

**MINORITY, WOMEN, DISADVANTAGED & EVANSTON BUSINESS ENTERPRISE
DEVELOPMENT COMMITTEE**

**Wednesday, March 19, 2025, 6:00 P.M.
Lorraine H. Morton Civic Center, 2100 Ridge Avenue, Room 2402**

AGENDA

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1. CALL TO ORDER/DECLARATION OF A QUORUM	
2. APPROVAL OF MINUTES	
A. <u>Approval of the February 19, 2025, Minutes</u> MWDEBE MINS 02-19-2025	3 - 4
3. GUEST INTRODUCTIONS	
4. OLD BUSINESS	
A. <u>Responsive Bidder Ordinance – Action</u> RBO 03.18.2025 Packet	5 - 93
B. <u>MWDEBE Small Business Survey</u> MWDEBE Small Business Survey	94 - 98
5. STAFF REPORTS	

- A. **MWDEBE Tracking Updates**
- B. **LEP Projects Tracking Updates**

6. NEW BUSINESS

7. OTHER BUSINESS

8. ADJOURNMENT

Order & Agenda Items are subject to change. Information about the Minority, Women & Evanston Business Enterprise Development Committee (M/W/EBE) is available at: www.cityofevanston.org/mwebecommittee. Questions can be directed to Tammi Nunez at 847-866-2935.

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**MINORITY, WOMEN, DISADVANTAGED & EVANSTON BUSINESS ENTERPRISE
(M/W/D/EBE)
DEVELOPMENT COMMITTEE**

Wednesday, February 19, 2025
6:00 P.M.
Meeting Minutes

MEMBERS PRESENT: CM Bobby Burns, Jared Davis, Bonaventure Fandohan, Tawana Johnson, Angela Pennisi, and Michael McLean

MEMBERS ABSENT: Ernest Noy and Rachel Williams

STAFF PRESENT: Tammi Nunez, Purchasing Manager; Hitesh Desai, CFO/ Treasurer; Lara Biggs, Bureau Chief -CIP/City Engineer; Daniel Biss, Mayor; Steve Ruger, Deputy City Manager; CM Clarie Kelly, Cynthia Granfield, Deputy City Attorney, Liza Roberston-Young, Chief Legislative Policy Advisor; Joseph Fields, Workforce Development Manager

GUEST: Jeremy Esparza, Marcus Jordan, Robert Piani

PRESIDING MEMBER: Councilmember Bobby Burns

1. Declaration of a Quorum

With a quorum present, Councilmember (CM) Burns called the meeting to order at 6:08 PM.

2. New Member Introduction/ Public Comments

A. Tawana Johnson

B. Jeremy Esparza, support of RBO (virtual), Clarified that RBO compliance does not mandate union membership and highlighted the importance of skilled workers and safety.

3. Approval of Minutes

M. McLean motioned to approve the December 18, 2024 minutes, seconded by J. Davis. The motion passed, and all voted in favor of approving the minutes.

4. Old Business

A. Responsive Bidder Ordinance:

- The meeting focused heavily on the Responsible Bidder Ordinance and its implications for local contractors, particularly concerning apprenticeship programs and the potential exclusion of non-union contractors.
- There was a strong emphasis on ensuring that any new requirements serve the interests of Evanston residents and businesses.
- The committee is considering how to streamline processes and reduce paperwork to encourage more local participation in city contracts.
- Future meetings will continue to address these issues, focusing on aligning the RBO with the LEP and ensuring compliance with legal standards.

Apprenticeship Program:

Council Member Burns shared insights from discussions with USDOL about alternative paths to compliance with the RBO, emphasizing creating a look-ahead requirement for apprenticeship programs rather than a retrospective one. Concerns about the requirement for bidders to have partnered with a program for the previous five years. Discussion on the potential for contractors to become their apprenticeship programs. It is essential to ensure that the RBO complements the Local Employment Program (LEP).

Concerns Raised:

Concerns about the apprenticeship program requirements potentially limiting non-union contractors. Discussion on the complexity and additional paperwork required by the RBO. Suggestions to set a threshold for when the RBO requirements apply, potentially at \$500,000. Discussion on the self-performing work requirement and its impact on local contractors. Staff and legal team will review the ordinance for consistency and compliance with procurement laws.

Follow-up:

- Staff to provide information on the quality of work and any issues with current contractors.
- Further meetings to discuss paperwork, process, and potential amendments to the RBO.
- Consider how the RBO and LEP can be aligned to serve local employment and contracting goals better.

B. MWDEBE Award Proposal

Discuss whether to include a monetary award or focus on non-monetary benefits like marketing packages. Rachel Williams submitted comments suggesting reconsideration of a monetary award. The subcommittee will meet on February 27th to discuss this further.

C. MWDEBE Small Business Survey – Item held

5. Staff Reports – Items held

- A. LEP Projects Tracking Updates**
- B. MWDEBE Tracking**

6. New Business

7. Other Business

8. Adjournment

The meeting concluded with acknowledgments of the complexity of the issues and the importance of continued dialogue

Councilmember Burns ended the meeting at 8:05 PM.



MEMORANDUM

To: M/W/D/EBE Committee
From: Alexandra Ruggie, Corporation Counsel
 Cynthia S. Grandfield, Deputy City Attorney
Subject: Responsible Bidder Ordinance
Date: March 19, 2025

Attached is a working draft proposed ordinance revising Section 1-17-1 of the City's Ordinances entitled "Contracts with the City" pursuant to a review and revision by Legal.

I. General Overview of the Bidding Process and Contracting with the City

As has been previously stated, the field of procurement law and construction law is heavily regulated and subject to numerous mandatory statutes that the contractor and the City must comply with for purposes of bidding and entering into contracts. In addition, from a due process perspective, there are certain bidding procedures that must be followed.

Broadly speaking, the City first issues a request for proposals or ("RFP"). Pursuant to Illinois statute, all construction/public works projects and contracts for goods, must be competitively bid in an amount exceeding \$25,000. The bids must be submitted in sealed format. The terms of the RFP must be carefully defined and adhered to in determining the successful bidder. Then, again by statute and other mandatory provisions, the City must award the contract to the lowest responsible bidder. The lowest responsible bidder is different from the lowest bidder or even a responsive bidder. A responsible bidder is determined by taking certain qualitative aspects into account. Because these concepts are sometimes confused, here is a table mostly taken from the National Association of State Procurement Officials that identifies the differences:

RESPONSIVE BIDDER	RESPONSIBLE BIDDER
• A determination focused on the response materials	• A determination focused primarily on the respondents.

<ul style="list-style-type: none"> • Determined after the opening of responses, frequently before any technical evaluation. • Identifies whether responses are eligible to proceed to evaluation. • Meets all prescribed requirements included in the solicitation. 	<ul style="list-style-type: none"> • Determination of responsibility is an ongoing process throughout the evaluation. • Determines if the respondent is qualified and capable of delivering needed goods/ services. • Includes research and reference checks with other clients.
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Once the sealed bids are opened, the City first determines what bids are “responsive.” Any bids that are not responsive are thrown out. Next, the City determines what bids are from “responsible bidders.” Once that is determined, the City next determines the “lowest responsible bidder.” Once the lowest responsible bidder is determined, it is submitted for Council approval for execution of the contract. Once Council approves the bidder, the contract is executed by the City Manager. The contract is then managed by City staff. During the course of the contract there are again multiple mandatory statutes that must be complied with, such as the Prevailing Wage Act, which includes the contractor submitting certified payroll to the Illinois Attorney General and staff review.

More than 100 units of government in Illinois have enacted a version of a responsible bidder ordinance, including Cook County, Lake County, Schaumburg, Des Plaines, and Waukegan among others. There is some variation among these ordinances, with some laws representing a more streamlined approach and others (for instance, Schaumburg’s) drafted quite similarly to the original draft ordinance presented to this Committee.

II. Legislative History

Attached to this memo, please find a chart of the legislative history of the Responsible Bidder Ordinance for detailed information to the extent helpful. Very generally speaking, this referral was made at the Referrals Committee in March of 2024 by Mayor Biss and Council Members Suffredin and Kelly. It was referred to the M/W/D/EBE Committee for further consideration. The first draft of the ordinance was provided to the Committee in July 2024 (although it was submitted after the deadline for posting the agenda so does not appear in the committee packet for that meeting). The same draft was included in the packet in September of 2024. There was another version of the proposed ordinance in December of 2024, and another version in February of 2025. Along with this chart, we have also attached each version that has been included in the packet for this Committee, to the extent helpful to compare. Staff has prepared the newest version, Ordinance 23-O-25 Amending Title 1, Chapter 17, “Contracts with the City” of the City Code, attached hereto and formatted to fit within the Evanston City Code.

III. Modifications Included in 23-O-25

- A. Certification by Calendar Year as Opposed to Prequalification
 - This area was cleaned up to allow for bidders to submit the required information yearly

- B. Prevailing Wage Act Corrected – 2 Violations in 5 years
 - This specifically follows the Prevailing Wage Act.
- C. Addition of “NBE” based on Request in Original Referral
- D. Drawing of Straws Removed Due to Problematic Procedure
 - It is highly unlikely that two bidders would ever score the same throughout an RFP process. This section was removed as it is unclear if it would pass legal review in Court.

IV. Further Direction Requested

- A. E(2) Excessive Pass Through Prohibited.
 - This provision, which appeared in previous drafts as the “self-performance” requirement, requires a certain percentage of work to be performed on site by the general contractor rather than by a subcontractor.
 - The committee has previously discussed how this provision would operate in practice for general contractors who principally manage the project work rather than directly performing it themselves.
 - Staff seeks policy direction on the percentage of work that must be performed by the general contractor. Additionally, staff suggests adding a qualifying term to this provision. It would read as follows:

Excessive Pass Through Prohibited. No contracts for the City shall be allowed where the general contractor performs less than **20% of the work absent Added Value**. The City’s Purchasing Manager or their designee shall advise the City Manager and the City Council of same at the time approval is sought by City Council for approval of letting of the contract.

Added value would be defined as:

<u>ADDED VALUE.</u>	<u>When a contractor performs subcontract management functions that the City Manager or their designee determines are a benefit to the City. (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).</u>
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- B. E(3) Apprenticeship Training Program Required.

- Staff seeks direction on the contract amount to require an Apprenticeship Training Program. The original referral required the program for all contracts over \$25,000.
- Staff further seeks direction on including a waiver to the apprenticeship program, similar to the waiver for the LEP program. The City conducts specialized public works projects that may only have a handful of contractors that are able to bid for the work in the United States and therefore, Staff is recommending a way to account for a situation where a company without an apprenticeship program is still able to bid.

C. E(9) Projects of Similar Size and Scope.

- Staff seeks direction on the amount of the contract price that requires a bidder to identify and submit documentation with their bid or similar projects in size and scope for the past five years and references for the same. The draft specifies this information be submitted for all contracts over \$25,000.

23-O-25

AN ORDINANCE

Amending Title 1, Chapter 17, “Contracts with the City” of the City Code

WHEREAS, the City of Evanston is a unit of local government organized and operating under federal and state laws;

WHEREAS, the City of Evanston seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the City of Evanston, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

WHEREAS, the City of Evanston seeks to enhance its ability to identify the lowest “responsible bidder” on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law; **WHEREAS**, the City of Evanston has a compelling proprietary interest in awarding contracts for public works construction projects in a manner that will yield successful project delivery in terms of work that is performed safely, at the lowest responsible cost, and in accordance with the highest possible standards of quality and efficiency;

WHEREAS, the City of Evanston has a compelling interest in ensuring that workers on public works construction projects are paid appropriate wages and receive

appropriate benefits, as set forth in, and required by, the Illinois Prevailing Wage Act and the Federal Davis-Bacon and Related Acts;

WHEREAS, securing successful delivery of public works construction projects presents significant challenges due to the complex, unpredictable and inherently dangerous nature of the construction industry, wherein errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities;

WHEREAS, the City of Evanston enacted the Local Employment Program (LEP) Ordinance, Section 1-17-1(C) in 2014, in an effort to increase the hiring of Evanston residents and Evanston construction apprentices on public works projects; and

WHEREAS, City ordinances with apprenticeship standards increase the likelihood of contractors on publicly funded projects to use apprentices, resulting in a better local tax base and a safer, more efficient job site;

WHEREAS, a responsible bidder ordinance assures efficient use of taxpayer dollars, promotes public safety, and is in the public interest;

WHEREAS, the Evanston City Council finds that it is in the best interest of the City of Evanston residents to amend the City Code with respect to bidding.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: Title 1, Chapter 17, "Contracts with the City" of the Evanston City Code of 2012, as amended, is hereby further amended as follows:

1-17-1. CONTRACTS WITH THE CITY.

- (A) All contracts with the City costing in excess of twenty-five thousand dollars (\$25,000.00) must be approved by the City Council. Contracts for the purchase of goods or services to be utilized in the conduct of the affairs of the City, shall be let by the City Manager or his/her designee, with the approval of the City Council, to a reliable, responsible and acceptable bidder, after advertising for the same, and bonds to be approved by the City Council may be taken for the faithful performance thereof.
- (B) All contracts for the purchase of goods or services with entirely City funds shall be awarded to the lowest quote/bid price or lowest evaluated quote/bid price from a responsive and responsible Evanston business enterprise ("EBE") provided the EBE's quote/bid price does not surpass the lowest quote/bid price or lowest evaluated quote/bid price from a responsive and responsible nonlocal business by more than five percent (5%).

All contracts let from requests for proposals (RFPs) and requests for qualifications (RFQs) with entirely City funds shall be awarded to the most qualified consultant that is an EBE, provided the EBE price/cost does not surpass the lowest price/cost or lowest evaluated price/cost from a nonlocal business by more than five percent (5%).

1. An "EBE" shall mean an entity which is located in or has one or more offices located in the City for a minimum of one year and which performs a "commercially useful function."
 - a. An EBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the EBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an EBE is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the EBE credit claimed for its performance of the work and other relevant factors.
 - b. An EBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of EBE participation. In determining whether an EBE is such an extra participant, the City will examine similar transactions, particularly those in which EBEs do not participate.
 - c. If an EBE does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force, or the EBE subcontracts a greater portion of the work of a contract than would be

expected on the basis of normal industry practice for the type of work involved, then it is not performing a commercially useful function.

