding requirements; or
  - (vii) The subcontractor's withdrawal of its bid or proposal.
- d. The final decision whether to permit or deny the proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the CC Director.
- e. Where the Contractor has established the basis for the substitution to the satisfaction of the District, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the Office of Contract Compliance in obtaining a new MBE or WBE. If the Project Specific Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.

- f. If the District requires the substitution of a MBE or WBE subcontractor listed in the Utilization Plan, the Contractor shall undertake Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the Office of Contract Compliance in obtaining a new MBE or WBE subcontractor. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.
4. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of the CC Director to modify the Utilization Plan and must make Good Faith Efforts to ensure that MBES and WBEs have a fair opportunity to bid on the new scope of work.
  5. Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the MBE or WBE goal.
  6. Prior to contract closeout, the CC Director shall evaluate the Contractor's fulfillment of the contracted goals, taking into account all approved substitutions, terminations and changes to the contract's scope of work. If the District determines that Good Faith Efforts to meet the MBE or WBE commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the contract or violation of this subdivision, a remedy or sanction may be imposed, as provided in the contract.
- N. *Sanctions and Penalties.*
1. The following violations of this subdivision may result in a breach of contract:
    - a. Providing false or misleading information to the District in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations.
    - b. Committing any other violations of this subdivision.
  2. A Contractor or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, or being barred or deemed non-responsive in future District solicitations and contracts as determined by the District's Purchasing Ordinance, if it is found to have:
    - a. Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;
    - b. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations or colluded with others to do so;
    - c. Failed in bad faith to fulfill Project Specific Goals, thereby materially breaching the contract; or

d. Failed to comply in good faith with substantive provisions of this subdivision.

O. *Program Review and Sunset.*

1. The President and the Board of Commissioners shall receive quarterly and annual reports from the CC Director detailing the District's performance under the Program.
2. The President and the Board of Commissioners will review these reports, including the Annual Participation Goals and the County's progress towards meeting those Goals and eliminating discrimination in its contracting activities and marketplace.
3. Within five years after the effective date of this ordinance, the District will review the operation of the Program and the evidentiary basis for the Program in order to determine whether the District has a continuing compelling interest in remedying discrimination against MBEs and WBEs in its construction marketplace, and the permissible scope of any narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the County will not function as a passive participant in a discriminatory marketplace.
5. This subdivision shall sunset on or before June 30, 2016.

P. *Effective Date.* This subdivision shall be effective upon 90 days after passage.

**\*Referred to the Committee on Finance on 6/2/12.**

**COMMISSIONER REYES, SECONDED BY VICE CHAIRMAN STEELE, MOVED TO ACCEPT THE PROPOSED SUBSTITUTE ORDINANCE FOR COMMUNICATION NO. 11FINA0194. THE MOTION CARRIED.**

**SUBSTITUTE**

**FOR COMMUNICATION NO. 11FINA0194**

PROPOSED ORDINANCE

Sponsored by

THE HONORABLE EDWIN REYES, JESUS G. GARCIA, and ROBERT B. STEELE, JEFFREY R. TOBOLSKI, DEBORAH SIMS, JERRY BUTLER, JOHN P. DALEY, LARRY SUFFREDIN AND JOHN A. FRITCHEY, FOREST PRESERVE DISTRICT OF COOK COUNTY COMMISSIONERS

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES**

**BE IT ORDAINED**, by the Forest Preserve District of Cook County Board of Commissioners that Title 1 Administration, Chapter 8 Forest Preserve District President and Board of Commissioners Rules of Organization and Procedure, Section 1-8-2 Organization, Subsection 2-6 Standing Committees of the Code of the Forest Preserve District of Cook County hereby is amended as follows:

2-6. *Standing Committees.* The standing committees of the Board, their standing subcommittees and the number of members to be appointed to each (including Chair and Vice-Chair) are as follows:

AUDIT (7) - Chief Financial Officer shall be an ex officio, nonvoting member of the Audit Committee

BOTANIC GARDEN (9)

CAPITAL DEVELOPMENT (9)

CONTRACT COMPLIANCE (7)

ENVIRONMENTAL CONTROL (7)

FINANCE (Committee of the Whole) with the following subcommittees with the number of members indicated:

Labor (7)

Litigation (7)

Workers' Compensation (5)

LAW ENFORCEMENT (9)

LEGISLATION AND INTERGOVERNMENTAL RELATIONS (Committee of the Whole)

REAL ESTATE (Committee of the Whole)

RECREATION (9)

RULES (9)

ZOOLOGICAL (9)

**BE IT FURTHER ORDAINED**, by the Forest Preserve District of Cook County Board of Commissioners that Title 1 Administration, Chapter 8 District Finances, Section 1-8-5 Minority and Women Owned Business Enterprises of the Code of the Forest Preserve District of Cook County hereby is enacted as follows:

**1-8-5: MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES**

**1-8-5a: SUBDIVISION I. GENERAL PROVISIONS**

A. *Short title.*

This subdivision shall be known and may be cited as the Forest Preserve District of Cook County Minority- and Women-Owned Business Enterprise General Ordinance. This Subdivision is applicable to all Contracts, except Public Works Contracts, which are governed by Subdivision 2 of this Division 1-8-5.

B. *Findings.*

1. Currently, the Forest Preserve District of Cook County (the "District") does not have an ordinance specifically crafted to address the underutilization of Minority-and Women-Owned Business Enterprises (M/WBEs) and barriers to the full and fair participation of M/WBEs in District prime contracts and subcontracts.
2. M/WBEs have contributed significantly to the economic development of the community, and played a similar role in increasing employment, including that of minorities.
3. M/WBEs may be awarded prime contracts and subcontracts in dollar amounts that are disproportionately lower than the availability of such businesses to perform Forest Preserve District contracts.
4. In 1988, Cook County adopted a Minority-and Women-Owned Business Enterprises Ordinance establishing an affirmative action program to ensure the full and equitable participation of M/WBEs in the County's procurement process as both prime contractors and subcontractors.
5. In 1993, Cook County amended its Minority-and Women-Owned Business Enterprises Ordinance to include specific minority and women participation goals in construction contracts.
6. The affirmative action program for construction projects set goals of 30% minority owned participation and 10% women owned participation on all County construction projects in order to remedy ongoing discrimination and the effects of past discrimination against women and members of minority groups, so as not to be a passive participant in such discrimination.
7. This program as it relates to construction projects was declared unconstitutional in *Builders Association of Greater Chicago v. Cook County*, 123 F.Supp.2d 1087 (N.D. Ill. 2000), and a permanent injunction was entered against the program preventing the County from setting minority and women participation goals in County construction projects.
8. The district court's holding was affirmed in *Builders Association of Greater Chicago v. Cook County*, 256 F.3d 672 (7<sup>th</sup> Cir. 2001).
9. The County complied with the permanent injunction and ceased setting M/WBE goals on County construction projects in early 2001, causing an immediate and drastic reduction in M/WBE construction prime contract and subcontract participation.
10. Evidence presented at trial in *Builders Association of Greater Chicago v. City of Chicago*, 298 F.Supp.2d 725 (N.D. Ill. 2003) and *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005) established that there is strong evidence of the effects of past and current discrimination against M/WBEs in the construction industry in the Chicago area.
11. The trial court's decision was affirmed in *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7<sup>th</sup> Cir. 2007).

