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# CITY OF CHICAGO

## RULES

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### **CITY-BASED MANUFACTURERS, BUSINESSES, AND PROJECT-AREA SUBCONTRACTORS BID INCENTIVES**

**UNDER 2-92-405, 2-92-410, AND 2-92-412**

**LAST UPDATED: September 7, 2018**



**DPS** DEPARTMENT OF  
**PROCUREMENT  
SERVICES**

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**Mayor Rahm Emanuel**

**Chief Procurement Officer Shannon E. Andrews**

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BY AUTHORITY VESTED IN THE CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF PROCUREMENT SERVICES PURSUANT TO 2-92-405, 2-92-410 AND 2-92-412, THE FOLLOWING RULES REGARDING THE CITY-BASED MANUFACTURERS, BUSINESSES, AND PROJECT-AREA SUBCONTRACTORS BID INCENTIVES ARE ADOPTED HEREIN.

By Order of the Commissioner:

Signed:   
Chief Procurement Officer *John*

Date: 7 September 2018

Effective: **September 7, 2018**

## **1. GENERAL PROVISIONS**

### **1.1. Statement of Authority**

These rules and regulations are issued pursuant to the following Sections of the Municipal Code of Chicago:

Section 2-92-410 of the Municipal Code of Chicago establishes a bid incentive for utilization of city-based manufacturers (“manufacturers bid incentive”). Subsection (c) of the Section requires the chief procurement officer to “establish, in rules, and regulations, the amount of value that must be derived from manufacturing activities located in the city in order for [a specific type of] good to qualify as a locally manufactured good.” Subsection (g) authorizes the Chief Procurement Officer to “adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement” of the Section.

Section 2-92-412 of the Municipal Code of Chicago establishes bid preferences for city-based businesses, city based businesses in which the majority of its employees are city residents, and city based businesses in which the majority of its city resident employees reside in a socio-economically disadvantaged area (collectively “business bid incentives”). Subsection (f) authorizes the Chief Procurement Officer to “adopt, promulgate and enforce reasonable rules pertaining to the administration and enforcement” of the Section.

Section 2-92-405 of the Municipal Code of Chicago establishes a bid preference for utilization of project-area subcontractors (“subcontractor bid incentive”). Subsection (f) authorizes the Chief Procurement Officer to “adopt, promulgate and enforce reasonable rules and regulations pertaining to the administration and enforcement” of the Section.

### **1.2. Application and Statement of Purpose**

Unless otherwise indicated, the following rules and regulations shall apply to the manufacturers bid incentive, the business bid incentives, and the subcontractor bid incentive (collectively, “bid incentive”).

These rules and regulations describe how and when the bid incentive would apply, including the right of the Chief Procurement Officer to decline to apply the bid incentive.

## **2. DEFINITIONS**

Unless otherwise specified, whenever used in these rules and regulations, the following terms have the following meanings:

“City-based business” means a person who (i) conducts meaningful day-to-day business operations at a facility located within the city and that facility is the place of employment for the majority of that person’s regular, full-time workforce; (ii) holds all appropriate city licenses; and (iii) is subject to applicable city taxes.

“City-based manufacturer” means a person who: (i) holds any appropriate city license; (ii) is subject to applicable city taxes; and (iii) owns, operates, or leases a manufacturing facility within the city.

“City residents” has the meaning ascribed to the term in Section 2-92-330.

“City resident employee” means an individual who resides in the City and who is employed by a prime contractor in a permanent, full-time employment and whose work is not counted towards the work hours required by Section 2-92-330.

"Construction project" means any project to be paid for by the city, but which is not funded in whole or part by any federal or state funds, to construct, remodel or reconstruct any public works, public buildings, public structures, roadways, parkways, bridges, parking facilities or parks, or any portion of any of the same, belonging to the city within its geographical boundaries as they exist or shall exist in the future.