- d. When an EBE is presumed not to be performing a commercially useful function as provided in Subsection (B)1c of this Section, the EBE may present evidence to rebut this presumption. The City may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
2. In determining whether a business has been located in Evanston for one (1) year, the MWEBE Committee will consider the following:
 - a. Whether the vendor pays property and/or sales taxes in Evanston; and
 - b. Whether the business entity's address or the address given on the federal and/or state income tax return is within Evanston.
 - c. The date of issuance of an Evanston business license.

The City may waive the one-year requirement if the entity provides evidence of a substantial commitment to Evanston.

3. Businesses that maintain a distribution warehouse or which manufacture in Evanston will receive EBE credit of sixty (60) percent and one hundred (100) percent, respectively. Those that do not maintain a distribution warehouse or manufacturing operation but have an office in Evanston will be considered a broker and receive a five (5) percent credit.
4. Eligibility as an EBE will be periodically reviewed and may be revoked at any time if the entity no longer meets the above requirements.

(C) Local Employment Program.

1. *Definitions.* For the purposes of this Subsection (C), the employment program, the following terms shall be defined as follows:

<i>CONTRACT.</i>	The written agreement to provide services established between the City and a contractor, including, but not limited to, a redevelopment agreement between the City and any contractor or party.
<i>CONTRACTOR.</i>	An individual, partnership, corporation, joint venture or other legal entity entering into a contract, or a subcontract of whatever tier, for a public works project.
<i>DESK REVIEW.</i>	A method of monitoring compliance with the local employment program in which the Business and Workforce Development Coordinator contacts a contractor or subcontractor to gather relevant information or request relevant documentation.
<i>EMERGENCY WORK.</i>	Work necessitated by an imminent threat to the property of the city or the health, safety, or welfare of its citizens.
<i>GENERAL CONTRACTOR.</i>	An entity that enters into a contract directly with the city. The general contractor may also be known as the prime contractor.

<i>LOCAL RESIDENT DATABASE.</i>	A database maintained by the City's Business and Workforce Development Coordinator containing the names of local residents who have expressed interest in employment on City public works projects.
<i>NEW HIRE.</i>	Any employee of a contractor who is not listed on the contractor's last quarterly tax statement and was hired prior to or during the commencement of work on a public works project contract subject to the requirements of the local employment program.
<i>ON SITE MONITORING.</i>	The Business and Workforce Development Coordinator's act of visiting the site of a public works project to ensure compliance with the requirements of the local employment program.
<i>PUBLIC WORKS PROJECT.</i>	Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part from City funds.
<i>RESIDENT.</i>	Any person whose domicile is in the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment. In order to qualify as a resident for purposes of the local employment program, an individual must have established domicile within the City at least thirty (30) days prior to commencing work on any public works project subject to the local employment program.
<i>SUBCONTRACT.</i>	A contract that exists between the general contractor and a subcontractor or between subcontractors of any tier.
<i>SUBCONTRACTOR.</i>	An entity that enters into a contract with the general contractor or another subcontractor.
<i>TIER.</i>	The level of relationship to the prime contractor of a subcontractor who enters into a contract under a prime contractor or another subcontractor to perform a portion of the work on a project.

2. *Work hours and new hire requirements.*

- a. Unless prohibited by federal, state, or local law, all contractors entering into contracts with the City for public works projects valued at two hundred fifty thousand dollars (\$250,000.00) shall ensure that:
 - 1) Fifteen percent (15%) of the total work hours are performed at the construction site by City of Evanston residents, as laborers and/or trade persons; and
 - 2) A minimum of one (1) Evanston resident is hired.
- b. The effectiveness of the local employment program regarding the minimum percentage of work hours and residents hired will be evaluated by city staff after two (2) years of implementation.

- c. These requirements shall bind the contractor both with respect to persons working directly for the contractor and to subcontractors, regardless of tier or phase of the project, hired to perform any portion of the contracted work. The contractor shall ensure that subcontractors comply with the requirements of the local employment program. It shall be the responsibility and obligation of the contractor that all contracts are in overall compliance with this Subsection (C) and all the requirements listed herein.
 - d. Requirements of the local employment program are satisfied if the contractor already employs Evanston residents sufficient to meet fifteen percent (15%) of the project's total work hours. Some or all of these requirements may be waived if a waiver is obtained from the City pursuant to Subsection (C)5. of this Section.
3. *Contracts, bid documents, subcontracts.* Where appropriate and consistent with law, contracts and bid documents shall incorporate the local employment program by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract entitling the City to all the remedies and damages available for material breach of a contract. All subcontracts shall expressly acknowledge the City's status as a third party beneficiary to the subcontract and further expressly acknowledge that the City, as a third party beneficiary, shall have the right to enforce the provisions of the local employment program. Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with the local employment program.
4. *Automatic review.* This Subsection (C) shall be reviewed to address any deficiencies on a bi-annual basis by the Minority, Women and Evanston Business Enterprise Development Committee.
5. *Waiver.*
- a. The contractor may request that the Business and Workforce Development Coordinator waive all or a portion of the requirements imposed under the local employment program. Such requests must be in writing and must be received by the Business and Workforce Development Coordinator prior to the award of any public works project contract. In order to apply for a waiver, the contractor must submit:
 - 1) Documentation to the Business and Workforce Development Coordinator demonstrating that:
 - a) The contractor utilized the local resident database to attempt to satisfy the local employment program hiring requirement.
 - b) The contractor notified residents of the employment opportunities available for the project. Such notification must have appeared in the employment section of a newspaper of local general circulation. Additionally, the Illinois department

of employment security's office located in Evanston, Illinois, must have been notified of the employment opportunities. All notices must have stated that all qualified applicants would receive consideration without regard to race, color, religion, sex or national origin.

- c) The contractor, for a contract utilizing union labor, contacted in writing Chicagoland labor unions to request a resident for employment on the project.
 - 2) Any additional documents requested by the Business and Workforce Development Coordinator in order to evaluate the waiver request.
6. *Business and Workforce Development Coordinator.*
- a. The Business and Workforce Development Coordinator shall determine, based on the required documentation and conditions cited by the contractor that make compliance unfeasible, whether to grant the waiver prior to the award of the contract. Examples of such conditions include, but are not limited to:
 - 1) Intermittent service by one (1) trade throughout the life of the project.
 - 2) Nonavailability of resident(s) necessary to fulfill craft position(s) required for the project.
 - b. If circumstances arise subsequent to the issuance of the contract, the results of which the contractor believes will prevent satisfying the local employment program requirements, the contractor will immediately notify the Business and Workforce Development Coordinator by requesting in writing a waiver of the percentage that cannot be met. The Business and Workforce Development Coordinator or his or her designee shall meet with the applicant as necessary and issue a decision within five (5) business days, including a determination as to any retroactive liability for failure to achieve the goals for work undertaken prior to the application for such a waiver.
7. *Local resident selection.* It is the contractor's responsibility to meet the requirement of the local employment program. In order to satisfy the work hours and/or new hire requirements of the local employment program, contractors working under a collective bargaining agreement shall contact the appropriate local union hall to request a resident. If a resident is not available for dispatch by that union hall, the contractor shall contact the Business and Workforce Development Coordinator or his or her designee to request an available Evanston resident. The Business and Workforce Development Coordinator or his or her designee will thereafter provide the name of a resident matching the qualifications defined by the contractor to the local union hall and that resident will be dispatched to the contractor within three (3) business days in accordance with the lawful hiring hall rules of the respective union. Failure of the Business and Workforce Development Coordinator to

provide an individual shall not relieve the contractor from their responsibility to comply with the local employment program.

In order to satisfy the work hours and/or new hire requirement of the local employment program, contractors working in the absence of a collective bargaining agreement shall contact the Business and Workforce Development Coordinator or his or her designee to request an available Evanston resident from the local resident database. The Business and Workforce Development Coordinator or his or her designee will provide the name of a resident matching the qualifications identified by the contractor within three (3) business days.

8. *Reporting requirements.* The contractor shall submit reports as required by the City in order to comply with the local employment program. These reports may include weekly certified payroll records for all crafts within five (5) working days of the end of each payroll period. Additionally, the City may require a weekly or monthly summary of the information that would be obtainable from the certified payroll regarding local hire by craft. These reports, if required, must show the person-hours on a laborer and/or trade person basis and, in the case of certified payroll records, identify the address, new hires, and trade and status journey person or apprentice of all employees on the project. All reports must have an original signature and be signed by an authorized officer of the company under penalty of perjury. The City will make a copy of all required forms available to contractors.

Nothing in the local employment program is intended to eliminate the requirement of a contractor to maintain certified payrolls or of the subcontractors to provide certified payrolls to the contractor, or for any contractor to provide certified payrolls to any party that requests them, as required under Illinois state law.

9. *Monitoring.* The Business and Workforce Development Coordinator or his or her designee will monitor compliance with the requirements of the local employment program by means including, but not limited to, desk reviews or on site monitoring. Audits of compliance may require the review of documents such as certified payrolls, canceled checks, or quarterly wage and withholding reports. Full scale investigations of noncompliance or violations will be on an as needed basis as determined by the Business and Workforce Development Coordinator.

A contractor that fails to provide requested documents or misrepresents material facts in such documents shall be deemed to be noncompliant with the local employment program.

10. *Post-award meeting.* At its discretion, the Business and Workforce Development Coordinator or his or her designee may require the contractor to attend a post-award meeting to familiarize the contractor with the local employment program requirements and to identify the individual by position and name if available. If requested by the contractor post-award, or at any time during the project, the City shall hold such a meeting within ten (10) business days.

11. *Penalty.* If the contractor or subcontractor should fail to meet the total percentage of resident project hours for any reason, without having received a waiver as outlined in Subsection (C)5. above, the City may impose a fine up to one percent (1.0%) of the approved project price in total. Contractors or subcontractors that are out of compliance due to a resident termination or resignation, shall immediately notify the Business and Workforce Development Coordinator of this occurrence within two (2) business days. Subsequently, the contractor or subcontractor shall have five (5) additional business days to replace a terminated or resigned worker with another resident. If the contractor or subcontractor fails to make the replacement or to notify the Business and Workforce Development Coordinator of this occurrence, the offending party will also be subject to a penalty up to one percent (1.0%) of the approved project price. If the noncompliant contractor makes a good faith effort to replace the resident, the fine may be waived.

At the sole discretion of the City, a contractor or subcontractor that has violated the terms of the local employment program within a three-year period may be determined a non-responsible bidder and excluded from bidding on future projects for a period of not less than one (1) year.

At the sole discretion of the City, an employee that has been hired through the LEP may be removed from the program for a period of not less than one (1) year for failing to adhere to program guidelines or due to termination by the contractor for cause. Such termination process will be reviewed by the Business and Workforce Development Coordinator.

12. *Workforce reserve account.* The City shall establish a reserve account for the deposit of all penalty funds within the general fund. This account may be utilized for the support of the LEP and other workforce development programs as follows:
 - The MWEBE Committee shall receive a report on the balance of penalty funds as of the end of the fiscal year no later than March 31 after the close of that year.
 - The MWEBE Committee shall recommend utilization of these funds for placement in the next year's proposed budget in accordance with current LEP and workforce development program goals.
 - Both program goals and recommended expenditure of funds will be subject to approval by the City Council.

(D) *Minority, women, disadvantage, and Evanston business enterprise (M/W/D/EBE) goals.*

1. *Definitions.* For the purposes of this Subsection (D), Minority, Women, Disadvantage, and Evanston Business Enterprise (M/W/D/EBE) Goals, the following terms shall be defined as follows:

DISADVANTAGE-OWNED	A firm must be at fifty-one percent (51%) owned by one (1) or more disadvantaged individual (socially and economically) or, in
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<i>BUSINESS ENTERPRISE or DBE.</i>	the case of a publicly-held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more disadvantaged individual (socially and economically) whose management and daily business operations are controlled by one (1) or disadvantaged individual (socially and economically). The City Manager or his or her designee shall determine which DBE certifications shall be accepted by the City.
<i>EVANSTON-OWNED BUSINESS ENTERPRISE or EBE.</i>	An entity which is located in or has one (1) or more offices located in the City for a minimum of one (1) year and which performs a "commercially useful function." The business must be certified by the City in accordance with the provisions of Section 1-17-1(B).
<i>MINORITY-OWNED BUSINESS ENTERPRISE or MBE.</i>	A business which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly-held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups, whose management and daily operations are controlled by one (1) or more members of one (1) or more minority groups. The City Manager or his or her designee shall determine which MBE certifications shall be accepted by the City.
<i>M/W/D/EBE GOALS.</i>	The City of Evanston establishes the goal of awarding not less than twenty-five percent (25%) of its contract awards to MBE, WBE, DBE and EBE businesses. The City of Evanston establishes the goal of awarding not less than three percent (3%) utilization of EBEs in its contract awards. The provisions of this Section shall be implemented by the City Manager or his or her designee. The provisions of this Section do not guarantee contract participation.
<i>WOMEN-OWNED BUSINESS ENTERPRISE or WBE.</i>	A business which is at least fifty-one percent (51%) owned by one (1) or more women, or, in the case of a publicly-held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women, whose management and daily business operations are controlled by one (1) or more women. The City Manager or his or her designee shall determine which WBE certifications shall be accepted by the City.

2. A minority-owned business enterprise ("MBE"), women-owned business enterprise ("WBE"), or disadvantage-business enterprise ("DBE") (collectively, "M/W/D/BE") must perform a "commercially useful function."
 - a. A M/W/D/BE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/W/D/BE

must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an M/W/D/BE is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the M/W/D/BE credit claimed for its performance of the work and other relevant factors.

- b. A M/W/D/BE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of M/W/D/BE participation. In determining whether a M/W/D/BE is such an extra participant, the City will examine similar transactions, particularly those in which M/W/D/BE's do not participate.
 - c. If a M/W/D/BE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the M/W/D/BE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then it is not performing a commercially useful function.
 - d. When an M/W/D/BE is presumed not to be performing a commercially useful function as provided in Subsection (D)(2)(c) of this Section, the M/W/D/BE may present evidence to rebut this presumption. The City may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
3. Businesses that maintain a distribution warehouse or manufacturing operation will receive M/W/D/BE credit of sixty percent (60%). Those that do not maintain a distribution warehouse or manufacturing operation will be considered a broker and receive a five (5) percent credit.
 4. Eligibility as a M/W/D/BE will be periodically reviewed and may be revoked at any time if the entity no longer meets the above requirements.