12. In 2005, the County commissioned a review of the utilization of M/WBEs in its construction contracts since the injunction.
13. The results of this review were presented to the County in a 2006 Report titled, "Review of Compelling Evidence of Discrimination Against Minority- and Women-Owned Business Enterprise in the Chicago Area Construction Industry and Recommendations for Narrowly Tailored Remedies for Cook County, Illinois" (Cook County 2006 Report).
14. The Report concluded that there is extensive evidence of discrimination against M/WBEs in the Chicago area construction marketplace, and the participation of M/WBEs in the County's construction prime contracts and subcontracts is below the availability of such firms.
15. The Report recommended, among other initiatives, the establishment of an interim ordinance to remedy the underutilization of M/WBEs in the County's construction contracts and ensure that the County is not passively participating in discrimination against Minority- and Women-Owned Business Enterprises in the Chicago area construction marketplace.
16. In response to the Cook County 2006 Report the County adopted a Minority- and Women-Owned Business Enterprise Construction Interim Ordinance in 2007.
17. In 2006, the Illinois State Toll Highway Authority commissioned a study for the availability of Disadvantaged Business Enterprises (DBEs) in its geographic and procurement markets, to ensure that its DBE program was narrowly tailored as required by constitutional standard, which found 19.56% DBE availability in construction, 19.36% DBE availability in construction-related professional services, and that DBE utilization had steadily increased from 2.40% in 2004 to 24.72% in 2010.
18. The County commissioned a new report, entitled "The Status of Minority and Women-Owned Business Enterprises Relevant to Construction Activity In and Around Cook County, Illinois" (Cook County 2010 Study).
19. The Cook County 2010 Study made recommendations for a revised M/WBE program for construction contracting, emphasizing the establishment of project-specific goals, implementation of race- and gender-neutral measures, and enhancements to data gathering, implementation and performance monitoring of the program.
20. In 2010 the U.S. Department of Justice produced a report to Congress, entitled "Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers to Minority- and Women-Owned Businesses," that updated the original basis for the U.S. Department of Transportation's DBE program and concluded that discriminatory barriers continue to impede the ability of M/WBEs to compete with other firms on a fair and equal footing in government contracting markets.
21. Based upon this evidentiary record, the District concludes that in the absence of affirmative action remedies for both procurement and construction contracts, the District will likely be a passive participant in discrimination against M/WBEs.

22. Based upon the experiences of other local governments and other entities and the trial records in *BAGC v. Chicago* and *Northern Contracting v. Illinois DOT*, race- and gender-neutral measures have not and are not likely to eliminate the competitive disadvantage of M/WBEs in participating in District contracts due to discrimination in the local economy.

C. *Policy and purpose.*

1. The District is committed to a policy of preventing discrimination in the award of or participation in District contracts and eliminating arbitrary barriers to full participation in such contracts by all persons regardless of race, ethnicity or sex.
2. It is the District's desire to affirm its commitment to full and fair opportunities for all firms to participate in its procurement and construction contracts.
3. The District's procurement practices in the past may have contributed to the above identified underutilization of M/WBEs on District contracts.
4. The numerical goals for the participation of M/WBEs in District contracts are commensurate with the availability of M/WBEs to perform District work as established by the evidentiary record.
5. The District may undertake additional efforts to gather evidence relevant to its compelling interest in remedying discrimination in its geographic and procurement markets and narrowly tailoring any race- and gender-conscious remedies to that evidence.

D. *Definitions.*

The following words, terms and phrases, when used in this Subdivision I shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Additional terms applicable to subdivision II are set forth in such subdivision.

1. "*Annual Participation Goals*" means the targeted levels of participation established by the District for the annual aggregate participation of MBEs and WBEs in procurement contracts.
2. "*Broker*" means a Person who or which neither manufactures the supplies, equipment or goods supplied or owns or operates a store, warehouse or other establishment (and related distribution equipment) in which it maintains, consistent with industry standards, an inventory of the supplies, equipment or goods, materials or supplies required for performance of the Contract for sale in the normal course of business.
3. "*Certified*" or "*Certification*" means registration of the Minority Business Enterprises or Women's Business Enterprise status of a business in the County's Directory of Minority Business Enterprises and Women's Business Enterprises ("M/WBE Directory").
4. "*Commercially Useful Function*" shall have the meaning set forth in this Subdivision.
5. "*Contract Compliance Administrator*" or "CCA" means the Forest Preserve District Contract Compliance Administrator.

6. *“Contract Compliance Director”* or *“CCD”* means the Cook County Contract Compliance Director. The CCD also shall be empowered to act as, or assist, the CCA with respect to the functions of the CCA referenced herein.
7. *“Contract Specific Goals”* means the goals established under this Subdivision that are based upon relevant factors including, but not limited to, the availability of MBEs or WBEs in the scopes of work of the Project.
8. *“District Marketplace”* means the six county region, currently the counties of Cook, DuPage, Kane, Lake, McHenry and Will.
9. *“Economically Disadvantaged”* means an individual with a Personal Net Worth less than \$2,000,000.00 indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2011.
10. *“Expertise”* means demonstrated skills, knowledge or ability to perform, as defined by normal industry practices, including licensure where required, in a field.
11. *“Good Faith Efforts”* shall have the meaning set forth in this Subdivision.
12. *“Joint Venture”* means an association formed by two or more Persons (as this term is defined below) to carry out a single business enterprise, for which purpose they combine their expertise, property, capital, efforts, and skills.
13. *“Local business”* means a Business located within the District's Marketplace which has the majority of its regular, full time work force located within the District's Marketplace.
14. *“Local Small Business”* means a Local Business which is also a Small Business.
15. *“Manufacturer”* means a Person (as this term is defined below) that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required for a Procurement and of the general character described by the specifications.
16. *“Minority Business Enterprise”* or *“MBE”* means a Business:
  - a. Which is at least 51 percent owned by one or more Minority Individuals, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals;
  - b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more Minority Individuals;
  - c. Which performs a Commercially Useful Function;
  - d. Which is a Certified Firm; and
  - e. Which is a Local Small Business

17. "*Minority Individual*" means an individual in one of the following groups:
  - a. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
  - b. Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, regardless of race;
  - c. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or
  - d. Asian-Americans (persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent); or
  - e. Other groups, including, but not limited to, Arab-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 the District's Marketplace.
18. "*Owned*" means having all the customary incidents of ownership, including the right of disposition, and the sharing in all risks and profits commensurate with the degree of ownership interest.
19. "*Person*" or "*Persons*" means any individual, corporation, partnership, Joint Venture, trust, association, limited liability company, sole proprietorship or other legal entity.
20. "*Personal Net Worth*" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other Certified MBE or WBE, provided that the other Person is certified by a governmental agency that meets the District's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with a spouse, an individual's Personal Net Worth includes only that individual's share of such assets. An individual's Personal Net Worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.
21. "*Program*" means the Minority and Women Owned Businesses Enterprise Program established in this division, and shall include the Public Works Participation Program.
22. "*Program Goals*" means the goals set forth in Section (H) of this Subdivision.
23. "*Public Works*" means all fixed works constructed or demolished by the County, or paid for wholly or in part out of public funds administered by the County. "Public Works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through federal or State government, or the County. "Public Works" does not include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multi-family residence. "Public Works" includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

