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# CITY OF CHICAGO

# RULES

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**EQUAL EMPLOYMENT OPPORTUNITY**

**BID INCENTIVE**

**UNDER 2-92-390**



**LAST UPDATED: OCTOBER 17, 2016**



DEPARTMENT OF  
**PROCUREMENT  
SERVICES**

BY AUTHORITY VESTED IN THE COMMISSIONER OF THE DEPARTMENT OF PROCUREMENT SERVICES PURSUANT TO SECTION 2-92-390 OF THE MUNICIPAL CODE OF CHICAGO, THE FOLLOWING RULES REGARDING THE **EQUAL EMPLOYMENT OPPORTUNITY BID INCENTIVE** ARE HEREBY ADOPTED.

By Order of the Commissioner:

Signed:   
Shannon E. Andrews  
Chief Procurement Officer 

Date: JUL 1 9 2019

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Effective: May 20, 2019



## **1. GENERAL PROVISIONS**

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

These rules are issued pursuant to the following Section of the Municipal Code of Chicago:

Section 2-92-390 of the Municipal Code of Chicago ("Section") establishes a bid incentive for committing to utilization goals for journeyworkers, apprentices, and laborers on construction projects with an estimated contract value of \$100,000 or more ("EEO Bid Incentive" or "Incentive"). Subsection (e) of the Section authorizes the chief procurement officer to "adopt rules for the proper administration" of the Section.

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

These rules describe the proper use of the bid incentive, 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, the following terms have the following meanings:

"Bid incentive" means an amount deducted, for bid evaluation purposes only, from the contract base bid in order to calculate the bid price to be used to evaluate the bid on a competitively bid contract.

"Construction project" has the same meaning ascribed to that term in Section 2-92-335.

"Contract" means any contract, purchase order, construction project, or other agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement) awarded by the city and whose cost is to be paid from funds belonging to or administered by the city.

"Contract base bid" means the total dollar amount a contractor bids on a contract without factoring any bid incentive or percentage reductions to the bid amount.

"Prime contractor" means a business entity that is the primary contractor on a contract. A "prime contractor" does not include any subcontractors.

## **3. PROCEDURES**

### **3.1. EEO Bid Incentive**

Unless otherwise prohibited by federal, state, or local law, for a construction project having an estimated contract value of \$100,000 or more when advertised or, if not advertised, awarded, the chief procurement officer shall allocate a bid incentive pursuant to the canvassing formula described in subsection (c) of the Section, which will be applied as a percentage off of the contract base bid, to any bidder bidding as a prime contractor and is not an ineligible bidder.

Each bidder is invited to propose the minority and female employee utilization goals for the project, as percentages of the journeyworker and apprentice and laborer hours to be expended in the construction of the project. Lines 2, 4, and 6 in the formula (minority journeyworker,



apprentice, and laborer hours) shall not be greater than 70 percent in each category, for the purpose of canvassing only. The 70 percent limit shall not deter or restrict the fuller utilization of minority employees for the project, but shall only serve as a limiting figure for use in the formula. Similarly, lines 8, 10, and 12 (female journeyworker, apprentice, and laborer hours) shall not be greater than 15 percent in each category, for the purpose of canvassing only. Actual amounts of minority and female work will be measured for the total hours of construction workers employed on the projects within each of the categories of journeyworkers, apprentice, laborers by the contractor and all of the worksite subcontractors.

In calculating the aggregated work hours toward the utilization goals for construction journeyworkers, apprentices, or laborers under this subsection, the contractor shall be given 150 percent credit for every work hour performed by a minority or woman worker residing within a socio-economically disadvantaged area. The criteria for designation of an area as socio-economically disadvantaged will be set forth in rules promulgated by the Commissioner of Planning and Development. Such criteria shall include, but not be limited to, the median family income of an area.

The EEO bid incentive is limited in scope and therefore will not apply to every contract between the City of Chicago and a prime contractor.