(E) Additional Requirements for Public Works Contract. All bidders for public works contracts must comply with the below specifications in bid submission and during the project for a successful bidder.

1. *Definitions.* For the purposes of this Subsection, the following definitions apply:

APPRENTICESHIP TRAINING PROGRAM.	<i>A program approved and registered by the United States Department of Labor's Office of Apprenticeship, or its successor organization, that has graduated at least five (5) apprentices in each other past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprentice able crafts dedicated</i>
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	<i>exclusively to the transportation of material and equipment to and from the public works project.</i>
<i>BIDDER.</i>	A contractor that submits a bid in response to a City of Evanston Request for Proposal.
<i>COMMERCIALLY USEFUL FUNCTION.</i>	A business enterprise that is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
<i>NEARBY BUSINESS ENTERPRISE ("NBE").</i>	A business enterprise located within fifteen (15) miles of Evanston City limits for a minimum of one (1) year and performs a commercially useful function.
<i>PUBLIC WORKS CONTRACT.</i>	Any construction, alteration, demolition, or repair work done under contract on City owned property.
<i>RELIABLE, RESPONSIVE AND ACCEPTABLE BIDDER.</i>	A bidder who submits a bid that conforms in all material respects to the requirements and criteria in the invitation for bids. This means the bid promises to perform in the precise manner requested by the government, and any minor irregularities in the bid shall not defeat responsiveness.

2. Excessive Pass Through Prohibited. Any bidder must directly perform at least 25% of the services identified in the project solicitation. The named bidder submitting the bid must be the entity directly performing the services. Any affiliates and/or subsidiaries shall not contribute to the minimum performance percentage required.

3. Apprenticeship Training Program Required. Public Works contracts for over \$25,000 amount or greater shall only be let to a contractor with evidence of participation in an Apprenticeship Training Program applicable to the work to be performed on the project. All contracts submitted to the City Council must identify whether the contractor meets this requirement. The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the City of Evanston in its discretion.

4. Occupational Safety and Health Administration Safety Cards Required. Prior to beginning work for the City, the bidder shall certify that all employees for the contractor that will be on the work site shall have completed a ten hour (10) or greater OSHA safety program. The contractor must submit copies of the employees' OSHA cards to the City prior to the project commencing.

5. Near Business Enterprises. In the absence of an Evanston Business Enterprise as required by City Code 1-17-1(B), the City shall award the contract for the

public works contract to the lowest bid price or lowest evaluated quote/bid price from a responsive or responsible NBE, provided that the NBE's bid price does not surpass the lowest bid price or lowest evaluated bid price from a responsible and responsible non NBE or EBE business by more than three percent (3%).

- a. An NBE shall perform a commercially useful function.
 - i. To determine whether an NBE is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the NBE credit claimed for its performance of the work and other relevant factors.
 - ii. An NBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of NBE participation. In determining whether an NBE is such an extra participant, the City will examine similar transactions, particularly those in which NBEs do not participate.
 - iii. If an NBE does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force, or the NBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then it is not performing a commercially useful function.
 - iv. When an NBE is presumed not to be performing a commercially useful function as provided in Subsection (B)1c of this Section, the EBE may present evidence to rebut this presumption. The City may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- b. In determining whether a business has been located in Evanston or within 15 miles of Evanston City limits for one (1) year, the MWEBE Committee will consider the following:
 - i. Whether the vendor pays property and/or sales taxes in Evanston, or, in the case of a NBE, in a community that is within 15 miles of City limits; and
 - ii. Whether the business entity's address or the address given on the federal and/or state income tax return is within Evanston or, in the case of a NBE, in a community that is within 15 miles of City limits.
 - iii. The date of issuance of an Evanston business license or, in the case of a NBE, the date of issuance of a business license by a community located within 15 miles of City limits.
 - iv. The City may waive the one-year requirement if the entity provides evidence of a substantial commitment to Evanston.
- c. Businesses that maintain a distribution warehouse or which manufacture in Evanston will receive EBE credit of sixty (60) percent and one hundred

(100) percent, respectively. Those that do not maintain a distribution warehouse or manufacturing operation but have an office in Evanston will be considered a broker and receive a five (5) percent credit.

- d. Eligibility as an NBE will be periodically reviewed and may be revoked at any time if the entity no longer meets the above requirements.

6. Certifications Required at time of Bid Submittal. All bidders, including any subcontractors included in the bid, as applicable, shall be compliant and shall submit certification of compliance with the following at the time of the bid submittal:

- a. The Prevailing Wage Act, 820 ILCS 130/1 et seq.
- i. Compliance with the Prevailing Wage Act is required for the previous five (5) years and certification that the contractor has not been found in violation of the Prevailing Wage Act by the Illinois Department of Labor; and
 - ii. A contractor who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice in a five-year (5) period shall be barred from bidding for a Public Works Contract for four (4) years from the date of the most recent finding from the Illinois Department of Labor.
- b. The Substance Abuse Prevention on Public Works Project Act, 820 ILCS 265/1 et seq;
- i. Compliance with the Substance Abuse Prevention on Public Works Act must include a copy of its written program for the prevention of substance abuse pursuant to the Act.
- c. The Workers' Compensation Act, 820 ILCS 305/1 et seq.;
- i. A copy of the applicable workers' compensation policy must be submitted to the City along with documentation of the Illinois Department of Labor registration. The bidder shall additionally certify that all employees are properly classified under the workers' compensation policy.
- d. The Unemployment Insurance Act, 820 ILCS 405/100, et seq.;
- i. A copy of the applicable Illinois Department of Employment Security current registration.
- e. A copy of the Illinois Secretary of State's Department of Business Services online records evidencing that the bidder has a current corporate annual report on file. If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply;
- f. A copy of the current registration with the Illinois Department of Revenue, if the bidder has employees;
- g. A disclosure of any federal, state or local tax liens or tax delinquencies against the bidder or any officers of the bidder in the last five (5) years;

- i. Compliance with the Federal Davis-Bacon Act and Related Acts, if applicable;
- j. Compliance with the Employee Classification Act 820 ILCS 185/1, et seq.
 - i. All contractors and subcontractors shall submit certified payrolls as specified in Illinois Public Act 94-0515.
- k. All applicable professional or trade licensure, including documentation of said licenses, certification that all licenses are current, and disclosure of any suspension or revocation of such license held by the company, or of any director, officer or manager of the company;
- l. Certification of compliance with 720 ILCS 5/33E-11 and that the bidder is not barred from contracting with any unit of State or local government as a result of a violation of 720 ILCS 5/33E-3,4;
- m. Certification that all individuals who perform work on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances; and
- n. Disclosure of any determinations by a court, State or Federal agency of violations of any federal, state or local laws, including but not limited to OSHA, contracting or antitrust laws, tax or licensing laws, environmental laws or the Federal Davis-Bacon and Related Acts.

Any bidder who fails to adhere to this Subsection shall be deemed disqualified from the bid process. If a bidder or contractor has a material change to the information provided to the City of Evanston, the bidder or contractor must notify the City within fourteen (14) days of this material change in writing. Failure to self-report a material change may result in disqualification from the bid.

7. Subcontractors. A bidder shall submit documentation including the name and address of each subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the project. Further, each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the City of Evanston. Each contractor shall submit all subcontractor information and supporting documentation to the City of Evanston prior to the subcontractor commencing work on the project. It shall be the responsibility of the bidder to ensure its subcontractors comply with all of the requirements of this Code, including the timely and complete submittals of all required documentation and full compliance with all obligations set forth in this Section.

8. Certification by Calendar Year. In anticipation of bidding on a project, a contractor may submit the certifications identified in the preceding section to the City's Purchasing Manager or their designee. The Purchasing Manager or their designee shall review the certifications for completeness. Upon review, if the certifications are

complete, the Purchasing Manager or their designee shall advise the contractor of same via an email address designated by the contractor. If the certifications are incomplete, the contractor shall be also notified via email and given fourteen (14) days to complete the submission. Once the certifications are completed, the contractor shall be notified of a "Certification by [Calendar Year]" and shall not be required to resubmit these certifications through December 31st of that year. Any material changes to these certifications shall be reported in writing to the City's Purchasing Manager or designee. In the event that these documents are still required to be submitted by a State or federal agency that is contributing funding to a project, this provision shall not apply.

9. *Projects of Similar Size and Scope.* In projects in the amount of \$25,000 or greater, bidders shall identify and submit documentation with their bid of relevant experience on projects of similar size and scope in the past five (5) years and submit references for same. Projects of similar size and scope shall be as further defined and outlined in the request for proposal ("RFP"). The bidder shall also identify any civil judgments, mediation or arbitration awards against it for default, breach, or damages due to delay or work inadequately performed. Information submitted pursuant to this section shall be considered in determining responsible bidders for the project at issue.

10. *Statement of Past Performance.* Bidders shall submit with their bid a record of all work performed for public bodies completed in the prior three (3) years. Such statements shall include the name of the public body, the type of work performed, the original contract price, the final contract price, the names of all subcontractors used and if liquidated damages were assessed.

11. *Project Labor Agreement.* A Project Labor Agreement may be required by the City. A Project Labor Agreement shall provide:

a. Decent wages and working conditions for qualified and skilled craftspeople so as to achieve professionally and competently completed projects, while maintaining labor peace and harmony in and amongst the various trades organizations;

b. Any firm, union affiliated or not, may bid on any City of Evanston project that uses a Project Labor Agreement, provided that the successful bidder becomes party to the Project Labor Agreement for the duration of the project. However, there shall be no obligation or requirement by any successful bidder to become affiliated with any trade union or association, and any such affiliation, or lack thereof, shall not be used, or considered by the City of Evanston in making a determination to award a project; and

c. In the event that no reliable, responsible and acceptable bidders bid on a project or portion thereof with a Project Labor Agreement, the City reserves the right to request new proposals without including the Project Labor Agreement. No Project Labor Agreements shall apply to private construction projects and/or developments in the City of Evanston.

12. Public Records. All information submitted by a successful bidder pursuant to this Section are subject to review pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

(E) Contractor Debarment, Suspension, and Prohibited Contracts.

1. *Definitions.* For the purposes of this Subsection, the following definitions apply:

<i>CITY MANAGER.</i>	The City of Evanston City Manager or his/her designee.
<i>CONTRACTOR.</i>	A person, partnership, corporation, or other entity that has contracted with, or is seeking to contract with, the City to construct a public improvement, to provide goods to, or perform services for or on behalf of the City. A contractor includes a contractor, subcontractor, vendor, or any person or entity who or which owns an interest of ten percent (10%) or more in a contractor, subcontractor, or vendor.
<i>DEBARMENT.</i>	An action taken by the City which results in a contractor being prohibited from bidding or proposing on, being awarded or performing work on a contract with the City. A contractor who has been determined by the City to be subject to such a prohibition is debarred.

2. *Effect of Debarment or Suspension.* A debarred or suspended contractor is prohibited from bidding or proposing or being awarded or performing work on a contract with the City during the period of debarment or suspension.
3. *Debarment or Suspension.* The City Manager is authorized to debar or suspend a contractor for just cause. The period of debarment or suspension will be determined by the City Manager in consultation with the Corporation Counsel, on a case by case basis. Debarment or suspension may be lifted for good cause shown. Reasons for debarment or suspension include, but are not limited to, the following:
 - a. Commission of fraud or a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such a contract or subcontract;
 - b. Conviction or indictment under a State or Federal statute of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a vendor or contractor;
 - c. Conviction or indictment under a State or Federal antitrust statute;
 - d. A finding by a State or Federal agency with statutory authority to adjudicate civil rights violations, or by a judge or jury in a State or Federal

- court of competent jurisdiction, that the vendor or contractor has violated State or Federal civil rights statutes in its hiring or business practices;
- e. Failure or default without good cause to perform in accordance with the terms of any contract and the associated supporting documents or unsatisfactory performance of any contract and the associated supporting documents with the City;
 - f. Disqualification or rejection of a bid by the vendor on three (3) or more occasions within a three (3) year period;
 - g. Commission of an act or omission indicating a lack of business integrity or business honesty;
 - h. Debarment, disqualification or suspension by another government entity for any reason; or
 - i. Any Federal or State funding that, by law, rule, or regulation, precludes the City from paying a contractor from those funding.
4. *Procedure.* Before a contractor is debarred or suspended, written notice of debarment or suspension must be provided to that contractor. Such notice must apprise the contractor of the reasons for the debarment or suspension and must inform the contractor of the right to be heard before the City Manager. The City Manager must grant a reasonable opportunity for the debarred or suspended contractor to be heard on the issue of said debarment or suspension, if the contractor submits a request in writing within seven (7) calendar days of the mailing of the written notice. The City Manager will make a final determination after consulting with Corporation Counsel.
 5. *Assignment of Contracts.* No contract will be assigned or sublet by the successful bidder without the consent of the City Manager.
 6. *Prohibited Bidders and Contractors.*
 - a. Unless otherwise provided, no contractor will bid or enter into a contract or subcontract under this Subsection if the business or any officer, director, partner, or other managerial agent of the business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 for a period of five (5) years from the date of conviction.
 - b. Every bid submitted to and contract executed by the City and every subcontractor will contain a certification by the bidder, contractor, or subcontractor, respectively, that the bidder, contractor, or subcontractor is not barred from being awarded a contract or subcontract under this Section and acknowledges that the City Manager will declare the related contract void if any of the certificates completed pursuant to this Subsection (b) are false.
 7. *Debt Delinquency.*

- a. No person will submit a bid for or enter into a contract or subcontract under this Section if that person knows or should know that they or any affiliate is delinquent in the payment of any debt to the City, unless the person or affiliate has entered into a deferred payment plan to pay off the debt.
 - b. Every bid submitted to and contract executed by the City and every subcontractor, respectively, that the contractor or the subcontractor and its affiliate is not barred from being awarded a contract or subcontract under this Section and acknowledges that the City Manager may declare the related contract void if any of the certifications completed pursuant to this Subsection (b) are false.
8. *Voidable Contracts.*
- a. If any contract or amendment is entered into or purchase or expenditure of funds is made at any time in violation of this Subsection or any other law, the contract or amendment may be declared void by the City Manager or may be ratified and affirmed, provided the City Manager determines that ratification is in the best interests of the City. If the contract is ratified and affirmed, it will be without prejudice to the City's rights to any appropriate damages.
 - b. If, during the term of a contract, the City Manager determines that the contractor is delinquent in the payment of debt as set forth in Subsection 1-17-1(E)(7), the City Manager, or his/her designee, may declare the contract void if he/she determines that voiding the contract is in the best interests of the City.
 - c. If, during the term of a contract, the City Manager determines that the contractor is in violation of Subsection 1-17-1(E)(6), the City Manager will declare the contract void.
 - d. If, during the term of a contract, the contracting agency learns from an annual certification or otherwise determines that the contractor no longer qualifies to enter into City contracts under this Section, the City Manager may declare the contract void if he/she determines that voiding the contract is in the best interests of the City.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: If any provision of this Ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect

without the invalid application or provision, and each invalid application of this Ordinance is severable.