24. "*Purchasing Agent*" means the Purchasing Agent of the District.
25. "*Regular Dealer*" means a Person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character required for the Procurement are bought, kept in stock, and regularly sold or leased in the usual course of business. To be a Regular Dealer, the Person must be an established business that engages, as its principal business and under its own name, in the Procurement and sale or lease of the products in question. A Person may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the Person both owns and operates distribution equipment for the products. Any supplementing of such Person's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other Persons who arrange or expedite transactions are not Regular Dealers.
26. "*Small Business*" means a small business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the Person seeks to perform on Contracts. A Person is not an eligible small business enterprise in any calendar fiscal year in which its gross receipts, averaged over the Person's previous five fiscal years, exceed the size standards of 13 CFR Part 121.
27. "*Socially Disadvantaged*" means an individual who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.
28. "*Using Department*" means the department within the District responsible for initiating the procurement process.
29. "*Utilization Plan*" means a plan for utilization of M/WBEs described in Section (J) of this Subdivision.
30. "*Woman*" means a person of the female gender.
31. "*Woman-Owned Business Enterprise*" or "*WBE*" means a Business:
- a. Which is at least 51 percent owned by one or more Women, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Women;
  - b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Women;
  - c. Which performs a Commercially Useful Function;
  - d. Which is a Certified Firm; and
  - e. Which is a Local Small Business.

E. *Race- and gender-neutral measures to implement the program.*

The District has adopted and shall continue to develop and use race-and gender-neutral measures to facilitate the participation of all firms in the procurement process. These measures include, but are not limited to the following:

1. Establishing schedules for submitting Bids and Quotations with adequate time frames for identifying and contacting M/WBEs qualified to participate in the Procurement;
2. Segmenting Procurements to facilitate the participation of MBEs, WBEs and other Small Businesses;
3. Providing timely information on contracting procedures, Bid preparation and specific contracting opportunities;
4. Holding pre-Bid conferences, where appropriate, to explain the projects and to encourage Contractors to use available qualified M/WBEs;
5. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the District;
6. Collecting information from all Contractors detailing the Bids or proposals received from all subcontractors for Procurements and the expenditures to M/WBEs;
7. At the discretion of the CCA, in cooperation with the Purchasing Agent, periodically entering into a procurement process without Program Goals or Project Specific Goals in order to determine MBE and WBE utilization in the absence of such goals;
8. Referring complaints of discrimination to Cook County's Commission on Human Rights, or other appropriate authority, for investigation

F. *Program administration.*

1. The CCA, in conjunction with the District's Purchasing Agent and the CCD, shall administer the Program. The duties of the CCA shall include:
  - a. Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program.
  - b. Providing information and assistance to M/WBEs and Small Businesses relating to the Program, serving as a liaison to community, contractor, professional and supplier groups, and serving as a liaison to various other associations and organizations.
  - c. Verifying that Persons interested in participating in the Program have M/WBE certifications from the County of Cook and/or the City of Chicago, and monitoring the directory of Certified M/WBEs maintained by Cook County.
  - d. Establishing Contract Specific Goals, based upon the availability of M/WBEs to provide the supplies, materials and equipment or services required by the Contract.

- e. Monitoring Contracts to evaluate compliance with Contract Specific Goals and commitments.
  - f. Cooperating with and providing assistance to Using Departments to facilitate participation by M/WBEs in Procurements.
  - g. Reviewing, approving, and, if necessary, rejecting Utilization Plans for achievement of Contract Specific Goals, evaluating the extent to which goals were achieved.
  - h. Monitoring contracts to ensure compliance with Section (O) of this Subdivision, Prompt Payment of M/WBEs.
  - i. Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
  - j. Evaluating the effectiveness and utility of the Program.
  - k. Monitoring the Program and the District's progress towards the Program Goals.
2. The CCA shall report to the Contract Compliance committee on an annual basis, or as requested by the Contract Compliance Committee, information regarding the administration of the Program and its progress toward achieving the Program Goals.
  3. Using Departments shall cooperate with the CCA in the administration of the Program, specifically including assisting the CCA-with setting Contract Specific Goals and assisting in the identification of available MBEs and WBEs.
  4. *Intergovernmental Agreement between District and County.* The Forest Preserve District of Cook County shall provide staff and/or reimbursement to Cook County as set out in an intergovernmental agreement for the CCD to also act as, or assist, the CCA.

G. *Contract compliance committee.*

The Contract Compliance Committee ("CCC") shall be a Standing Committee of the Board, consisting of seven members of the Board selected as set forth in Title 1, Chapter 5, Section 1-5-2 of the Code. The CCC shall review procedures, proposed modifications to the Program or this Division 1-8-5, and complaints as referred by the CCA or the Purchasing Agent.

H. *Program goals.*

1. The District aspires to the following annual Program Goals: A goal of twenty-five percent (25%) of the annual total dollar amount of Contracts other than Public Works Contracts to MBEs, and ten percent (10%) of the total dollar amount of such Contracts to WBEs.
2. The CCA, in consultation with CCD, the Purchasing Agent and the Using Agency shall establish Contract Specific Goals for each Contract. In establishing a Contract Specific Goal, the CCA shall consider the availability of sufficient Certified MBEs and WBEs for the supplies, materials and equipment or services required as part of the Procurement. No goal shall be treated as a quota nor shall it be used to discriminate against any Person on the basis of race, color, national origin, religion or sex.

- I. *Program Eligibility.* Only Businesses that meet the criteria as determined by the CCD for the County of Cook, for certification as a MBE or WBE may participate in the Program.
  
- J. *Utilization plan; commercially useful function.*
  1. *Utilization Plan required.* The Purchasing Agent shall include in Contract Documents for Contracts covered by this Division, a requirement that a Utilization Plan be submitted from a bidder or proposer that either: (i) commits to M/WBE participation equal to or greater than the applicable Program Goals or Contract Specific Goals, or (ii) requests a waiver of all or a portion of a Program Goals or Contract Specific Goals based on the bidder' or proposer's good faith efforts to meet the goals. The Utilization Plan shall be in such form and contain such information as is required by the CCA. Failure to include a Utilization Plan will render the submission not Responsive. The CCA shall review and either approve or reject the Utilization Plan. For purposes of evaluation a Utilization Plan, only M/WBEs which perform a Commercially Useful Function shall be considered.
  