"Contract" means any contract, purchase order or agreement awarded by the city and whose cost is to be paid from funds belonging to or administered by the city; provided that the term contract does not include: (i) a delegate agency contract; (ii) a lease of real property; or (iii) a collective bargaining agreement.

"Contract for goods" means any contract, purchase order or agreement for the purchase of goods awarded by the city and whose cost is to be paid from funds belonging to or administered by the city; provided that a "contract" does not include: (i) a delegate agency contract; (ii) a lease of real property; (iii) a collective bargaining agreement; or (iv) a construction contract as defined in Section 2-92-670.

"Locally manufactured goods" means goods whose value, either in whole or in part, is derived from growing, producing, processing, assembling, or manufacturing activities that occur within a city-based manufacturer's facility located within the city.

"Manufacture" means to produce tangible goods for use from raw or prepared materials by giving the materials new forms, qualities, properties or combinations, whether by hand-labor or machines.

"Owner-employee" means an owner and employee of a prime contractor. For example, an owner is an owner-employee if he or she is on the prime contractor's payroll and is active in the management of the business. A passive investor/owner is not an owner-employee.

"Prime Contractor" means a person who is a city-based business and the primary contractor on a contract. A "Prime Contractor" does not include any subcontractors.

"Project-area subcontractor" means a person who: (i) conducts meaningful day-to-day business operations at a facility located within that part of the city designated as the project area in the information for bidders issued by the department and that facility is the place of employment for the majority of that person's regular, full-time workforce; (ii) holds all appropriate city licenses; (iii) is a small business enterprise; and (iv) is subject to applicable city taxes; provided that a project-area subcontractor shall not include the prime contractor.

"Small business enterprise" means a small business as defined by the U.S. Small Business Administration, pursuant to the business size standards found in 13 C.F.R. Part 121, relevant to the scope of work the business seeks to perform on city contracts. A business is not an eligible small business enterprise in any city fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 C.F.R. Part 121.

"Socio-economically disadvantaged area" means an area within the City that meets the criteria for designation as socio-economically disadvantaged area as set forth in rules promulgated by the City's Commissioner of Planning and Development pursuant to Section 2-92-390.

### **3. PROCEDURES**

#### **3.1. City-Based Manufacturers Bid Incentive**

Unless otherwise prohibited by federal, state, or local law, the Chief Procurement Officer shall allocate the bid incentive described in Section 2-92-410 of the Municipal Code of Chicago, as may be amended from time to time, to any qualified bidder on a contract for goods having an estimated contract value of \$100,000 or more when advertised or, if not advertised, awarded.

As of March 20, 2013, the city-based manufacturers bid incentive, if applicable, will apply as follows:



*Total Dollar Value of Locally Manufactured Goods Provided in the Contract*

*Bid Incentive*

25% to 49%	1% of the contract base bid
50% to 74%	1.5% of the contract base bid
75% or greater	2% of the contract base bid

The city-based manufacturers bid incentive is limited in scope and therefore will not apply to every contract between the City of Chicago and a contractor providing locally manufactured goods.

The city-based manufacturers bid incentive does not apply if:

- prohibited by federal, state, or local law;
- the estimated value of the goods is less than \$100,000;
- the bidder has been allocated a local business bid preference on the contract pursuant to Section 2-92-412 of the Municipal Code of Chicago;
- the bidder has been allocated a project-area subcontractor bid preference on the contract pursuant to Section 2-92-405 of the Municipal Code of Chicago;
- the bidder has been allocated an incentive for the utilization of veteran-owned subcontractors pursuant to Section 2-92-940; or
- the Chief Procurement Officer declines to allocate a bid incentive for any of the six reasons set forth in subsection (b)(2) of Section 2-92-410 of the Municipal Code of Chicago.