SECTION 4: This Ordinance shall be in full force and effect beginning upon passage.

SECTION 5: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Introduced: _____, 2025

Approved:

Adopted: _____, 2025

_____, 2025

Daniel Biss, Mayor

Attest:

Approved as to form:

Stephanie Mendoza, City Clerk

Alexandra B, Ruggie, Corporation Counsel

**LEGISLATIVE HISTORY OF RBO
AS OF 03.14.2025**

Date	Meeting	Additional Details/Result
March 6, 2024	Referrals Committee – Requested by CM Kelly, Co-Referrers CM Suffredin and Mayor Biss	<p>(Below Taken from Referral Tracker)</p> <p><u>Intended Policy Change:</u> To improve the overall quality and accountability of the city's contracts by establishing objective criteria and verifiable standards for contractors bidding on public projects.</p> <p><u>Reason for Policy Change:</u> To improve procurement policies and better ensure that contracts are being awarded to reputable and responsible contractors, and to contractors that will better adhere to our LEP program requirements and state laws. This RBO policy also more strongly ensure that contractors that are awarded are reputable and safe, which will, in the long, save the city much in tax dollars. Mandating that contractors who are bidding are part of reputable apprenticeship programs will further the ideals of the city's LEP program.</p> <p><u>Relation to Other City Policies or Ordinances:</u> Strengthen LEP program as well as procurement policy.</p> <p><u>Anything Else:</u> Proposed amendments to our LEP program will be forthcoming which support the RBO Ordinance. The proposed LEP amendments expand the geographical parameters of local hiring requirements when the percent of required local Evanston hiring cannot be first met. In such a case, expanding local hiring to within a proximity of 15 miles would be allowed when there are not enough qualified hires available in Evanston. Expanding the local hiring geographical</p>

		limits will strengthen local economic development. Referred to MW/D/EBE Committee
July 17, 2024	MW/D/EBE Committee	<p><u>From Approved Minutes:</u> <i>Introduction/action – Responsible Bidder Ordinance (RBO) Discussion.</i> Jeremy Esparza from the construction workers' labor union presented the RBO presentation. Mr. Esparza stated the current procurement language is too broad. RBO would mandate Safety Standards, OSHA 10-hour training for workers, Substance Abuse Policies, Apprenticeship Standards (would ensure qualified workers perform work on projects, complementing the LEP program), Subcontracting Transparency (require listing subcontractors before awarding jobs), Self-Performance Clause (Contractors must self-perform a percentage of the work), Worker Status (RBO would mandate defining whether workers are employees or independent contractors).</p> <p><i>Concerns Raised by the Committee:</i> Potential barriers for minority and small local businesses, the need for increased access to OSHA training and apprenticeship programs, and the impact on first-time bidders, and smaller contractors and its implications for local hiring and project compliance. Next Steps: The Committee will review the documents and prepare for further discussion in the next meeting in September. Staff will review the procurement policy and provide feedback. The Committee asked for Jeremy to provide detailed information on qualifications and pathways for different union apprenticeship programs.</p>
September 18, 2024	MW/D/EBE Committee	<p><u>From Approved Minutes:</u> <i>Old Business</i> A. <i>Responsive Bidder Ordinance (RBO)</i></p>

	<p>Pennisi made a motion to move the RBO for discussion. The motion was seconded by K. Hendricks. The meeting focused on discussing the (RBO), covering various requirements APPROVED such as apprenticeship programs, prevailing wage compliance, OSHA safety standards, and subcontractor qualifications. Concerns were raised about the potential impact on small and local businesses, particularly regarding union signatory requirements and the administrative burden of additional documentation. The committee plans to gather more information on union requirements and other cities' implementations of RBOs before making final recommendations to the city council.</p> <p>Concerns Raised by the Committee and Next Steps: Concerns were raised about the potential impact on small and local businesses, particularly regarding union signatory requirements the administrative burden of additional documentation, and pre-qualification of contractors. The committee plans to gather more information on union requirements and other cities' implementations of RBOs, research the impact of RBO on small and local businesses and explore partnerships with non-profits for apprenticeship programs before making final recommendations to the city council.</p> <p><i>Action Items:</i> Jeremy was asked to provide a digital version of the LA County RBO document; share the requirements for becoming a signatory to a union; and investigate other cities with RBOs and their implementation processes. Staff will distribute a digital version of the LA County RBO document to the committee; including requirements for becoming a signatory to a union with the committee; and coordinate with Jeremy to gather</p>
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		<p>information on other cities with RBOs. Staff will also provide additional feedback on the potential impacts of the RBO on local businesses; explore partnerships with local non-profits for apprenticeship programs; and follow up with other cities that have RBOs to understand their implementation and any carve-outs or exclusions they use. CM Burns will prepare draft recommendations based on the committee's discussions for the next meeting</p>
December 18, 2024	MW/D/EBE Committee	<p><u>From Approved Minutes:</u> <i>(Note: the RBO was not discussed at the October Committee Meeting and there was no November meeting)</i> <i>Old Business</i> <i>A. Responsible Bidder Ordinance</i> The discussion focused on the responsible bidding ordinance (RBO), defining what constitutes a responsible bidder and the implications of such an ordinance on local businesses and union vs. non-union contractors. The RBO aims to ensure fair contracting and responsible bidding but may impact local businesses and contract costs. The ordinance's goals must be balanced with the city's objectives for local employment and business opportunities. Further research and discussions are needed to refine the ordinance and address concerns raised during the meeting. <i>Concerns Raised:</i> CM B. Burns: Emphasized the need to ensure that the ordinance supports local contractors and employees and suggested exploring ways to simplify the procurement process. L. Biggs, City Engineer, expressed concerns about the ordinance potentially increasing project costs and limiting bids to union contractors, which could exclude local businesses. The ordinance could conflict with the local employment</p>

		<p>program and minority/womenowned business goals. The need for clear criteria to avoid unnecessary burdens on staff and contractors was emphasized.</p> <p>Committee Member M. McLean: Stressed the need to balance the goals of local employment and business opportunities with the requirements of the RBO.</p> <p><i>Apprenticeship Program Discussion:</i> Discussion on the requirement for contractors to have apprenticeship programs, with concerns about the impact on small, non-union businesses and the potential benefits for local employment.</p> <p><i>Committee's Role and Responsibility Discussion:</i> The committee's focus on supporting Evanston workers and businesses was highlighted, as well as the need to balance quality work and local employment opportunities.</p> <p><i>Follow-up/Next Steps:</i></p> <ul style="list-style-type: none"> • Further research on the USDOL approval process for apprenticeship programs. • Simplification of the procurement process to improve access for local contractors. • Consideration of a threshold for the ordinance's application based on contract size. • Potential exemption for Evanston businesses from certain ordinance requirements. • Scheduling of future meetings to continue discussions and refine the ordinance. • Consider changes to the LEP to include supervisory roles
February 19, 2025	MW/D/EBE Committee	<p><i>(From notes – no approved meeting minutes yet available)</i> Responsible Bidder Ordinance again introduced for discussion. Also in</p>

		<p>attendance – Mayor Biss, CM Kelly, several union leaders/ reps.</p> <p>CM Burns described results of his contacting US DOL for information on apprenticeship programs. Further general discussion of raising amount for apprenticeship program and union membership requirements to apply. Prevailing Wage Act, more paperwork potentially being a bar to contractors bidding, need for legal review and meshing into City Code. General discussion of what the purpose/effect of ordinance was. Request by CM Burns for data that supports same.</p>
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WHEREAS, the City of Evanston is a unit of local government organized and operating under federal and state laws;

WHEREAS, codifying the City of Evanston's procurement rules will ensure greater transparency in soliciting goods and services, increase efficient use of taxpayer dollars, promote public safety, and is in the public interest;

WHEREAS, the City of Evanston seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the City of Evanston, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily ensured by awarding a construction contract solely on the basis of the lowest bid;

WHEREAS, the City of Evanston seeks to enhance its ability to identify the lowest "responsible bidder" on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law;

WHEREAS, the City of Evanston has a compelling proprietary interest in awarding contracts for public works construction projects in a manner that will yield successful project delivery in terms of work that is performed safely, at the lowest responsible cost, and in accordance with the highest possible standards of quality and efficiency;

WHEREAS, the City of Evanston has a compelling interest in ensuring that workers on public works construction projects are paid appropriate wages and receive appropriate benefits, as set forth in, and required by, the Illinois Prevailing Wage Act and the Federal Davis-Bacon and Related Acts;

WHEREAS, securing successful delivery of public works construction projects presents significant challenges due to the complex, unpredictable, and inherently dangerous nature of the construction industry, wherein errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities;

WHEREAS, the City of Evanston enacted the Local Employment Program (LEP) Ordinance, Section 1-17-1(C) in 2014, in an effort to increase the hiring of Evanston residents and Evanston construction apprentices on public works projects; and

WHEREAS, responsible bidder ordinances with apprenticeship standards increase the likelihood of contractors on publicly funded projects to use apprentices, resulting in a better local tax base and a safer, more efficient job site;

NOW, THEREFORE, BE IT ORDAINED by the City of Evanston that:

1.1. Responsibility of bidders; determination.

Contracts subject to bidding requirements, not including those for Professional Services, shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, the criteria listed in this Article shall be considered. A contractor deemed a responsible bidder remains subject to all other provisions of this Code.

1.2. Bid submission requirements.

A bidder for the award of a public works contract estimated to be at least \$25,000 or more must submit the following information and supporting documentation verified under oath on a form designated by the City of Evanston in order for the bid to be accepted:

- (a) A copy of the Illinois Secretary of State's Department of Business Services online records showing that the bidder has a current corporate annual report on file. If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply;
- (b) Documents showing current registration with the Illinois Department of Revenue if the bidder has employees, including but not limited to a document with the account number or Illinois Business Tax number;
- (c) Documents showing current registration with the Illinois Department of Employment Security if the bidder has employees, including but not limited to a document with the Unemployment Insurance account number;
- (d) Disclosure of any federal, state, or local tax liens or tax delinquencies against the contractor or any officers of the contractor in the last five (5) years;
- (e) A statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers' compensation insurance shall be a copy of the "Information Page" of the bidder's workers' compensation policy and any continuation of that Information Page which includes the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code.
- (f) A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years. Such statement shall also provide that the contractor has reviewed the Prevailing Wage Act or federal Davis-Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the

Prevailing Wage Act or federal Davis-Bacon and Related Acts and related requirements. A contractor who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding.

- (g) A copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.). In the event a prospective bidder does not maintain an active substance abuse prevention policy, it can reach out to the Evanston Local Employment Program for assistance.
- (h) A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.
- (i) Documents showing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer, or manager of the company.
- (j) Evidence of participation in apprenticeship training programs applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the public works project. The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the City of Evanston at its discretion.
- (k) The bidder shall certify that all employees expected to perform work on the project have completed a 10-hour or greater safety program authorized by the Occupational Health and Safety Administration (OSHA). Only workers that have satisfactorily completed a 10-hour or greater OSHA safety program will be allowed to participate on the project. The bidder must have copies of employee OSHA cards on file, and the City of Evanston may request the bidder provide copies of employees' OSHA cards; failure to produce an employee's OSHA card may result in a determination that the bidder is not a responsible bidder.

- (l) Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the City of Evanston. Each contractor shall submit all subcontractor information and supporting documentation to the City of Evanston prior to the subcontractor commencing work on the project. It shall be the responsibility of the bidder to ensure its subcontractors comply with all of the requirements of this Code, including the timely and complete submittals of all required documentation, and the full compliance with all obligations set forth in this Code and the project specifications. Failure of a successful bidder to submit the required subcontractor information or documentation may constitute a contractual default and/or breach by the bidder and may disqualify a bidder from performing work on future projects.
- (m) The bidder must provide evidence of relevant experience on similar size and scope projects in the past (5) years that indicate the necessary capacity to perform the project and must provide adequate reference(s) verifying the quality of work performed;
- (n) A local bidder must directly perform at least 20% of the services identified in the project solicitation. A bidder that is not a local contractor must directly perform at least 30% of the services identified in the project solicitation. The named bidder submitting the bid must be the entity directly performing the services. Any affiliates and/or subsidiaries shall not contribute to the minimum performance percentage required.
- (o) Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the name of the public body and the project, original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines.
- (p) Any determinations by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful or repeated violations of the Occupational Safety and Health Act, violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis-Bacon and Related Acts.

Any material changes to the contractor's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence. Failure to comply with this requirement may be grounds for the contractor to be deemed a non-responsible bidder.

1.3. Incomplete submissions by bidders and subcontractors.

- (a) It is the sole responsibility of the bidder to comply with all submission requirements at the time it submits its bid to the City of Evanston. Bidder submissions deemed

inadequate or incomplete may result in a determination that the bidder is not a responsible bidder.

- (b) The submission requirements also apply to all subcontractors, except that the successful bidder shall submit all subcontractor submissions to the City of Evanston prior to the subcontractor commencing work on the project. Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, the City of Evanston may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information, and the City of Evanston approves such information. Further, where the City of Evanston deems necessary, it may also require that the successful bidder remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

1.4. Lowest bidder not chosen.

When the award is not recommended to be given to the lowest bidder, a statement of the reasonable reason for such recommendation shall be prepared by the City Manager or designee.