  2. *Commercially Useful Function.* To be considered in meeting Goals, a M/WBE must perform a Commercially Useful Function, as determined pursuant to Subsection (K). "Commercially Useful Function" means the performance of a distinct element of work required for the Procurement, with the requisite skill and expertise.
    - a. In the case of a Procurement of goods or equipment, ordering from a manufacturer or distributor for delivery directly to the Using Agency is not a Commercially Useful Function; provided, however, that to the extent such practice is consistent with normal industry practices, a M/WBE subcontractor may enter into second tier subcontracts. However, if a M/WBE Contractor or subcontractor subcontracts a significantly greater portion of the work of the Contract than would be expected on the basis of normal industry practices, the M/WBE shall be presumed not to be performing a Commercially Useful Function.
  
    - b. In the case of a Procurement of services, a Person which subcontracts with another Person to perform the services required does not perform a Commercially Useful Function unless such Person also performs significant supervisory or management responsibilities. A Broker does not fulfill a Commercially Useful Function. In the case of a Joint Venture partner, each Joint Venture partner must perform a Commercially Useful Function.
  
  3. 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.
  
  4. When a M/WBE is presumed not to be performing a Commercially Useful Function, the Certified M/WBE and the Person seeking to include that M/WBE in its Utilization Plan, may present evidence to rebut this presumption.
  
  5. Once a Utilization Plan has been approved, the Contractor cannot make changes to the Utilization Plan, including substituting M/WBEs named in the Utilization Plan, without the prior written approval of the CCA, Purchasing Agent and the Using Department. The CCA shall promulgate procedures for changes to the Utilization Plan.

K. *Methods to achieve goals and compliance.*

A Person may achieve the applicable Contract Specific Goals in any one or more of the methods set forth below. The same M/WBE, whether as a contractor, subcontractor or supplier, cannot be utilized as both a MBE and a WBE on the same Contract.

1. *M/WBE as prime Contractor.* An MBE or WBE may count its own participation toward the achievement of the applicable MBE or WBE goal. Such M/WBE will be required to meet the other goal by another method described herein. If a WBE is also a MBE, such WBE's participation may count toward either the MBE or WBE Goal but not both.
2. *Joint Venture with one or more M/WBE.* Where a Person engages in a Joint Venture with one or more M/WBEs, the Utilization Plan shall include a written agreement providing at least the information set forth in this Subsection. The CCA shall consider the following in determining whether the proposed Utilization Plan satisfies the Program Goals based upon such written Joint Venture agreement and the Utilization Plan.
  - a. Each Joint Venture partner's initial capital investment;
  - b. The extent to which the M/WBE's proposed participation in the performance of the Contract constitutes a Commercially Useful Function;
  - c. Whether the M/WBE's share in the risks and profits of the Joint Venture is proportional to their ownership interest;
  - d. Whether the M/WBE will have duties, responsibilities, management Control and risk with respect to the Joint Venture in proportion to its ownership interest;
3. *Subcontracting.* A Person may achieve the Contract Specific Goals by means of subcontracting with, or purchasing from one or more M/WBEs.

L. *Request for a total or partial waiver of the Contract Specific Goals; good faith efforts.*

1. In reviewing a partial or total request for waiver of a Goal, the CCA shall determine whether a Person has made good faith efforts to meet the applicable Goals and to what extent the waiver request should be granted. In determining whether a Person has made good faith efforts, the CCA will consider whether the Person has taken the following actions:
  - a. Reviewed lists of M/WBEs maintained by Cook County and other State and local governments and agencies to identify qualified M/WBEs for solicitation for Bids;
  - b. Divided Procurement requirements into small tasks or quantities. This shall include, where appropriate, whether the person has broken out Contract work items into economically feasible units, consistent with the availability of M/WBEs, to facilitate M/WBE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces;

- c. Adjusted any insurance requirements imposed by the Person seeking M/WBEs, or otherwise assisted M/WBEs in obtaining any required insurance, where economically feasible, to encourage participation by M/WBEs;
  - d. Made timely attempts to contact M/WBEs providing the type of supplies, equipment, goods or services required for the Procurement; and provided them with a convenient and timely opportunity to obtain and review all information concerning the Procurement necessary to enable such M/WBE to respond;
  - e. Followed up on initial contacts of M/WBEs to determine if they are interested participating in the Procurement;
  - f. Negotiate in good faith and on a timely basis with M/WBEs to enable them to participate in the Procurement. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached. The Contractor may not reject M/WBEs as being unqualified without sound reasons. That there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a Contractor's failure to meet the Goals, as long as such costs are reasonable;
  - g. Make efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate; provided, however, that such efforts shall not be inconsistent with the requirement that the M/WBE be responsible for actually obtaining and paying for such items;
  - h. Establish delivery schedules which will encourage participation by M/WBEs, where the requirements of the Procurement permit;
  - i. Use the services and assistance of the CCD's or CCA's and the District's staff, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce;
  - j. Timely notify appropriate community and minority and women's business organizations identified as assist agencies of the opportunity for participation in the Procurement;
2. In determining whether a Bidder or Respondent has made Good Faith Efforts, the levels of participation by M/WBEs set forth in Utilization Plans submitted by other Persons for the same Procurement may be considered. For example, if the apparent successful Bidder or Respondent fails to meet the Contract Specific Goals, but meets or exceeds the average M/WBE participation obtained by other Bidders or Respondents, this may be evidence that the apparent successful Bidder or Respondent made Good Faith Efforts.
  3. Where the District requires professional services, the District must be able to call upon those professionals whose particular training and experience are most beneficial to the District.
    - a. The District sets an annual goal of 35 percent (35%) M/WBE participation for the total professional services and consulting services utilized by the District.

- b. A Utilization Plan shall be required, and if a waiver or partial waiver is requested, "good faith" efforts shall be demonstrated as set forth in Section (L); provided, however, that such Persons shall not be required to attempt to subcontract with M/WBEs if subcontractors would not typically be utilized for the type of Procurement. In such cases, the Person shall document the reasons for not subcontracting in a waiver request.
  - c. The Contractor will endeavor to maximize use of M/WBEs for supplies, equipment, goods or services for such Contractor's business operations not specifically for the Procurement.
  - d. If such Person is required to have or has an affirmative action plan and goals, such plan and goals shall be submitted with their Utilization Plan. The CCA shall compare such plan and goals with the Person's actual affirmative action achievements and such achievements may be considered by the District in future Procurements.
4. The CCA may grant a total or partial waiver based upon the following criteria:
- a. There are not sufficient M/WBEs capable of providing the supplies, equipment, goods or services required for the Procurement;
  - b. The Procurement cannot reasonably be divided;
  - c. The price required by potential M/WBEs is more than ten percent (10%) above competitive levels; and
  - d. Any other factor relating to good faith efforts as set forth in the Person's Utilization Plan.

M. *Calculating M/WBE participation.*

In calculating a M/WBE's participation, only dollar amounts commensurate with a M/WBE's performance of a Commercially Useful Function may be counted.