The EEO bid incentive does not apply if:

- prohibited by federal, state, or local law;
- the estimated value of the contract is less than \$100,000;
- the contract is not for a construction project;
- an emergency exists;
- the contract is for cooperative purchasing or cooperative construction;
- the chief procurement officer concludes allocation of a bid incentive is not in the city's best interest.

### **3.2. 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. The bid incentive shall be applied by deducting a percentage from the bid price of the bidder meeting the eligibility criteria. The percentage shall be determined by employing the canvassing formula described in subsection (c) of the Section.

### **3.3. Eligibility**

A bidder bidding as a prime contractor on a construction project with an estimated contract value of \$100,000 or more may apply for the bid incentive. The contractor is obliged during the construction of the project to fulfill every numerical commitment made under the canvassing formula categories. Therefore, every limiting condition or circumstance which may affect referral, hiring, or deployment of construction trades employees must be taken into account by the bidder before the commitment is proposed. Limits imposed by the policies or circumstances of labor organizations or other referral resources, for example, should be anticipated by the bidder, since relief from the contractor's obligations as established under the canvassing formula is not available due to such circumstances found to exist during construction.



### 3.4. Penalties

- 3.4.1.** Upon completion of the work on a contract, any prime contractor that received the Incentive but failed to meet the total commitment made in each category shall be subject to liquidated damages as described in subsection (c) of the Section, which shall be withheld from the final payment to the prime contractor.
- 3.4.2.** The prime contractor is prohibited from passing through the liquidated damages to any of its subcontractors absent an explicit, written agreement between the prime contractor and the subcontractor with provisions covering responsibility for EEO bid incentive damages.
- 3.4.3.** If a contractor substantially fails to meet its EEO bid incentive commitments, the Chief Procurement Officer may assess increased monetary damages. Substantial failure means failure to meet the minority percentage commitments by a deficiency of 20 percentage points or more, and the female percentage commitments by a deficiency of five percentage points or more, and may incur increased monetary damages (pursuant to subsections (c) and (d) of the Section) as follows:

<u>Shortfall percentage points</u>	<u>Damages multiplier</u>
1-19 (minority); 1-4 (female)	1
20-29 (minority); 5-7 (female)	1.5
30-39 (minority); 8-10 (female)	2
40-49 (minority); 11-12 (female)	2.5
50-70 (minority); 13-15 (female)	3

- 3.4.4.** For each instance of substantially failing to meet its EEO bid incentive commitment, the contractor may apply for a reduction in the damages multiplier by providing information and documentation that demonstrates its good faith efforts to achieve its EEO commitments. A reduction shall be deemed appropriate if a contractor or subcontractor has unsuccessfully solicited a sufficient number of eligible apprentices, journeymen, and/or laborers to perform the work identified in the bid solicitation and has documented such effort to the satisfaction of the Chief Procurement Officer. Good faith efforts may also be demonstrated by requesting assistance from and meeting with:

- The Chicago Cook Workforce Partnership
- The relevant assist agencies
- The relevant trade unions

The above list is non-exclusive, and other factors may be considered. If the Chief Procurement Officer determines that the contractor demonstrated good faith efforts, such bidder shall not be assessed increased damages as described in section 3.4.3. herein, but it shall still be assessed, at minimum, damages calculated pursuant to subsection (c) of the Section as follows:

<u>Shortfall category (minorities and females)</u>	<u>Damages for each one percent deficiency</u>
Journeyworkers	Four cents for each hundred dollars of the base bid
Apprentices	Three cents for each hundred dollars of the base bid
Laborers	One cent for each hundred dollars of the base bid



**3.4.5.** Bidders having a pattern of substantial failure to meet its EEO commitments may also be determined to not be a responsible bidder and thus ineligible to bid on future contracts. Substantial failure to meet EEO bid incentives on three or more contracts shall constitute a pattern. If the Chief Procurement Officer makes a determination of non-responsibility and thus ineligibility to bid on contracts, s/he shall notify the contractor of its ineligibility.

**4. FINAL DECISION**

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

*This document may be updated periodically and is subject to change without notice.*