1.5. Multiple low bids.

When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the City of Evanston, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

1.6. Local preference in contract award.

As determined by the City Manager or designee, offerors whose principal place of business is within the municipal limits of the City of Evanston, shall be eligible for up to a five percent (5%) local preference. Offerors whose principal place of business is not within the municipal limits of the City of Evanston, but within the boundaries of Cook County, shall be eligible for up to a three percent (3%) local preference. In determining any local preference, the following shall apply:

- (a) The offeror meets all the requirements of the City's procurement code.
- (b) The local vendor has established and maintained a physical presence in the city of Evanston, in the case of a city local vendor, or in Cook County outside the city, in the case of a county local vendor, by virtue of the ownership or lease of all or a portion of a commercial building for a period of not less than 12 consecutive months prior to the submission of a bid. The City Manager or designee may waive the one-year requirement if the entity provides evidence of a substantial commitment to Evanston or Cook County.

- (c) In determining whether a business has been located in Evanston or Cook County for not less than 12 consecutive months, the City will consider the following:
- (i) Whether the vendor pays property and/or sales taxes in Evanston;
 - (ii) Whether the business entity's address or the address given on the federal and/or state income tax return is within Evanston; and
 - (iii) The date of issuance of an Evanston business license.
- (d) The local vendor employs a minimum of two full-time employees at the location in the city of Evanston in the case of a city local vendor or in Cook County, Illinois, outside the city, in the case of a county local vendor, and those employees spend the majority of their work time at the location in the city of Evanston, in the case of a city local vendor, or in Cook County outside the city, in the case of a county local vendor.
- (e) The local vendor is legally authorized to conduct business within the State of Illinois and the city of Evanston, in the case of a city local vendor, or in Cook County, outside the city, in the case of a county local vendor.
- (f) The local vendor performs a "commercially useful function."
- (i) A local vendor performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the local vendor must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a local vendor is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work and other relevant factors.
 - (ii) A local vendor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of local participation. In determining whether a local vendor is such an extra participant, the City will examine similar transactions, particularly those in which local vendors do not participate.
 - (iii) If a local vendor does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force, or the local vendor

subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then it is not performing a commercially useful function.

(iv) When a local vendor is presumed not to be performing a commercially useful function as provided in this Section, the local vendor may present evidence to rebut this presumption. The City may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(g) Eligibility as a local vendor will be periodically reviewed and may be revoked at any time if the entity no longer meets the above requirements.

1.7. Prequalification.

(a) A vendor or contractor which has previously satisfied all responsible bidding requirements is deemed prequalified for future City of Evanston public works projects. Prequalified vendors or contractors are exempt from the bid submission requirements in Section 4.2 for a period of 12 months. Prequalified vendors or contractors remain subject to all other bid submission requirements under this Procurement Code.

(b) Prequalified vendors or contractors may reapply for prequalification after the initial 12-month period by submitting a form verified under oath and designated by the City of Evanston.

(c) A vendor or contractor which does not reapply for prequalification shall have its prequalification status removed after the initial 12-month period has expired. Removed vendors or contractors remain eligible to bid on Evanston public works projects but must submit the documentation required to qualify as a responsible bidder under Section 4.2.

(d) Denial or loss of prequalification status shall be in writing and shall be provided to the vendor or contractor within 7 business days of the determination. Any vendor or contractor denied or losing prequalification status may request reconsideration of the decision by submitting its request in writing to the City Manager or designee within 5 business days of receipt of notice of denial or loss.

(e) During the period where a contractor has been deemed prequalified, the Contractor shall notify the City in writing of changes that may affect their ability to remain qualified within 14 days of the change.

1.8. Contract requirements.

(a) Prevailing wage.

- (i) The City Manager or designee shall include in all public works contracts the affirmative requirement that a bidder comply with the Prevailing Wage Act, as amended (820 ILCS 130/1 et seq.).
- (ii) All contractors and subcontractors on public works projects must submit certified payroll records on a monthly basis to the City Manager or designee pursuant to 820 ILCS 130/5 et seq., as amended.
- (iii) During the performance of or within one week of the conclusion of any public works contract, but in no event more than three times for any one project, the City Manager or designee may, upon written request, require the bidder to provide the City Manager or designee with such documentation as is reasonably necessary to demonstrate the bidder's compliance with the Prevailing Wage Act. The documentation requested by the City Manager or designee may include other information reasonably necessary to show compliance with these sections of the Prevailing Wage Act.
- (iv) If the information provided by the bidder reasonably shows a violation of the Prevailing Wage Act, then the City Manager or designee shall notify the bidder of the possible violation by certified mail. If the bidder does not cure the violation, or provide the City Manager or designee with sufficient information demonstrating compliance with the Prevailing Wage Act within five business days of the bidder's receipt of the City Manager or designee's written notice of possible violation, then the City Manager or designee, after consulting with the office of corporation counsel, shall refer this matter to the Illinois Department of Labor for the purpose of conducting an investigation and hearing to determine whether a violation has occurred.
- (v) The City and any contractor shall adhere to all obligations that may be a condition of any funding agreement not in conflict with this procurement code.

(b) Employee benefit insurance.

- (i) The City Manager or designee shall include in all public works contracts the affirmative requirement that the bidder purchase and maintain insurance, at the bidder's expense, to cover claims for damage of bodily injury and death to bidder's employees brought under: (1) Illinois Workers' Compensation Law; (2) disability benefits laws; (3) occupational health laws; or (4) other similar employee benefit laws.
- (ii) The City Manager or designee shall require proof of insurance prior to the work beginning on the project.

1.9. Project Labor Agreements.

- (a) The City of Evanston may require the use of a Project Labor Agreement when it approves bid specifications and the letting of a project out for bid. When so specified, the public works construction projects covered under this Procurement Code shall be performed under a Project Labor Agreement in such form as prescribed and adopted by

the City of Evanston. Such agreements shall provide for decent wages and working conditions for qualified and skilled craftsmen and craftswomen so as to achieve professionally and competently completed projects; while maintaining labor peace and harmony in and amongst the various trades organizations.

- (b) Any firm, union affiliated or not, may bid on any City of Evanston project that uses a Project Labor Agreement, provided that the successful bidder becomes party to the Project Labor Agreement for the duration of the project. However, there shall be no obligation or requirement by any successful bidder to become affiliated with any trade union or association, and any such affiliation, or lack thereof, shall not be used, or considered by the City of Evanston in making a determination to award a project to the lowest responsible bidder as defined by this ordinance. In the event that no qualified bidders bid on a project or portion thereof, the City of Evanston reserves the right to request new proposals without including the Project Labor Agreement.
- (c) This Section shall not apply to private construction projects and/or developments in the City of Evanston.

Draft Evanston Procurement Code

WHEREAS, the City of Evanston is a unit of local government organized and operating under federal and state laws;

WHEREAS, codifying the City of Evanston's procurement processes will ensure greater transparency in public works projects, increase efficient use of taxpayer dollars, promote public safety, and is in the public interest;

WHEREAS, the City of Evanston seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the City of Evanston, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily ensured by awarding a construction contract solely on the basis of the lowest bid;

WHEREAS, the City of Evanston seeks to enhance its ability to identify the lowest "responsible bidder" on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law;

WHEREAS, the City of Evanston has a compelling proprietary interest in awarding contracts for public works construction projects in a manner that will yield successful project delivery in terms of work that is performed safely, at the lowest responsible cost, and in accordance with the highest possible standards of quality and efficiency;

WHEREAS, the City of Evanston has a compelling interest in ensuring that workers on public works construction projects are paid appropriate wages and receive appropriate benefits, as set forth in, and required by, the Illinois Prevailing Wage Act and the Federal Davis-Bacon and Related Acts;

WHEREAS, securing successful delivery of public works construction projects presents significant challenges due to the complex, unpredictable, and inherently dangerous nature of the construction industry, wherein errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities;

WHEREAS, the City of Evanston enacted the Local Employment Program (LEP) Ordinance, Section 1-17-1(C) in 2014, in an effort to increase the hiring of Evanston residents and Evanston construction apprentices on public works projects; and

WHEREAS, responsible bidder ordinances with apprenticeship standards increase the likelihood of contractors on publicly funded projects to use apprentices, resulting in a better local tax base and a safer, more efficient job site;

NOW, THEREFORE, BE IT ORDAINED by the City of Evanston that:

Article I. General Provisions

1.1. Short title.

This chapter may be referred to and cited as the Procurement Code.

1.2. Purpose of the Procurement Code.

The underlying purposes and policies of this Procurement Code are:

- (a) To specify, clarify, and modernize the rules governing procurement by the city;
- (b) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the city;
- (c) To foster effective broad-based competition within the free enterprise system;
- (d) To provide safeguards for the maintenance of a procurement system of quality and integrity;
- (e) To ensure that workers on public works projects are paid appropriate wages and receive appropriate benefits in accordance with local, state, and federal law; and
- (f) To maximize to the fullest extent possible the purchasing value of the public funds of the city.

1.3. Definitions.

For the purposes of this Procurement Code, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Agencies. City offices, departments, boards, bureaus, committees, councils and commissions.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

City residents. Persons domiciled within the city.

City Manager. The City of Evanston City Manager or designee.

Competitive sealed bidding. The process whereby the City Manager or designee accepts sealed bids after public notice by newspaper advertisement.

Competitive sealed proposal. The process whereby the City Manager or designee accepts sealed proposals through request for proposals after adequate public notice.

Construction. Any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other structure, project, development, real property or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project, development, real property or improvement herein described of any material or article of merchandise. Construction shall also include moving construction related materials on the job site to or from the job site.

Contract. All types of agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, construction, or redevelopment.

Contract modifications. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor. A person, partnership, corporation, or other entity that has contracted with, or is seeking to contract with, the City to construct a public improvement, to provide goods to, or perform services for or on behalf of the City. A contractor includes a contractor, subcontractor, vendor, or any person or entity who or which owns an interest of ten percent (10%) or more in a contractor, subcontractor, or vendor.

Contractual services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance, but not including employment agreements or collective bargaining agreements.

Debarment. An action taken by the City which results in a contractor being prohibited from bidding or proposing on, being awarded or performing work on a contract with the City. A contractor who has been determined by the City to be subject to such a prohibition is debarred.

Desk review. A method of monitoring compliance with the local employment program in which the City Manager or designee contacts a contractor or subcontractor to gather relevant information or request relevant documentation.

Disadvantaged-owned business enterprise. A firm that is at least fifty-one percent (51%) owned by one (1) or more disadvantaged individual (socially and economically) or, in the case of a publicly-held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more disadvantaged individual (socially and economically) whose management and daily business operations are controlled by one (1) or disadvantaged individual (socially and

economically). The City Manager or designee shall determine which DBE certifications shall be accepted by the City.

Domicile. An individual's fixed and permanent home and principal establishment.

Eligible residents. City residents in zip codes 60201 and 60202.

Emergency work. Work necessitated by an imminent threat to the property of the city or the health, safety, or welfare of its citizens.

Evanston business. An entity which is located in or has one (1) or more offices located in the City (in zip codes 60201 and 60202) for a minimum of one (1) year and which performs a "commercially useful function." The business must be certified by the City in accordance with this Code.

General contractor. An entity that enters into a contract directly with the city. The general contractor may also be known as the prime contractor.

Local resident database. A database maintained by the City Manager or designee containing the names of local residents who have expressed interest in employment on City public works projects.

Minority-owned business. A business which is at least fifty-one percent (51%) owned by one (1) or more members of one (1) or more minority groups, or, in the case of a publicly-held corporation, at least fifty-one percent (51%) of the stock of which is owned by one (1) or more members of one (1) or more minority groups, whose management and daily operations are controlled by one (1) or more members of one (1) or more minority groups. The City Manager designee shall determine which MBE certifications shall be accepted by the City.

New hire. Any employee of a contractor who is not listed on the contractor's last quarterly tax statement and was hired prior to or during the commencement of work on a public works project contract subject to the requirements of the Local Employment Program.

Person. Any individual, business, partnership, corporation, joint venture, union, committee, club, other organization, group of individuals, or other legal entity..

Procurement. Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction, including all functions that pertain to the obtaining of any supply, service, or construction, such as description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration, construction.

Project Labor Agreement. A pre-hire collective bargaining agreement that is negotiated between the City of Evanston and an appropriate labor organization which sets out the basic terms and work conditions for that particular project.

Public works. Any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of a public fund or out of a special assessment. The term also includes any public works leased by a political subdivision under a lease containing an option to purchase.

Public works contracts. Any contracts awarded by the city for public works.

Resident. Any person whose domicile is in the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment. In order to qualify as a resident for purposes of the local employment program, an individual must have established domicile within the City at least thirty (30) days prior to commencing work on any public works project subject to the local employment program.

Responsive bidder. A person who has submitted a bid that conforms in all material respects to the invitation for bids.

Responsible bidder. A person who possesses the experience, facilities, reputation, and financial resources required to fully perform the contract.

Subcontract. A contract that exists between the general contractor and a subcontractor or between subcontractors of any tier.

Subcontractor. An entity that enters into a contract with the general contractor or another subcontractor.

Supplies. All property, including but not limited to equipment, computer equipment, software, utilities, materials, commodities, printing, insurance, telecommunications equipment and services, and leases of real property, excluding land or a permanent interest in land. The word "supplies" includes both capital and operational needs.

Tier. The level of relationship to the prime contractor of a subcontractor who enters into a contract under a prime contractor or another subcontractor to perform a portion of the work on a project.

Women-owned business. A business which is at least fifty-one percent (51%) owned by one (1) or more women, or, in the case of a publicly-held corporation, fifty-one percent (51%) of the stock of which is owned by one (1) or more women, whose management and daily business operations are controlled by one (1) or more women. The City Manager or designee shall determine which WBE certifications shall be accepted by the City.

1.4. Severability.

If any provision of this Code or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Code that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Code is severable.

1.5. Materiality.

The requirements of this Procurement Code are a material part of the bid documents and the contract and the successful bidder shall insert this Procurement Code in all subcontracts.