1. The dollar value of that portion of a Procurement that is performed by the M/WBEs' own forces shall be counted, including the cost of supplies, materials and equipment furnished by the M/WBE for the Procurement, whether purchased or leased (except to the extent purchased or leased from the Contractor or the Contractor's Affiliate).
2. The dollar amount of fees or commissions charged by a M/WBE for providing a bona fide service, such as professional, technical, consultant, managerial, insurance brokerage or surety services, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
3. When a M/WBE is a Joint Venture partner, only the dollar value of the distinct, clearly defined work performed by the M/WBE with its own forces shall be counted.
4. Only the dollar value must be commensurate with the work the M/WBE actually performs.
5. One hundred percent (100%) of the cost of the supplies, equipment or goods obtained from a M/WBE Manufacturer or Regular Dealer shall be counted.

6. One hundred percent (100%) of the fees or transportation charges for the delivery of supplies, equipment, materials or goods shall be counted only if the payment of such fees is a customary industry practice and such fees are commensurate with fees customarily charged for similar services.
  7. If a M/WBE ceases to be Certified during its performance on a Procurement, the dollar value of work performed under a Contract with that Person after it has ceased to be Certified shall not be counted.
  8. Only the dollar amount actually paid to the M/WBE shall be counted toward the participation of a M/WBE.
- N. *Review of contract performance.*
1. *Compliance with Utilization Plan.* The CCA shall review the Contractor's compliance with its Utilization Plan as necessary during the performance of the Contract. The CCA may establish such requirements for periodic Contractor reporting on compliance with its Utilization Plan as the CCA determines appropriate and necessary. A Contractor shall be required to provide any additional requested compliance documentation within 14 days of request by the CCA.
    - a. If the CCA determines that the Contractor has failed to comply with its Utilization Plan, the CCA shall notify the Purchasing Agent of such failure. The Purchasing Agent shall then send notice of default to the Contractor, and the Contractor shall have such time to cure the default as is provided in the Contract. If no such period is provided, the Contractor shall have ten days to cure such default. For purposes of this section, providing a plan for bringing the Contract into compliance with the Utilization Plan may constitute a cure, if compliance cannot reasonably be achieved within the applicable cure period, and if compliance is achieved in accordance with such plan.
    - b. If a Contractor fails to provide any documentation required by the CCA, the CCA shall notify the CPO of such failure. The Purchasing Agent shall then send notice of default to the Contractor, and the Contractor shall have such time to cure the default as is provided in the Contract. If no such period is provided, the Contractor shall have ten days to cure such default.
  2. *Bid and target market programs.* To address more specifically the barriers to M/WBE participation as prime Contractors in District work, the CCA may recommend to the Purchasing Agent to institute the following special M/WBE bidding provisions, following determination of the appropriateness of such provisions.
    - a. In connection with the award of a Contract subject to competitive bidding on which a M/WBE has bid and where the M/WBE is bidding on the item in question for the first time; and has never successfully bid on a Forest Preserve District of Cook County purchasing contract, the CCA may, at the opening of the bids on the item, compare the M/WBE Bid with the lowest Bid, and, if the M/WBE's Bid is closely competitive as defined by guidelines to be established by the CCA with that of lowest actual Bids, direct the Purchasing Agent to declare the M/WBE the successful Bidder. A M/WBE may use this procedure only once to become the successful Bidder on any particular item. Thereafter, the M/WBE must be totally competitive in terms of price to be the successful Bidder.

b. The Contract Compliance Administrator shall develop and coordinate a target market program as follows:

- (i) The CCA shall review the availability of M/WBEs providing various goods and services and shall identify for inclusion in a potential program for bidding among M/WBE Persons certain commodity areas with sufficient M/WBE availability to ensure that the District receives a competitive price. The CCA shall report his/her findings and recommendations to the Contract Compliance Committee;
- (ii) Upon a determination by the CCA that such a program is advisable for any particular commodity procurement; the CCA will institute the following procedures:
  - (a) The CCA will notify the Purchasing Agent of identification of those commodity codes appropriate for a target market program;
  - (b) To the extent practicable, the Purchasing Agent, with the aid of the CCA, shall divide procurement in the designated commodity areas into economically feasible sizes to facilitate Bids or offers from M/WBEs and shall designate contracts to be offered under the target market program;
  - (c) The Purchasing Agent shall offer M/WBEs the opportunity to bid on such contracts in a limited competition;
  - (d) All standard District rules for bidding will then become effective and, provided that at least three M/WBEs Bid or make an offer on the contract, the lowest Responsive and Responsible Bidder among the M/WBEs will receive the contract;
  - (e) In the event less than three M/WBEs Bid or make an offer on the Contract or if there is no Responsive Bid or offer received from a Responsible M/WBE, the Purchasing Agent shall rebid the Contract not subject to the target market program.
- (iii) Participation in the target market program shall be limited to Minority Business Enterprises, Women's Business Enterprises and Joint Ventures consisting exclusively of Minority Business Enterprises, Women's Business Enterprises or both. The M/WBE Contractor on a target market Contract may subcontract up to 49 percent of the dollar value of the target market Contract to subcontractors who are not Minority Business Enterprises or Women's Business Enterprises.

O. *Prompt payment of firms.*

If an invoice from a Contractor includes payment for supplies, equipment, goods or services furnished by a M/WBE, Contractor shall pay such M/WBE for such supplies, equipment, goods or services within fourteen (14) days after receipt of payment from the District. The CCA shall investigate any complaint or charge of excessive delay in payment, and shall report the results of such investigations to the Contract Compliance Committee and to the District Comptroller. Failure of Contractor to comply with this Section shall constitute a material breach of the Contract.

P. *Reporting and review.*

The CCA shall report to the Board on an annual basis with respect to the following:

1. The percentage of the total dollar amount of Procurements for such year actually received by M/WBEs;
2. The number of MBEs and WBEs available for participation in Procurements, by category;
3. An evaluation of the effectiveness of this division in ensuring equitable participation by M/WBEs in Procurements;
4. An assessment of the continuing need for the Program;
5. Identification of any enforcement problems; and
6. Any recommendations with respect to modifying or improving the Program, including discontinuing or modifying Program Goals in those cases where Minority Business Enterprises and Women's Business Enterprises no longer are disadvantaged by the effects of discrimination in their participation in Procurements.

Q. *Prohibited provisions.*

Any agreement between a Contractor and a MBE or WBE in which the Contractor requires that the MBE or WBE not provide subcontracting quotations to other Contractors is prohibited.

R. *Review and Sunset*

1. On or before the sunset date of this Ordinance, the District shall review new evidence to determine whether it has a compelling interest in continuing narrowly tailored remedies to redress discrimination against M/WBEs so that the District will not function as a passive participant in a discriminatory marketplace.
2. This Ordinance shall sunset on or before June 30, 2016

**1-8-5b: SUBDIVISION II. CONSTRUCTION ORDINANCE**

A. *Short title; incorporation of provisions.*

This subdivision may be known and cited as the Forest Preserve District of Cook County Public Works Minority- and Women-Owned Business Enterprise Ordinance and may be cited as such.

B. *Findings.*

1. The findings set forth in subdivision I Section B of this division 1 - 8 - 5 are incorporated herein by this reference.