### **3.2. City-Based Business Bid Incentives**

Unless otherwise prohibited by federal, state, or local law, for a contract having an estimated contract value of \$100,000 or more, the Chief Procurement Officer shall allocate to any qualified bidder that is a prime contractor a bid preference of:

- i. 4 % of the contract base bid if the prime contractor is a City-based business; or
- ii. 6 % of the contract base bid, if the majority of such prime contractor's employees are city resident employees; or
- iii. 8% of the contract base bid, if such prime contractor is eligible for an incentive under (3.2)(ii) and the majority of such contractor's city resident employees are residents of a socio-economically disadvantaged area.

For the purposes of the 4% and 6% incentives, an owner-employee will be considered for the purposes of determining whether a majority of the prime contractor's employees are city residents or residents of socio-economically disadvantaged area, as applicable. If a business has more than two employees, including all owner-employees, "majority" means more than half.

The city-based business bid incentives are limited in scope and therefore will not apply to every contract between the City of Chicago and a city-based business, or, if applicable, a city-based business eligible for a four percent or six percent bid preference.

The city-based business bid incentives do not apply if:

- prohibited by federal, state, or local law;
- the estimated value of the contract is less than \$100,000;
- the bidder has been allocated a local manufacturers bid preference on the contract pursuant to Section 2-92-410 of the Municipal Code of Chicago;

The city-based business bid incentives do not apply if the chief procurement officer declines to allocate a bid incentive because:

- an emergency exists;
- the contract is for cooperative purchasing or cooperative construction; or
- the Chief Procurement Officer concludes allocation of a bid preference is not in the city's best interest.



### 3.3. City-Based Subcontractor Bid Incentive

For any construction project advertised after the effective date of the ordinance and where not otherwise prohibited by federal, state or local law, the Chief Procurement Officer shall allocate to any qualified bidder the following bid preference for utilization of project-area subcontractors in the performance of the contract.

<b>Total dollar value of work performed by project-area subcontractors as a percentage of the total contract value</b>	<b>Bid Preference</b>
1 to 16%	0.5% of the contract base bid
17 to 32%	1% of the contract base bid
33 to 49%	1.5% of the contract base bid
50% or greater	2% of the contract base bid

The city-based subcontractor bid incentive is limited in scope and therefore will not apply to every contract between the City of Chicago and a contractor utilizing project area subcontractors.

The city-based subcontractor bid incentive may not apply if:

- prohibited by federal, state, or local law;
- the bidder has been allocated a local manufacturers bid preference on the contract pursuant to Section 2-92-410 of the Municipal Code of Chicago;
- an emergency exists;
- the contract is for cooperative purchasing or cooperative construction contracts; or
- the Chief Procurement Officer otherwise concludes that the allocation of a bid preference is not in the city's best interest.

### 3.4. Prohibition

The bid incentives provided in Sections 2-92-410 and 2-92-412 are not cumulative. A bidder may only benefit from one of the two preferences (manufacturers or business) for any single procurement.

The bid incentives provided in Sections 2-92-410 and 2-92-405 are not cumulative. A bidder may only benefit from one of the two preferences (manufacturers or subcontractor) for any single procurement.

The business bid incentives provided in Section 2-92-412 are not cumulative. A bidder may benefit from one of the three types of city-based business incentives (city-based business, city-based business eligible for a four-percent bid preference or city-based business eligible for a six-percent bid preference) for any single procurement.

### 3.5. Purpose and Effect of Bid Incentive

The purpose of the bid incentive is to identify the low bidder; it does not apply to or otherwise pertain to the contract price.

Example #1 (manufacturers bid incentive):

Assume that the apparent lowest responsive and responsible bidder does not qualify for the bid incentive. Assume also that the second lowest responsive and responsible bidder does qualify for the bid incentive because 30% of the goods provided by the second bidder are locally manufactured goods and the second bidder meets all other eligibility criteria. If the second lowest bidder's bid is within 1% of the lowest bid, determined by deducting 1% from the bid price of the bidder meeting the eligibility criteria, the second lowest bidder will be awarded the contract.