1.6. Other Ordinances.

Any prior ordinance or portion thereof in conflict with this Procurement Code is hereby revoked.

1.7. Effective Date.

This Procurement Code shall take effect upon passage by City Council. Any bid submitted before the effective date shall be considered under the laws, policies, and procedures of the City of Evanston in effect at the time the bid was submitted.

Article II. City Manager.

2.1. Powers and duties.

(a) Pursuant the powers established under Title 1, Chapter 8, the City Manager or designee shall:

- (i) Purchase supplies, services, and construction for all agencies of the city;
- (ii) Exercise general supervision and control over all inventories of supplies belonging to the city;
- (iii) Sell, trade, or otherwise dispose of surplus supplies belonging to the city;
- (iv) Establish and maintain programs for the inspection, testing and acceptance of supplies, services, and construction;
- (v) Open all bids submitted to the city;

- (vi) Make recommendations to the city council concerning the awarding of contracts for which bids have been received;
- (vii) Distribute or cause to be distributed to the various requesting agencies of the city such supplies as may be purchased by the department; and
- (viii) Transfer supplies to or between the various requesting agencies of the city.

(b) The City Manager or designee shall be empowered to:

- (i) Adopt, promulgate and from time to time revise rules and regulations, consistent with this Procurement Code, governing the management, procurement, control and disposal of any and all supplies, services and construction to be procured by the city;
- (ii) Adopt, promulgate and from time to time revise rules and regulations for the proper conduct of the City Manager or designee.
- (iii) Assume such related activities as may be assigned by the City Manager or designee;
- (iv) Submit to the city council an annual report describing the activities of the City's procurement practices.

Article III. Source Selection and Contract Formation

3.1. Methods of source selection and contract term length.

All city contracts involving amounts in excess of \$25,000 shall be awarded by competitive sealed bidding pursuant to this Procurement Code. All city purchasing and service contracts shall be limited to a maximum term of five years with no more than a one-year renewal extension period unless otherwise approved by the city council.

3.2. Sealed competitive bidding.

City contracts shall be let by sealed competitive bidding after advertisement, to the lowest responsible bidder, or to the highest responsible bidder depending upon whether the city is to expend or to receive money.

3.3. Advertisement for bids.

All proposals to award contracts involving amounts in excess of \$25,000 shall be published at least ten days, excluding Sundays and legal holidays, in advance of the date announced for the receiving of bids, in a secular English language daily newspaper of general circulation throughout the city and shall simultaneously be posted on the city website and readily accessible bulletin boards in the office of the City Manager or designee. Nothing contained in this section shall be construed to prohibit the City Manager or designee from placing additional announcements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract or agreement in sufficient detail to enable bidders to know

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what their obligations will be, either in the advertisement itself, or by reference to detailed plans and specifications on file at the time of the publication of the first announcement. Such advertisements shall also state the date, time and place assigned for the opening of bids and no bids shall be received at any time subsequent to the time indicated in the announcement. However, an extension of time may be granted for the opening of such bids upon publication in a secular English language daily newspaper of general circulation throughout the city of the date to which the bid opening has been extended. The time of the bid extension opening shall not be less than five days after the publication thereof, Sundays and legal holidays excluded.

3.4. Deposits.

A cashier's check, a certified check or a bid bond, as a deposit of good faith, in a reasonable amount but not in excess of 10% of the contract amount may be required of each bidder by the City Manager or designee in all bids involving amounts in excess of \$25,000 and, if so required, the advertisement for bids shall so specify.

3.5. Opening of bids.

All sealed bids must be publicly opened by the City Manager or designee and all such bids shall be open to public inspection.

3.6. Awarding of contracts; filing of purchase order or contract; public inspection.

The award of any contract let by sealed competitive bidding shall be made to the lowest responsible bidder or the highest responsible bidder as provided in this Procurement Code. Each bid, with the name of the bidder, shall be entered on a record which, along with the name of the successful bidder, shall, after award of the contract, be open to public inspection in the office of the City Manager or designee. An official copy of each awarded contract together with all necessary attachments, including assignments, shall be retained by the City Manager or designee in an appropriate file open to public inspection. The city council shall award all such contracts in excess of \$25,000. The City Manager or designee may award contracts for 25,000 or less.

3.7. Rejections of bids.

Any and all bids received in response to an advertisement may be rejected by the City Manager or designee.

3.8. Waiver of defects.

- (a) In awarding a contract pursuant to sealed competitive bidding, the city council may waive any variation from the bid requirements or defect in a bid which does not materially affect the competitive nature of the bid, is not in violation of any ordinance, statute, or law and does not prejudice the right of the public.

(b) A variance or defect does not materially affect the bid if the terms of the bid are clear and unambiguous, the bid contains all essential elements of the contract, if the amount or competitive nature of the bid is not affected and if the bidder has not received an unfair advantage from having seen the competitor's bid documents.

(c) In considering any waiver, the City Manager or designee shall attempt to secure the best work or materials at the lowest price practicable and shall make such determination in a manner as to fairly and reasonably accomplish such purpose with sole reference to the public interest.

3.9. Clarification of bid.

(a) The City Manager or designee may request clarification of a bid or any part thereof. Clarification shall mean the communication between the city and the bidder regarding the bid. Such communication shall not change the bid, the competitive nature of all bids or violate any ordinance, statute or law.

(b) In considering any clarification the City Manager or designee shall attempt to procure the best supply, service or construction at the lowest practicable price and shall make such clarifications in such a manner as to fairly and reasonably accomplish such purpose with the sole reference to the promotion of public interest.

3.10. Performance bonds of bidders.

Bond, with sufficient sureties, in such amount as shall be deemed adequate, not only to insure performance of contract in the time and manner prescribed in the contract, but also to save, indemnify, and keep harmless the city against all loss, damages, claims, liabilities, judgments, costs, and expenses which may in anywise accrue against the city in consequence of the granting of the contract, or which may in anywise result therefrom, may be required of each bidder upon contracts involving accounts in excess of \$25,000 when, in the opinion of the City Manager or designee, the public interest will be served thereby.

3.11. Competitive sealed proposals.

(a) If the City Manager or designee determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city in a particular instance, a contract may be entered into by competitive sealed proposals. The City Manager or designee may also provide by regulation that it is either not practicable or not advantageous to the city to procure specified types of supplies, services or construction by competitive sealed bidding.

(b) In the event a contract is to be entered into pursuant to paragraph (a) of this section, the following shall apply:

- (i) Proposals shall be solicited through a request for proposals.
- (ii) Adequate public notice of the request for proposals shall be given in accordance with the rules and regulations promulgated by the City Manager or designee.
- (iii) The request for proposals shall state the relative importance of price and other evaluation factors.
- (iv) Proposals shall be opened in a manner so as to avoid disclosure of contents thereof to competing offerors during the process of negotiations.
- (v) The award of any contract pursuant to a competitive sealed proposal in excess of \$25,000 shall be made by the city council.

3.12. Small purchases.

Any procurement not exceeding \$25,000 shall be made in accordance with small purchase procedures delineated in the rules and regulations adopted by the City Manager or designee, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

3.13. Sole source procurement.

A contract may be awarded for a supply, service or construction item without competition when, under regulations promulgated by the City Manager or designee, the City Manager or designee determines in writing that there is only one source for the required supply, service, or construction item. Sole source contracts in excess of \$25,000 shall be awarded by the city council. Sole source contracts that are \$25,000 or less may be awarded by the City Manager or designee.

3.14. Emergency contracts.

Purchases where an emergency immediately affects the public health, safety or welfare may be made without regard to the requirements of this chapter if authorized by the City Manager or designee; provided, however, that the City Manager or designee shall declare the emergency in writing setting out the nature of the emergency. The City Manager or designee shall inform the mayor, city council, and city clerk, in writing, of contracts entered into or purchases made pursuant to this section.

3.15. Professional services.

Contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important role shall not be subject to sealed competitive bidding. Professional services contracts shall be awarded pursuant to this Procurement Code.

3.16. Assignment of contracts.

No contract shall be assignable or sublet by the successful bidder without the consent of the city council.

3.17. Modification of contracts.

Contract modifications may be approved by the City Manager or designee if the expenditure is 10% or less of an original contract amount, or \$100,000 or less, whichever is lower, provided the modifications are otherwise in compliance with all applicable laws.

3.18. Purchases when competitive bidding is not reasonable.

A contract may be awarded pertaining to firefighting apparatus, including engines, towers and quints, without sealed competitive bidding or sealed competitive proposals when the City Manager or designee determines in writing that although there exists more than one responsible source, a competitive process cannot reasonably be used or if used will result in substantially higher cost to the city, will otherwise injure the city's financial interest, or will substantially impede the city's administrative functions.

3.19. Debarment or suspension.

- (a) The City Manager or designee is authorized to debar or suspend a vendor or contractor for just cause. A debarred or suspended vendor or contractor is prohibited from bidding or proposing or being awarded or performing work on a contract with the City during the period of debarment or suspension. The period of debarment or suspension shall be determined by the City Manager or designee in consultation with the Corporation Counsel on a case by case basis. Debarment or suspension may be lifted for good cause shown.
- (b) Reasons for debarment or suspension include, but are not limited to, the following:
 - (i) Commission of fraud or a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such a contract or subcontract;
 - (ii) Conviction or indictment under a state or federal statute of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a vendor or contractor;
 - (iii) Conviction or indictment under a state or federal antitrust statute;
 - (iv) A finding by a state or federal agency with statutory authority to adjudicate civil rights violations, or by a judge or jury in a state or federal court of competent

jurisdiction, that the vendor or contractor has violated state or federal civil rights statutes in its hiring or business practices.

- (v) Failure or default without good cause to perform in accordance with the terms of any contract and the associated supporting documents or unsatisfactory performance of any contract and the associated supporting documents with the City;
 - (vi) Disqualification or rejection of a bid by the vendor on three or more occasions within a three-year period;
 - (vii) Commission of an act or omission indicating a lack of business integrity or business honesty;
 - (viii) Debarment, disqualification or suspension by another government entity for any reason; or
 - (ix) Any federal or state funding that by law, rule, or regulation precludes the City from paying a vendor or contractor from that funding.
- (c) Before a vendor or contractor is debarred or suspended, written notice of debarment or suspension must be provided to that vendor or contractor. The notice must apprise the vendor or contractor of the reasons for the debarment or suspension and must inform the vendor or contractor of the right to be heard before the City Manager or designee. The City Manager or designee must grant a reasonable opportunity for the debarred or suspended contractor to be heard in the issue of debarment or suspension, if the vendor or contractor submits a request in writing within seven calendar dates of the mailing of the written notice. The City Manager or designee will make a final determination after consulting with the Corporation Counsel.

3.20. Prohibited contracts and bids.

- (a) No contract shall be let or bid accepted without prior approval of the council, nor shall any person or entity contracting with the city, without prior approval of the council, subcontract, assign, or sublet any contract for services or materials for the city with any person or entity that:
 - (i) Is delinquent more than 60 days in paying any indebtedness owed to the city in any sum in excess of \$100, unless the person or entity has entered into a deferred payment plan to pay off the debt.;
 - (ii) Is in violation of any of the ordinances of the city and has so continued in the violation for more than 30 days after notice to abate has been serviced;

- (iii) Is delinquent more than 30 days in the payment of any tax, fee or fine which accrues to the city.
- (iv) has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953 for a period of five (5) years from the date of conviction.

(b) Any contract let or any bid accepted in violation of this section may be declared void by the City Manager or designee or may be ratified and affirmed, provided the City Manager or designee determines that ratification is in the best interests of the City. If the contract is ratified and affirmed, it will be without prejudice to the City's rights to any appropriate damages.

3.21. Unauthorized charges against city contracts.

(a) Any contract, with the exception of professional services contracts, for \$100,000 or less entered into by the city shall include a provision that shall read substantially as follows:

"This contract does not authorize an expenditure of city funds in excess of \$100,000 without the prior approval of the city council. The contractor agrees and acknowledges that absent such prior approval, it proceeds at its own risk with no guarantee of payment if the amount billed to the city exceeds \$100,000."

(b) Professional services contracts for \$25,000 or less entered into by the city shall include a provision that shall read substantially as follows:

"This contract does not authorize an expenditure of city funds in excess of \$25,000 without the prior approval of the city council. The contractor agrees and acknowledges that absent such prior approval, it proceeds at its own risk with no guarantee of payment if the amount billed to the city exceeds \$25,000."

(c) Any contract requiring city council approval shall include a provision that shall read substantially as follows:

"This contract does not authorize an expenditure of city funds in excess of the amount authorized by the city council unless the city council specifically approves an additional expenditure. The contractor agrees and acknowledges that absent such prior approval it proceeds at its own risk with no guarantee of payment if the amount billed to the city exceeds the amount authorized by the city council."

3.22. Joint Purchasing.

The City Manager or designee is authorized to purchase supplies in cooperation with:

- (1) The State of Illinois pursuant to "An Act authorizing certain governmental units to purchase personal property, supplies and services jointly" (30 ILCS 525/1 et seq.) as now or hereafter amended.
- (2) The Federal government pursuant to the Federal Property and Administrative Services Act of 1949, as amended, when authorized by the U.S. General Services Administration in accordance with its rules and regulations.

Article IV. Responsible Bidder Requirements.

4.1. Responsibility of bidders; determination.

Contracts subject to bidding requirements shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, the criteria listed in this Article shall be considered.

4.2. Bid submission requirements.

A bidder for the award of a public works contract estimated to be at least \$25,000 or more must submit the following information and supporting documentation verified under oath on a form designated by the City of Evanston in order for the bid to be accepted:

- (a) A copy of the Illinois Secretary of State's Department of Business Services online records showing that the bidder has a current corporate annual report on file. If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply;
- (b) Documents showing current registration with the Illinois Department of Revenue if the bidder has employees, including but not limited to a document with the account number or Illinois Business Tax number;
- (c) Documents showing current registration with the Illinois Department of Employment Security if the bidder has employees, including but not limited to a document with the Unemployment Insurance account number;
- (d) Disclosure of any federal, state, or local tax liens or tax delinquencies against the contractor or any officers of the contractor in the last five (5) years;
- (e) A statement that all employees are (i) covered under a current workers' compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers' compensation insurance shall be a copy of the "Information Page" of the bidder's workers' compensation policy and any continuation of that Information Page which includes the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code.