2. On July 11, 2012 the Governor of Illinois signed a new law allowing the District to establish provisions to address the underutilization of M/WBE with respect to construction Contracts.
3. The District seeks to provide a level playing field and equal access for all prime contractors and subcontractors to participate in Public Works Contracts;
4. In the absence of authority to establish the type of provisions referenced via the Program to Public Works Contracts, the District has witnessed a significantly low level of participation by M/WBEs in its Public Works Contracts and, thus, the District has been a passive participant in a discriminatory marketplace without the application of M/WBE goals.

C. *Policy.*

It is hereby found, determined and declared that the purpose of this Ordinance is to ensure the full and equitable participation of Minority- and Women-Owned Business Enterprises in the District's procurement process as both prime and subcontractors in the District's construction contracts. The District is committed to a policy of preventing discrimination in the award of, or participation in, construction contracts and has recommended appropriate narrowly tailored remedies to address past discrimination and eliminate potential discrimination with respect to District contract awards.

D. *Applicability.*

This subdivision shall apply to all construction contracts funded in whole or in part by County funds, regardless of the sources of other funds; provided that any contract with respect to which a goal for Minority-Owned Business Enterprise or Women-Owned Business Enterprise participation is inconsistent with or prohibited by State or Federal law shall be exempt from the goals included in this subdivision.

E. *Definitions.*

The following terms shall have the following meanings:

1. "*Affiliate of a person or entity*" means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the District shall consider all appropriate factors, including common ownership, common management, and contractual relationships.
2. "*Annual Participation Goals*" mean the targeted levels of participation established by the District for the annual aggregate participation of MBEs and WBEs in District construction contracts.
3. "*Business*" means a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity.
4. "*Certified Firm*" means a firm that has been registered by the County as a certified MBE or WBE.
5. "*Contract Compliance Administrator*" or "CCA" means the Forest Preserve District Contract Compliance Administrator.

6. *“Contract Compliance Director”* or *“CCD”* means the Cook County Contract Compliance Director. The CCD also shall be empowered to act as, or assist, the CCA with respect to the functions of the CCA referenced herein.
7. *“Contractor”* means any Business that seeks to enter into a construction contract with the District, other than for professional services, and includes all partners and Affiliates Business.
8. *“Commercially Useful Function”* means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner.
9. *“Director”* or *“CCD”* means the Contract Compliance Director.
10. *“District”* means the Forest Preserve District of Cook County and its participating Using Department.
11. *“District’s Marketplace”* means the six county region, currently the counties of Cook, DuPage, Kane, Lake, McHenry and Will.
12. *“Doing Business”* means having a physical location from which to engage in for profit activities in the scope(s) of expertise of the Business.
13. *“Economically Disadvantaged”* means an individual with a Personal Net Worth less than \$2,000,000.00 indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2011.
14. *“Expertise”* means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the Business as defined by normal industry practices, including licensure where required
15. *“Good Faith Efforts”* means actions undertaken by a Contractor to achieve an MBE or WBE goal, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program’s goals.
16. *“Joint Venture”* means an association of two or more Businesses proposing to perform a for profit business enterprise. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.
17. *“Local Business”* means a Business located within the District’s Marketplace which has the majority of its regular, full time work force located within the District’s Marketplace.
18. *“Local Small Business”* means a Local Business which is also a Small Business.
19. *“Manufacturer”* means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
20. *“Minority Business Enterprise”* or *“MBE”* means a Business:

- a. Which is at least 51 percent owned by one or more Minority Individuals, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Minority Individuals;
- b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more Minority Individuals;
- c. Which performs a Commercially Useful Function;
- d. Which is a Certified Firm; and
- e. Which is a Local Small Business.

21. "*Minority Individual*" means:

- a. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
- b. Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American;
- c. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or
- d. Asian-Americans, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent; or
- e. Individual members of other groups, including but not limited to Arab-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 the District's marketplace or to do business with the District.

22. "*Owned*" means having all of the customary incidents of ownership, including the right of disposition, and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.

23. "*Person*" or "*Persons*" means any individual, corporation, partnership, Joint Venture, trust, association, limited liability company, sole proprietorship or other legal entity.

24. "*Personal Net Worth*" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other District certified MBE or WBE, provided that the other firm is certified by a governmental agency that meets the District's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

25. "*Program*" means the Program established by the Minority- and Women- Owned Business Enterprise Ordinance.
26. "*Project Specific Goals*" means the Goals established for a particular project or contract based upon the availability of MBEs or WBEs in the scopes of work of the Project.
27. "*Public Works*" means all fixed works constructed or demolished by the District, or paid for wholly or in part out of public funds administered by the District. "Public Works" as defined herein includes all projects financed in whole or in part with bonds, grants, loans, or other funds made available by or through federal or State government, or the County. "Public Works" does not include projects undertaken by the owner at an owner-occupied single-family residence or at an owner-occupied unit of a multi-family residence. "Public Works" includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.
28. "*Public Works Contracts*" means Contracts for all fixed works constructed or demolished by the District, or paid for wholly or in part out of public funds administered by the District.
29. "*Purchasing Agent*" means the Purchasing Agent of the District.
30. "*Regular Dealer*" means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular Business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.
31. "*Small Business*" means a small business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the firm seeks to perform on District contracts. A firm is not an eligible small business enterprise in any calendar fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 CFR Part 121.
32. "*Socially Disadvantaged*" means a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States.
33. "*Using Department*" means the department of the District responsible for initiating the procurement process.

34. “*Utilization Plan*” means the list of MBEs and WBEs that the Bidder/Proposer commits will be utilized, the scopes of the work and the dollar values or the percentages of the work to be performed.

35. “*Woman*” means a person of the female gender.

36. “*Woman-Owned Business Enterprise*” or “*WBE*” means a Business:

- a. Which is at least 51 percent owned by one or more Women, or in the case of a publicly owned Business, at least 51 percent of all classes of the stock of which is owned by one or more Women;
- b. Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Women;
- c. Which performs a Commercially Useful Function;
- d. Which is a Certified Firm; and
- e. Which is a Local Small Business.

F. Program Administration.

1. The CCA, who shall report to the General Superintendent and the President of the Board of Commissioners of Forest Preserve District of Cook County, shall administer the Program, whose duties shall include:

- a. Formulating, proposing and implementing rules and regulations for the development, implementation and monitoring of the Program.
- b. Providing information and assistance to MBEs and WBEs relating to District procurement practices and procedures, bid specifications, requirements, goals and prerequisites.
- c. Establishing uniform procedures and criteria for accepting certifications of Persons as M/WBEs by the County of Cook and the City of Chicago, and maintaining a directory of Certified Firms.
- d. Establishing Project Specific Goals in collaboration with the User Department.
- e. Evaluating Contractors' achievement of Project Specific Goals and Good Faith Efforts to meet Project Specific Goals.
- f. Working with Using Departments to monitor contracts to ensure prompt payments to MBEs and WBEs and compliance with Project Specific Goals and commitments, including gathering data to facilitate such monitoring.
- g. Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.
- h. Collecting data to evaluate the Program and other District contracting initiatives.