Example #2 (business bid incentives):

**City-based business:** Assume that the apparent lowest responsive and responsible bidder does not qualify for the bid incentive and the second lowest responsive and responsible bidder meets eligibility criteria and otherwise qualifies for the bid incentive. If the second lowest bidder's bid is within 4% of the lowest bid, determined by





deducting 4% from the bid price of the bidder meeting the eligibility criteria, the second lowest bidder will be awarded the contract.

**City-based business eligible for a six percent bid preference:** Assume that the apparent lowest responsive and responsible bidder does not qualify for the bid incentive and the second lowest responsive and responsible bidder meets eligibility criteria and otherwise qualifies for the bid incentive. If the second lowest bidder's bid is within 6% of the lowest bid, determined by deducting 6% from the bid price of the bidder meeting the eligibility criteria, the second lowest bidder will be awarded the contract.

**City-based business eligible for a eight percent bid preference:** Assume that the apparent lowest responsive and responsible bidder does not qualify for the bid incentive and the second lowest responsive and responsible bidder meets eligibility criteria and otherwise qualifies for the bid incentive. If the second lowest bidder's bid is within 8% of the lowest bid, determined by deducting 8% from the bid price of the bidder meeting the eligibility criteria, the second lowest bidder will be awarded the contract.

Example #3 (subcontractor bid incentive):

Assume that the apparent lowest responsive and responsible bidder does not qualify for the bid incentive. Assume also that the second lowest responsive and responsible bidder does qualify for the bid incentive because 35% of the total contract value is performed by project-area subcontractors and the second bidder meets all other eligibility criteria. If the second lowest bidder's bid is within 1.5% of the lowest bid, determined by deducting 1.5% from the bid price of the bidder meeting the eligibility criteria, the second lowest bidder will be awarded the contract.

Example #4 (bid incentive applied to RFP and RFQ procurements)

In procurements where price is a factor, but not the only consideration for determining the qualifications of a vendor submitting a proposal to the City, or where price is not a factor in determining the qualifications of a vendor submitting a proposal, the evaluation committee shall apply the relevant incentive (as calculated above) to the total evaluated score of the respondents. Thus, if a respondent's score is 4.0, and the respondent qualifies for the city-based business bid incentive, 2% of the respondent's score shall be added, for a final score of 4.08.

### 3.6. Application Procedures

#### Affidavit

At the time of bid, bidders seeking to take advantage of the bid incentive must submit the city-based manufacturers incentive affidavit included in bid packages for the procurement of goods, the city-based business bid incentives affidavit included in bid packages for the procurement of contracts in amounts of \$100,000 or more, and/or the city-based subcontractor bid incentive affidavit included in bid packages for construction projects.

#### Additional Documentation

In addition to the affidavit referenced in this section 3.6 of these Rules and Regulations, at the time of bid, bidders seeking to take advantage of the 4% bid incentive for city-based businesses must submit (i) all city licenses; (ii) proof of good standing with the Illinois Secretary of State; and (iii) proof of payment of applicable city taxes; bidders seeking to take advantage of the 6% bid incentive must submit the items listed in (i)-(iii) above as well as (iv) certified payroll reports (if certified payrolls are unavailable, a payroll record is required), including employee name, title, and address, for the bidder's regular, full-time workforce at a facility located within the city; bidders seeking to take advantage of the 8% bid incentive must submit the items listed in (i)-(iv) above as well as (v) an indication of which employees live in socio-economically disadvantaged areas of the city.

The Chief Procurement Officer may require, at the time of bidding, prior to contract award, or during the term of the contract, such additional documentation as the chief procurement officer deems necessary to verify that a bidder qualifies, or continues to qualify, for the bid incentive sought.

Contractors and their subcontractors are required to maintain records of compliance with the bid incentive for a period of three years after the expiration of the contract. Access to records must be granted in accordance with Section 2-92-410, 2-92-412, or 2-92-405, as applicable.