- (f) A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years. Such statement shall also provide that the contractor has reviewed the Prevailing Wage Act or federal Davis-Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act or federal Davis-Bacon and Related Acts and related requirements. A contractor who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding.
- (g) A copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.). In the event a prospective bidder does not maintain an active substance abuse prevention policy, it can reach out to the Evanston Local Employment Program for assistance.
- (h) A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.
- (i) Documents showing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer, or manager of the company.
- (j) Evidence of participation in apprenticeship training programs applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the public works project. The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the City of Evanston at its discretion.
- (k) The bidder shall certify that all employees expected to perform work on the project have completed a 10-hour or greater safety program authorized by the Occupational Health and Safety Administration (OSHA). Only workers that have satisfactorily completed a 10-

hour or greater OSHA safety program will be allowed to participate on the project. The bidder must have copies of employee OSHA cards on file, and the City of Evanston may request the bidder provide copies of employees' OSHA cards; failure to produce an employee's OSHA card may result in a determination that the bidder is not a responsible bidder.

- (l) Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the City of Evanston. Each contractor shall submit all subcontractor information and supporting documentation to the City of Evanston prior to the subcontractor commencing work on the project. It shall be the responsibility of the bidder to ensure its subcontractors comply with all of the requirements of this Code, including the timely and complete submittals of all required documentation, and the full compliance with all obligations set forth in this Code and the project specifications. Failure of a successful bidder to submit the required subcontractor information or documentation may constitute a contractual default and/or breach by the bidder and may disqualify a bidder from performing work on future projects.
- (m) The bidder must provide evidence of relevant experience on similar size and scope projects in the past (5) years that indicate the necessary capacity to perform the project and must provide adequate reference(s) verifying the quality of work performed;
- (n) A local bidder must directly perform at least 20% of the services identified in the project solicitation. A bidder that is not a local contractor must directly perform at least 30% of the services identified in the project solicitation. The named bidder submitting the bid must be the entity directly performing the services. Any affiliates and/or subsidiaries shall not contribute to the minimum performance percentage required.
- (o) Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the name of the public body and the project, original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines.
- (p) Any determinations by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful or repeated violations of the Occupational Safety and Health Act, violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis-Bacon and Related Acts.

Any material changes to the contractor's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence. Failure to comply with this requirement is grounds for the contractor to be deemed a non-responsible bidder.

4.3. Incomplete submissions by bidders and subcontractors.

- (a) It is the sole responsibility of the bidder to comply with all submission requirements at the time it submits its bid to the City of Evanston. Bidder submissions deemed inadequate or incomplete may result in a determination that the bidder is not a responsible bidder.
- (b) The submission requirements also apply to all subcontractors, except that the successful bidder shall submit all subcontractor submissions to the City of Evanston prior to the subcontractor commencing work on the project. Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, the City of Evanston may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information, and the City of Evanston approves such information. Further, where the City of Evanston deems necessary, it may also require that the successful bidder remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

4.4. Lowest bidder not chosen.

When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by the City Manager or designee.

4.5. Multiple low bids.

When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the City of Evanston, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

4.5. Local preference in contract award.

For purchases of goods or services in excess of \$25,000 and for all contracts let from requests for proposals and requests for qualifications with entirely City funds shall be awarded if: (1) the lowest bidding local vendor is a responsible bidder, (2) the lower responsible bidders are not local vendors, and (3) the lowest bidding local vendor's bid is higher than the nonlocal vendor by no more than 5% in the case of a city local vendor or by no more than 3% in the case of a county local vendor, then that local vendor should be considered the lowest responsible bidder. This provision shall not be applied to a contract if the funding source prohibits it through law, rule, or regulation. For purposes of this section, a "local vendor" is any responsible bidder that demonstrates by written documentation that it meets all of the following criteria:

- (a) The local vendor has established and maintained a physical presence in the city of Evanston, in the case of a city local vendor, or in Cook County outside the city, in the case of a county local vendor, by virtue of the ownership or lease of all or a portion of a commercial building for a period of not less than 12 consecutive months prior to the submission of a bid. The City may waive the one-year requirement if the entity provides evidence of a substantial commitment to Evanston or Cook County. Eligibility as a local vendor will be periodically reviewed and may be revoked at any time if the entity no longer meets the above requirements.
- (b) In determining whether a business has been located in Evanston or Cook County for not less than 12 consecutive months, the City will consider the following:
 - (i) Whether the vendor pays property and/or sales taxes in Evanston;
 - (ii) Whether the business entity's address or the address given on the federal and/or state income tax return is within Evanston; and
 - (iii) The date of issuance of an Evanston business license.
- (c) The local vendor employs a minimum of two full-time employees at the location in the city of Evanston in the case of a city local vendor or in Cook County, Illinois, outside the city, in the case of a county local vendor, and those employees spend the majority of their work time at the location in the city of Evanston, in the case of a city local vendor, or in Cook County outside the city, in the case of a county local vendor.
- (d) The local vendor is legally authorized to conduct business within the State of Illinois and the city of Evanston, in the case of a city local vendor, or in Cook County, outside the city, in the case of a county local vendor.
- (e) The local vendor performs a "commercially useful function."
 - (i) A local vendor performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the local vendor must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a local vendor is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work and other relevant factors.

- (ii) A local vendor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of local participation. In determining whether a local vendor is such an extra participant, the City will examine similar transactions, particularly those in which local vendors do not participate.
- (iii) If a local vendor does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force, or the local vendor subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then it is not performing a commercially useful function.
- (iv) When a local vendor is presumed not to be performing a commercially useful function as provided in this Section, the local vendor may present evidence to rebut this presumption. The City may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

4.7. Prequalification.

- (a) A vendor or contractor which has previously satisfied all responsible bidding requirements is deemed prequalified for future City of Evanston public works projects. Prequalified vendors or contractors are exempt from the bid submission requirements in Section 4.2 for a period of 12 months. Prequalified vendors or contractors remain subject to all other bid submission requirements under this Procurement Code.
- (b) Prequalified vendors or contractors may reapply for prequalification after the initial 12-month period by submitting a form verified under oath and designated by the City of Evanston.
- (c) A vendor or contractor which does not reapply for prequalification shall have its prequalification status removed after the initial 12-month period has expired. Removed vendors or contractors remain eligible to bid on Evanston public works projects but must submit the documentation required to qualify as a responsible bidder under Section 4.2.
- (d) Denial or loss of prequalification status shall be in writing and shall be provided to the vendor or contractor within 7 business days of the determination. Any vendor or contractor denied or losing prequalification status may request reconsideration of the decision by submitting its request in writing to the City Manager or designee within 5 business days of receipt of notice of denial or loss.

4.8. Contract requirements.

(a) Prevailing wage.

- (i) The City Manager or designee shall include in all public works contracts the affirmative requirement that a bidder comply with the Prevailing Wage Act, as amended (820 ILCS 130/1 et seq.).
- (ii) All contractors and subcontractors on public works projects must submit certified payroll records on a monthly basis to the City Manager or designee pursuant to 820 ILCS 130/5 et seq., as amended.
- (iii) During the performance of or within one week of the conclusion of any public works contract, but in no event more than three times for any one project, the City Manager or designee may, upon written request, require the bidder to provide the City Manager or designee with such documentation as is reasonably necessary to demonstrate the bidder's compliance with the Prevailing Wage Act. The documentation requested by the City Manager or designee may include other information reasonably necessary to show compliance with these sections of the Prevailing Wage Act.
- (iv) If the information provided by the bidder reasonably shows a violation of the Prevailing Wage Act, then the City Manager or designee shall notify the bidder of the possible violation by certified mail. If the bidder does not cure the violation, or provide the City Manager or designee with sufficient information demonstrating compliance with the Prevailing Wage Act within five business days of the bidder's receipt of the City Manager or designee's written notice of possible violation, then the City Manager or designee, after consulting with the office of corporation counsel, shall refer this matter to the Illinois Department of Labor for the purpose of conducting an investigation and hearing to determine whether a violation has occurred.

(b) Employee benefit insurance.

- (i) The City Manager or designee shall include in all public works contracts the affirmative requirement that the bidder purchase and maintain insurance, at the bidder's expense, to cover claims for damage of bodily injury and death to bidder's employees brought under: (1) Illinois Workers' Compensation Law; (2) disability benefits laws; (3) occupational health laws; or (4) other similar employee benefit laws.
- (ii) The City Manager or designee shall require proof of insurance prior to the work beginning on the project.

4.9. Project Labor Agreements.

- (a) The City of Evanston may require the use of a Project Labor Agreement when it approves bid specifications and the letting of a project out for bid. When so specified, the public works construction projects covered under this Procurement Code shall be performed under a Project Labor Agreement in such form as prescribed and adopted by

the City of Evanston. Such agreements shall provide for decent wages and working conditions for qualified and skilled craftsmen and craftswomen so as to achieve professionally and competently completed projects; while maintaining labor peace and harmony in and amongst the various trades organizations.

- (b) Any firm, union affiliated or not, may bid on any City of Evanston project that uses a Project Labor Agreement, provided that the successful bidder becomes party to the Project Labor Agreement for the duration of the project. However, there shall be no obligation or requirement by any successful bidder to become affiliated with any trade union or association, and any such affiliation, or lack thereof, shall not be used, or considered by the City of Evanston in making a determination to award a project to the lowest responsible bidder as defined by this ordinance. In the event that no qualified bidders bid on a project or portion thereof, the City of Evanston reserves the right to request new proposals without including the Project Labor Agreement.
- (c) This Section shall not apply to private construction projects and/or developments in the City of Evanston.

Article V. Minority, Women, Disadvantaged, and Local Businesses

5.1 Policy.

It is the policy of the City of Evanston to promote and encourage the continuing economic development of businesses owned and operated by minorities, women, disadvantaged, or local residents and to ensure that these businesses participate in the city's procurement process as both prime contractors and subcontractors.

5.2 Goals

The City of Evanston establishes the goal of awarding not less than twenty-five percent (25%) of its contract awards to MBE, WBE, DBE and local businesses. The City of Evanston establishes the goal of awarding not less than three percent (3%) utilization of local businesses in its contract awards. The provisions of this Section shall be implemented by the City Manager or designee. The provisions of this Section do not guarantee contract participation.

5.3. Minority, Women, and Disadvantaged-owned businesses.

- (a) A minority-owned business enterprise ("MBE"), women-owned business enterprise ("WBE"), or disadvantage-business enterprise ("DBE") (collectively, "M/W/D/BE") must perform a "commercially useful function."
 - (i) An M/W/D/BE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a

commercially useful function, the M/W/D/BE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an M/W/D/BE is performing a commercially useful function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the M/W/D/BE credit claimed for its performance of the work and other relevant factors.

- (ii) An M/W/D/BE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of M/W/D/BE participation. In determining whether an M/W/D/BE is such an extra participant, the City will examine similar transactions, particularly those in which M/W/D/BEs do not participate.
 - (iii) If an M/W/D/BE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the M/W/D/BE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then it is not performing a commercially useful function.
 - (iv) When an M/W/D/BE is presumed not to be performing a commercially useful function as provided in this Section, the M/W/D/BE may present evidence to rebut this presumption. The City may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (b) Businesses that maintain a distribution warehouse or manufacturing operation will receive M/W/D/BE credit of sixty percent (60%). Those that do not maintain a distribution warehouse or manufacturing operation will be considered a broker and receive a five (5) percent credit.
- (c) Eligibility as a M/W/D/BE will be periodically reviewed and may be revoked at any time if the entity no longer meets the above requirements.

5.4. Local Employment Program.

- (a) Work hours and new hire requirements.
 - (i) Unless prohibited by federal, state, or local law, all contractors entering into contracts with the City for public works projects valued at two hundred fifty thousand dollars (\$250,000.00) shall ensure that:

- (1) Fifteen percent (15%) of the total work hours are performed at the construction site by local residents, as laborers and/or trade persons;
- (2) A minimum of one (1) local resident is hired.
- (ii) The effectiveness of the local employment program regarding the minimum percentage of work hours and residents hired will be evaluated by the City Manager or designee after two (2) years of implementation.
- (iii) These requirements shall bind the contractor both with respect to persons working directly for the contractor and to subcontractors, regardless of tier or phase of the project, hired to perform any portion of the contracted work. The contractor shall ensure that subcontractors comply with the requirements of the local employment program. It shall be the responsibility and obligation of the contractor that all contracts are in overall compliance with this subsection and all the requirements listed herein.
- (iv) Requirements of the local employment program are satisfied if the contractor already employs local residents sufficient to meet fifteen percent (15%) of the project's total work hours. Some or all of these requirements may be waived if a waiver is obtained from the City pursuant to this section.
- (b) Contracts, bid documents, subcontracts. Where appropriate and consistent with law, contracts and bid documents shall incorporate the local employment program by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract entitling the City to all the remedies and damages available for material breach of a contract. All subcontracts shall expressly acknowledge the City's status as a third party beneficiary to the subcontract and further expressly acknowledge that the City, as a third party beneficiary, shall have the right to enforce the provisions of the local employment program. Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with the local employment program.
- (c) Automatic review. This subsection shall be reviewed to address any deficiencies on a bi-annual basis by the Minority, Women and Local Business Enterprise Development Committee.
- (d) Waiver.
 - (i) The contractor may request that the City Manager or designee waive all or a portion of the requirements imposed under the local employment program. Such requests must be in writing and must be received by the City Manager or

designee prior to the award of any public works project contract. In order to apply for a waiver, the contractor must submit:

(1) Documentation to the City Manager or designee demonstrating that:

- a) The contractor utilized the local resident database to attempt to satisfy the local employment program hiring requirement.
- b) The contractor notified residents of the employment opportunities available for the project. Such notification must have appeared in the employment section of a newspaper of local general circulation. Additionally, the Illinois department of employment security's office located in Evanston, Illinois, must have been notified of the employment opportunities. All notices must have stated that all qualified applicants would receive consideration without regard to race, color, religion, sex or national origin.
- c) The contractor, for a contract utilizing union labor, contacted in writing Chicagoland labor unions to request a resident for employment on the project.