- i. Monitoring the Program and the District's progress towards its Annual Participation Goals. The CCA shall report on a quarterly and annual basis to the General Superintendent and the President on the administration and operations of the Program.
2. The Using Departments that receive appropriate delegation for project management, contract management, and/or construction and/or design contract responsibility shall have the following duties and responsibilities with regard to the Program:
    - a. Assisting the CCA with setting Project Specific Goals.
    - b. Assisting in the identification of available MBEs and WBEs, and providing other assistance in meeting the Project Specific Goals.
    - c. Performing other activities to support the Program.
    - d. Gathering and maintaining prime contracting and subcontracting data for those contracts which they manage.
    - e. Submitting subcontracting data as required to the CCD or CCA.
  3. *Intergovernmental Agreement between District and County.* The Forest Preserve District of Cook County shall provide staff and/or reimbursement to Cook County as set out in an intergovernmental agreement for the CCD to also act as, or assist, the CCA.

G. *Race- and Gender-Neutral Measures to Ensure Equal Opportunities for all Contractors and Subcontractors.*

The District has adopted and shall continue to develop and use measures to facilitate the participation of all firms in District construction contracting activities. These measures shall include, but are not limited to:

1. Arranging solicitation times for the presentations of bids, quantities, specifications, and delivery schedules to facilitate the participation of interested firms;
2. Segmenting, structuring or issuing contracts to facilitate the participation of MBEs, WBEs and other Small Businesses;
3. Providing timely information on contracting procedures, bid preparation and specific contracting opportunities;
4. Providing assistance to Businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
5. Holding pre-bid conferences, where appropriate, to explain the projects and to encourage Contractors to use all available qualified firms as subcontractors;
6. Adopting prompt payment procedures, including, requiring by contract that prime Contractors promptly pay subcontractors;

7. Reviewing retainage, bonding and insurance requirements to eliminate unnecessary barriers to contracting with the District;
8. Collecting information from all prime Contractors on District construction contracts detailing the bids received from all subcontractors for District construction contracts and the expenditures to subcontractors utilized by prime Contractors on District construction contracts;
9. At the discretion of the District, letting a representative sample of District construction contracts without goals, to determine MBE and WBE utilization in the absence of goals;
10. Maintaining information on all firms bidding on District prime contracts and subcontracts; and
11. Referring complaints of discrimination to the appropriate authority, for investigation.

H. *Program Eligibility.*

Only Businesses that meet the criteria as defined by the CCD for the County of Cook, for certification as a MBE or WBE may participate in the Program.

I. *Annual Aspirational Goals.*

The Annual Aspirational Goals for the utilization of MBEs and WBEs on District construction contracts and subcontracts shall be twenty-four percent (24%) for MBEs and ten percent (10%) for WBEs.

J. *Project Specific Goals.*

The CCA, in consultation with the Using Department shall establish Project Specific Goals for construction Contracts based upon the availability of at least three MBEs and three WBEs to perform the anticipated subcontracting functions of the project and the District's utilization of MBEs and WBEs to date.

K. *Counting MBE and WBE Participation.*

1. The entire amount of that portion of a contract that is performed by the MBEs or WBEs own forces shall be counted, including the cost of supplies and materials obtained by the MBE or WBE for the work of the contract, and supplies purchased or equipment leased by the MBE or WBE (except supplies and equipment the MBE or WBE purchases or leases from the prime Contractor or the prime Contractor's Affiliate).
2. The entire amount of fees or commissions charged by a MBE or 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, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.
3. When a MBE or WBE performs as a participant in a Joint Venture, 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 is performed by the MBE or WBE with its own forces and for which it is separately at risk, shall be counted.

4. Only expenditures to a MBE or WBE that is performing a Commercially Useful Function shall be counted. To determine whether a MBE or WBE is performing a Commercially Useful Function, the District will evaluate the amount of work subcontracted, industry practices, whether the amount the MBE or WBE 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 MBE or 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 MBE or 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 MBE or WBE participation. If a MBE or 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 perform a Commercially Useful Function. When a MBE or WBE is presumed not to be performing a Commercially Useful Function, the Certified Firm may present evidence to rebut this presumption.
  
5. One hundred percent (100%) of the cost of the materials or supplies obtained from a MBE or WBE Manufacturer or Regular Dealer shall be counted. One hundred percent (100%) of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted only if the payment of such fees is a customary industry practice and are commensurate with fees customarily charged for similar services.
  
6. If a firm ceases to be a Certified Firm for any other reason than graduation from the M/WBE Construction Program 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.
  
7. In determining achievement of Project Specific Goals, the participation of a MBE or WBE shall not be counted until that amount has been paid to the MBE or WBE.
  
- L. *Contract Pre-Award Compliance Procedures.*
  1. For all solicitations, the bidder/proposer shall submit a Utilization Plan detailing all subcontractors from which the Contractor solicited bids or quotations, and if Project Specific Goals have been established, its achievement of the Goals or its Good Faith Efforts to do so. The Utilization Plan shall be due at the time the bid proposal is due.
  
  2. Any agreement between a Contractor and a MBE or WBE in which the Contractor requires that the MBE or WBE not provide subcontracting quotations to other Contractors is prohibited.
  
  3. Where the Contractor cannot achieve the Project Specific Goal(s), the CCD or CCA will determine whether the Contractor has made Good Faith Efforts to meet the Goal(s). In making this determination, the CCA will consider, at a minimum, the Contractor's efforts to:
    - a. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and written notices) the interest of all MBEs and WBEs certified in the scopes of work of the contract. The Contractor shall provide interested MBEs and WBEs with timely, adequate information about the plans, specifications, and requirements of the contract to allow MBEs and WBEs to respond to the solicitation. The Contractor must follow up initial solicitations with interested MBEs and WBEs.

- b. Select portions of the work to be performed by MBEs and WBEs in order to increase the likelihood that the Project Specific Goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE and WBE participation, even when the Contractor would otherwise prefer to perform these work items with its own forces. It is the Contractor's responsibility to make a portion of the work available to MBEs and WBEs and to select those portions of the work or material needs consistent with the availability MBEs and WBEs to facilitate their participation.
  - c. Negotiate in good faith with interested MBEs and WBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs and WBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with MBEs and WBEs. The Contractor may not reject MBEs and WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. That there may be some additional costs involved in finding and using MBEs and WBEs is not in itself sufficient reason for a Contractor's failure to meet the Project Specific Goals, as long as such costs are reasonable. The ability or desire of a Contractor 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 scopes of work that could be subcontracted.
  - d. Make efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance as required by the District or the prime Contractor, where appropriate.
  - e. Make efforts to assist interested MBEs and WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, where appropriate.
  - f. Use the services of the CCA, available minority/women community organizations, minority/women contractors' groups, government sponsored minority/women business assistance offices and other appropriate organizations to provide assistance in the recruitment and placement of MBEs and WBEs.
4. In determining whether a Contractor has made Good Faith Efforts, the performance of other Contractors in meeting the Project Specific Goals may be considered. For example, when the apparent successful Contractor fails to meet the Project Specific Goals but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Contractor could have met the Project Specific Goals. Similarly, if the apparent successful Contractor fails to meet the Project Specific Goals, but meets or exceeds the average MBE or WBE participation obtained by other Contractors, this may be evidence that the apparent successful Contractor made Good Faith Efforts.
  5. A signed letter of intent from each listed MBE or WBE, describing the work, materials, equipment or services to be performed or provided by the MBE or WBE and the agreed upon dollar value shall be due at the time of bid proposal or within three days after such submission.
  6. The CCA shall timely review the Utilization Plan before award, including the scope of work and the letters of intent from MBEs and WBEs. The CCA may request clarification in writing of items listed in the Utilization Plan, provided such clarification shall not include the opportunity to augment listed participation or Good Faith Efforts.