For the city-based manufacturers bid incentive, records of compliance to be maintained must include, at a minimum, a manufacturer's certification that the good was manufactured at a facility located in the city and an opinion from a licensed certified public accountant that evidences the amount of value being added from the manufacturing activity located in the city. However, the Chief Procurement Officer reserves the right to request additional documentation.

For the city-based subcontractor bid incentive, records of compliance that may be required include affidavits and other supporting documents demonstrating that a subcontractor is a project-area subcontractor.

*The Chief Procurement Officer reserves the right to decline to include or allocate the bid incentive pursuant to the authority granted in Section 2-92-410, 2-92-412, and 2-92-405.*

### 3.7. Amount of Value

For a good to qualify as a locally manufactured good, the following value must be derived from manufacturing activities located in the city:

**Agricultural and Construction Equipment:** Regardless of origin of parts, greater than 50% of the item as it is offered for retail sale must be assembled in the city.

**Cleaning/janitorial products, paint, and other chemical products:** 75% of ingredients, by weight or volume, exclusive of packaging, must be combined in the city.

**Clothing, Consumer Equipment, Furnishings, Housewares:** greater than 50% of the item as it is offered for retail sale, exclusive of packaging, must be assembled in the city.

**Communications and Safety Equipment:** Regardless of origin of parts, greater than 50% of the item as it is offered for retail sale must be assembled in the city.

**Food or Beverage:** 75% of ingredients, by weight or volume, exclusive of packaging, must be combined in the city.

**Hardware, Machinery Components, Tools:** Greater than 50% of the item as it is offered for retail sale, exclusive of packaging, must be assembled in the city or greater than 75% of the raw material used to make the item must be combined in the city.

**Health Care Products:** Greater than 50% of the item as it is offered for retail sale, exclusive of packaging, must be assembled in the city or greater than 75% of the raw material used to make the item must be combined in the city.

**Motor Vehicles:** Regardless of origin of parts, greater than 50% of the vehicle must be assembled in the city.

**Motor Vehicles Customized After Manufacturer:** Regardless of origin of parts, customization must take place in the city and the vehicle's final dollar value must exceed its pre-customized dollar value by 20% or more.

**Office Equipment/Products:** Greater than 50% of the item as it is offered for retail sale, exclusive of packaging, must be assembled in the city.

### 3.8. Penalties

For the city-based manufacturers bid incentive, any contractor that fails to supply the promised percentage of locally manufactured goods will be fined three times the amount of the difference between the bid incentive allocated and the bid incentive that would have been allocated for the amount of locally manufactured goods actually supplied under the contract, unless the contractor can demonstrate that due to circumstances beyond the contractor's control, the contractor for good cause was unable to provide the promised percentage of locally manufactured goods.

For the city-based business bid incentives, any prime contractor awarded a contract due to the application of a city-based business preference and who fails to remain a city-based business, or, if applicable, a city-based business eligible for a six percent or eight percent bid preference, during the contract will be fined three times the amount of





the bid incentive allocated, unless the prime contractor can demonstrate that due to circumstances beyond the prime contractor's control, the prime contractor for good cause was unable to remain a city-based business, or, if applicable, a city-based business eligible for a six percent or eight percent bid preference, throughout the duration of the contract period.

For the city-based subcontractor bid incentive, any prime contractor that has failed to retain the percentage of project-area subcontracts for which a bid preference was taken into consideration in awarding of a contract shall be fined an amount equal to three times the amount of the bid preference allocated, unless the prime contractor can demonstrate that due to circumstances beyond the prime contractor's control, the prime contractor for good cause was unable to retain the percentage of project-area subcontractors throughout the duration of the contract period.

#### **4. FINAL DECISION**

The Chief Procurement Officer or designee shall make the final determination regarding the applicability of the bid incentive to any procurement.