7. If the CCA determines that the Utilization Plan demonstrates that the Project Specific Goals have been achieved or Good Faith Efforts made, with the concurrence of the Using Department, the CCA and Using Department shall recommend award to Purchasing Department.
8. If the CCA finds that a Contractor did not make sufficient Good Faith Efforts, the CCA shall communicate this finding to the Purchasing Department and recommend that the bid/proposal be rejected. A Contractor may protest this determination pursuant to the County's bid protest procedures.

*M. Contract Administration Procedures.*

1. Upon award of a contract by the District that includes Project Specific Goals; the Project Specific Goals become covenants of performance by the Contractors and incorporated in the contract.
2. The Contractor shall provide a listing of all subcontractors to be used in the performance of the contract, and detailed subcontractor information to the District with each request for payment submitted to the District or as otherwise directed by the District. The CCA and the Using Department shall monitor subcontractor participation during the course of the contract. The District shall have full and timely access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by any officer or official of the District for any purpose.
3. The Contractor cannot make changes to the Utilization Plan or substitute MBEs or WBEs named in the Utilization Plan without the prior written approval of the CCA, Purchasing Agent and the Using Department. Unauthorized changes or substitutions shall be a violation of this subdivision and a breach of contract, and 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 Contractor to contract penalties or other sanctions.
  - a. All requests for changes or substitutions of a MBE or WBE Subcontractor(s) named in the Utilization Plan shall be made to the CCA, Purchasing Agent and the Using Department in writing, and shall clearly and fully set forth the basis for the request. A Contractor shall not substitute a MBE or WBE subcontractor or perform the work designated for a MBE or WBE subcontractor with its own forces unless and until the CCA, Purchasing Agent in consultation with the Using Department, approves such substitution in writing. A Contractor shall not allow a substituted subcontractor to be in work until the Director, Purchasing Agent and the Using Department have approved the substitution.
  - b. The facts supporting the request must not have been known nor reasonably should have been known by either party before the submission of the Utilization Plan. Bid shopping is prohibited. The Contractor must negotiate with the MBE or WBE subcontractor to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.
  - c. Substitutions of the subcontractor shall be permitted only on the following bases:

- (i) Unavailability after receipt of reasonable notice to proceed.
  - (ii) Failure of performance.
  - (iii) Financial incapacity.
  - (iv) Refusal by the subcontractor to honor the bid or proposal price.
  - (v) 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.
  - (vi) Failure of the subcontractor to meet insurance, licensing or bonding requirements; or
  - (vii) The subcontractor's withdrawal of its bid or proposal.
- d. The final decision whether to permit or deny the proposed substitution, and the basis of any denial, shall be communicated to the parties in writing by the CCA.
- e. Where the Contractor has established the basis for the substitution to the satisfaction of the District, the Contractor shall make Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CCA in obtaining a new MBE or WBE. If the Project Specific Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.
- f. If the District requires the substitution of a MBE or WBE subcontractor listed in the Utilization Plan, the Contractor shall undertake Good Faith Efforts to fulfill the Utilization Plan. The Contractor may seek the assistance of the CCA in obtaining a new MBE or WBE subcontractor. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the Contractor may substitute with a non-Certified Firm.
4. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Utilization Plan, the Contractor shall obtain the approval of the CCA to modify the Utilization Plan and must make Good Faith Efforts to ensure that MBES and WBEs have a fair opportunity to bid on the new scope of work.
5. Changes to the scopes of work shall be documented by the Using Department at the time they arise, to establish the reasons for the change and the effect on achievement of the MBE or WBE goal.
6. Prior to contract closeout, the CCA shall evaluate the Contractor's fulfillment of the contracted goals, taking into account all approved substitutions, terminations and changes to the contract's scope of work. If the District determines that Good Faith Efforts to meet the MBE or WBE commitments were not made, or that fraudulent misrepresentations have been made, or any other breach of the contract or violation of this subdivision, a remedy or sanction may be imposed, as provided in the contract.
- N. *Sanctions and Penalties.*
1. The following violations of this subdivision may result in a breach of contract:

- a. Providing false or misleading information to the District in connection with submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other Program operations.
  - b. Committing any other violations of this subdivision.
2. A Contractor or subcontractor is subject to withholding of payments under the contract, termination of the contract for breach, contract penalties, or being barred or deemed non-responsive in future District solicitations and contracts as determined by the District's Purchasing Agent, if it is found to have:
- a. Provided false or misleading information in connection with an application for certification or recertification or colluded with others to do so;
  - b. Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations or colluded with others to do so;
  - c. Failed in bad faith to fulfill Project Specific Goals, thereby materially breaching the contract;  
or
  - d. Failed to comply in good faith with substantive provisions of this subdivision.
- O. *Program Review and Sunset.*
1. The President and the Board of Commissioners shall receive quarterly and annual reports from the CCA detailing the District's performance under the Program.
  2. The President and the Board of Commissioners will review these reports, including the Annual Participation Goals and the County's progress towards meeting those Goals and eliminating discrimination in its contracting activities and marketplace.
  3. Within five (5) years after the effective date of this ordinance, the District will review the operation of the Program and the evidentiary basis for the Program in order to determine whether the District has a continuing compelling interest in remedying discrimination against MBEs and WBEs in its construction marketplace, and the permissible scope of any narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the District will not function as a passive participant in a discriminatory marketplace.
  4. This subdivision shall sunset on or before June 30, 2016.

**Effective date:** This ordinance shall be in effect immediately upon adoption.

**COMMISSIONER REYES, SECONDED BY VICE CHAIRMAN STEELE, MOVED TO APPROVE THE PROPOSED SUBSTITUTE ORDINANCE FOR COMMUNICATION NO. 11FINA0194. THE MOTION CARRIED AND THE PROPOSED SUBSTITUTE ORDINANCE FOR COMMUNICATION NO. 11FINA0194 WAS APPROVED.**

COMMISSIONER DALEY, SECONDED BY VICE CHAIRMAN STEELE,  
MOVED TO ADJOURN. THE MOTION CARRIED AND THE MEETING WAS  
ADJOURNED.

Respectfully submitted,  
Forest Preserve District  
Committee on Finance



Gregg Goslin, Chairman

Attest:



Matthew B. DeLeon, Secretary