(2) Any additional documents requested by the City Manager or designee in order to evaluate the waiver request.

(e) City Manager.

- (i) The City Manager or designee shall determine, based on the required documentation and conditions cited by the contractor that make compliance unfeasible, whether to grant the waiver prior to the award of the contract. Examples of such conditions include, but are not limited to:
 - (1) Intermittent service by one (1) trade throughout the life of the project.
 - (2) Nonavailability of resident(s) necessary to fulfill craft position(s) required for the project.
- (ii) If circumstances arise subsequent to the issuance of the contract, the results of which the contractor believes will prevent satisfying the local employment program requirements, the contractor will immediately notify the City Manager or designee by requesting in writing a waiver of the percentage that cannot be met. The City Manager or designee shall meet with the applicant as necessary and issue a decision within five (5) business days, including a determination as to any retroactive liability for failure to achieve the goals for work undertaken prior to the application for such a waiver.

(f) Local resident selection.

- (i) It is the contractor's responsibility to meet the requirements of the local employment program. In order to satisfy the work hours and/or new hire requirements of the local employment program, contractors working under a collective bargaining agreement shall contact the appropriate local union hall to request a resident. If a resident is not available for dispatch by that union hall, the contractor shall contact the City Manager or designee or his or her designee to request an available local resident. The City Manager or designee will thereafter provide the name of a resident matching the qualifications defined by the contractor to the local union hall and that resident will be dispatched to the contractor within three (3) business days in accordance with the lawful hiring hall rules of the respective union. Failure of the City Manager or designee to provide an individual shall not relieve the contractor from their responsibility to comply with the local employment program.
- (ii) In order to satisfy the work hours and/or new hire requirement of the local employment program, contractors working in the absence of a collective bargaining agreement shall contact the City Manager or designee to request an available local resident from the local resident database. The City Manager or designee will provide the name of a resident matching the qualifications identified by the contractor within three (3) business days.

(g) Reporting requirements.

- (i) The contractor shall submit reports as required by the City in order to comply with the local employment program. These reports may include weekly certified payroll records for all crafts within five (5) working days of the end of each payroll period. Additionally, the City may require a weekly or monthly summary of the information that would be obtainable from the certified payroll regarding local hire by craft. These reports, if required, must show the person-hours on a laborer and/or trade person basis and, in the case of certified payroll records, identify the address, new hires, and trade and status journey person or apprentice of all employees on the project. All reports must have an original signature and be signed by an authorized officer of the company under penalty of perjury. The City will make a copy of all required forms available to contractors.
- (ii) Nothing in the local employment program is intended to eliminate the requirement of a contractor to maintain certified payrolls or of the subcontractors to provide certified payrolls to the contractor, or for any contractor to provide certified payrolls to any party that requests them, as required under Illinois state law.

(h) Monitoring.

- (i) The City Manager or designee will monitor compliance with the requirements of the local employment program by means including, but not limited to, desk reviews or on site monitoring. Audits of compliance may require the review of documents such as certified payrolls, canceled checks, or quarterly wage and withholding reports. Full scale investigations of noncompliance or violations will be on an as needed basis as determined by the City Manager or designee.
 - (ii) A contractor that fails to provide requested documents or misrepresents material facts in such documents shall be deemed to be noncompliant with the local employment program.
- (i) Post-award meeting. At its discretion, the City Manager or designee may require the contractor to attend a post-award meeting to familiarize the contractor with the local employment program requirements and to identify the individual by position and name if available. If requested by the contractor post-award, or at any time during the project, the City shall hold such a meeting within ten (10) business days.

(j) Penalty.

- (i) If the contractor or subcontractor should fail to meet the total percentage of resident project hours for any reason, without having received a waiver as outlined in this section, the City may impose a fine up to one percent (1.0%) of the approved project price in total. Contractors or subcontractors that are out of compliance due to a resident termination or resignation, shall immediately notify the City Manager or designee of this occurrence within two (2) business days. Subsequently, the contractor or subcontractor shall have five (5) additional business days to replace a terminated or resigned worker with another resident. If the contractor or subcontractor fails to make the replacement or to notify the City Manager of this occurrence, the offending party will also be subject to a penalty up to one percent (1.0%) of the approved project price. If the noncompliant contractor makes a good faith effort to replace the resident, the fine may be waived.
- (ii) At the sole discretion of the City, a contractor or subcontractor that has violated the terms of the local employment program within a three-year period may be determined a non-responsible bidder and excluded from bidding on future projects for a period of not less than one (1) year.
- (iii) At the sole discretion of the City, an employee that has been hired through the LEP may be removed from the program for a period of not less than one (1) year for failing to adhere to program guidelines or due to termination by the contractor

for cause. Such termination process will be reviewed by the City Manager or designee

- (k) Workforce reserve account. The City shall establish a reserve account for the deposit of all penalty funds within the general fund. This account may be utilized for the support of the LEP and other workforce development programs as follows:
 - (i) The MWEBE Committee shall receive a report on the balance of penalty funds as of the end of the fiscal year no later than March 31 after the close of that year.
 - (ii) The MWEBE Committee shall recommend utilization of these funds for placement in the next year's proposed budget in accordance with current LEP and workforce development program goals.
 - (iii) Both program goals and recommended expenditure of funds will be subject to approval by the City Council.

Article VI. Ethics and Conflicts of Interest.

6.1. Pecuniary interest in contracts.

- (a) Except as authorized by law, no city officers shall be interested, directly or indirectly, in their own names or in the name of any other person, association, trust, or corporation, in any contract, work, or business of the city, or in the sale of any article, whenever the expense, price, or consideration of the contract, work, business, or sale is paid either from city funds or by any assessment levied by any statute or ordinance.
- (b) Except as authorized by law, no city officer shall be interested, directly or indirectly, in the purchase of any property which:
 - (i) Belongs to the city;
 - (ii) Is sold for taxes or assessments; or
 - (iii) Is sold by virtue of legal process at the suit of the city.
- (c) Nothing in this section shall prohibit an employee from being interested, directly or indirectly, in his own name or in the name of any other person, association, trust, or corporation, in an agreement with the city for the development, re-development, rehabilitation, repair, and the like, of property located in Evanston, if such agreement is found by the city council to be in the best interests of the city. However, the city shall be precluded from entering into such agreements with employees involved in the planning, preparation, processing, approval, implementation, or oversight of the subject matter of the agreement. For purposes of this section, the terms "employee" and "employees" shall exclude officers, directors, and members of the corporate authorities.

(d) Any ordinance drafted pursuant to section (c) above must specify the employee's position with the city, the nature of the agreement sought, and indicate in the title that the contractor is a city employee. The ordinance shall be placed on the city council's agenda for consideration.

DRAFT

**CITY OF EVANSTON
ORDINANCE NO. 2024-___**

**AN ORDINANCE ESTABLISHING RESPONSIBLE BIDDER
REQUIREMENTS ON PUBLIC WORKS PROJECTS**

WHEREAS, the City of Evanston is a unit of local government organized and operating under federal and state laws;

WHEREAS, the City of Evanston seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the City of Evanston, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

WHEREAS, the City of Evanston seeks to enhance its ability to identify the lowest “responsible bidder” on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Illinois law;

WHEREAS, the City of Evanston has a compelling proprietary interest in awarding contracts for public works construction projects in a manner that will yield successful project delivery in terms of work that is performed safely, at the lowest responsible cost, and in accordance with the highest possible standards of quality and efficiency;

WHEREAS, the City of Evanston has a compelling interest in ensuring that workers on public works construction projects are paid appropriate wages and receive appropriate benefits, as set forth in, and required by, the Illinois Prevailing Wage Act and the Federal Davis Bacon and Related Acts;

WHEREAS, securing successful delivery of public works construction projects presents significant challenges due to the complex, unpredictable and inherently dangerous nature of the construction industry, wherein errors in project planning or execution, including those caused by inexperienced or unqualified craft labor personnel, can result in serious safety risks, excessive cost overruns, flawed or inferior project quality, and disruptions in project schedules that may delay the use of critical government functions or facilities;

WHEREAS, the City of Evanston enacted the Local Employment Program (LEP) Ordinance, Section 1-17-1(C) in 2014, in an effort to increase the hiring of Evanston residents and Evanston construction apprentices on public works projects;

WHEREAS, responsible bidder ordinances with apprenticeship standards increase the likelihood of contractors on publicly funded projects to use apprentices, resulting in a better local tax base and a safer, more efficient job site;

WHEREAS, “An Ordinance Establishing Responsible Bidder Requirements on Public Works Projects” assures efficient use of taxpayer dollars, promotes public safety, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City of Evanston that:

Section 1. Public Works

For purposes of this chapter, the term “public works” shall mean the following: any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of a public fund or out of a special assessment. The term also includes any public works leased by a political subdivision under a lease containing an option to purchase.

Section 2. Bid Submission Requirements

In determining whether a bidder is a “responsible bidder” for the award of a public works contract estimated to be at least twenty-five thousand dollars (\$25,000) or more, the bidder must submit the following information and supporting documentation verified under oath on a form designated by the City of Evanston in order for the bid to be accepted:

- A. A copy of the Illinois Secretary of State’s Department of Business Services online records evidencing that the bidder has a current corporate annual report on file. If the bidder is an individual, sole proprietor, or partnership, this subsection shall not apply;
- B. Documents evidencing current registration with the Illinois Department of Revenue if bidder has employees (e.g. document with account number, Illinois Business Tax number).
- C. Documents evidencing current registration with the Illinois Department of Employment Security if bidder has employees (e.g. document with UI account number).
- D. Disclosure of any federal, state or local tax liens or tax delinquencies against the contractor or any officers of the contractor in the last five (5) years.
- E. A statement that all employees are (i) covered under a current workers’ compensation insurance policy and (ii) properly classified under such policy. If the bidder is insured with a carrier, the evidence of workers’ compensation insurance shall be a copy of the “Information Page” of the bidder’s workers’ compensation policy and any continuation of that Information

Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code.

- F. A statement of compliance with all provisions of the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.) and all rules and regulations therein, for the past five (5) years. Such statement shall also provide that the contractor has reviewed the Prevailing Wage Act or federal Davis-Bacon and Related Acts, has reviewed and agrees to pay the applicable prevailing wage rates attached to the bid specifications, and will strictly comply with the Prevailing Wage Act or federal Davis-Bacon and Related Acts and related requirements. A contractor who has been found by the Illinois Department of Labor to be in violation of the Prevailing Wage Act twice within a three (3) year period shall be deemed not to be a Responsible Bidder for two (2) years from the date of the latest finding.
- G. A copy of the written program for the prevention of substance abuse to be filed with a public body pursuant to the Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.).
- H. A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances.
- I. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.
- J. Evidence of participation in apprenticeship training programs applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the public works project.

The required evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the City of Evanston at its discretion.

The City of Evanston will actively seek partnerships in the community to offer programs to ensure small and new businesses are able to bid on prospective projects.

- K. Bidder shall certify that all employees expected to perform work on the project have completed

a 10-hour or greater OSHA safety program. Only workers that have satisfactorily completed a 10-hour or greater OSHA safety program will be allowed to participate on the project. The bidder must have copies of employee OSHA cards on file, and the City of Evanston may request the bidder provide copies of employees OSHA cards; failure to produce an employee's OSHA card may result in a determination that the bidder is not a responsible bidder.

The City of Evanston will work actively seek partnerships within the community to make OSHA safety certificate programs to prospective bidders to allow for small and new businesses to bid projects.

- L. Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Further, each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the City of Evanston. Each contractor shall submit all subcontractor information and supporting documentation to the City of Evanston prior to the subcontractor commencing work on the project. It shall be the responsibility of the Bidder to ensure its subcontractors comply with all of the requirements of this Code, including the timely and complete submittals of all required documentation, and the full compliance with all obligations set forth in this Ordinance and the project specifications. Failure of a successful Bidder to submit the required subcontractor information or documentation may constitute a contractual default and/or breach by the bidder and may disqualify a Bidder from performing work on future projects
- M. Bidder must provide evidence of relevant experience on similar size and scope projects in the past (5) years that indicate the necessary capacity to perform the project and must provide adequate reference(s) verifying the quality of work performed;
- N. Bidder must directly perform at least 20 % of the services identified in the project solicitation. The named bidder submitting the bid must be the entity directly performing the services. Any affiliates and/or subsidiaries shall not contribute to the minimum performance percentage required.
- O. Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the name of the public body and the project, original contract price, final contract price, the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines.
- P. Any determinations by a court or governmental agency for violations of federal, state, or local laws, including but not limited to serious, willful or repeated violations of the Occupational Safety and Health Act (OSHA), violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or the Federal Davis-Bacon and Related Acts.

Any material changes to the contractor's status, at any time, must be reported in writing within fourteen (14) calendar days of its occurrence. Failure to comply with this requirement is grounds for the contractor to be deemed a non-responsible bidder.

Section 3. Incomplete Submissions by Bidders and Subcontractors

It is the sole responsibility of the bidder to comply with all submission requirements at the time it submits its bid to the City of Evanston. Bidder submissions deemed inadequate or incomplete may result in a determination that the bidder is not a responsible bidder.

The submission requirements also apply to all subcontractors, except that the successful bidder shall submit all subcontractor submissions to the City of Evanston prior to the subcontractor commencing work on the project. Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, the City of Evanston may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information, and the City of Evanston approves such information. Further, where the City of Evanston deems necessary, it may also require that the successful bidder remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

Section 4. Validity of Pre-Qualification Classification

Upon designation by the city of Evanston that a contractor's or subcontractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the City of Evanston the contractor or subcontractor may be pre-qualified for future city of Evanston public works projects. A contractor's classification as "qualified" shall exempt the contractor or sub-contractor from the comprehensive submission requirements contained herein for a period of twelve (12) months. Thereafter, contractors or subcontractors who are pre-qualified must submit a complete application for continuation of "pre-qualified" standing, on a form provided by the City of Evanston (also referred to as the "short form") by December 31st for the upcoming calendar year. Failure by any pre-qualified contractor or subcontractor to timely submit its complete application for continuation of "pre-qualified" standing shall result in automatic removal of the designation, effective January 1 of the upcoming year. However, the "removed" contractor or subcontractor shall still be permitted to bid on Evanston public works projects.

Any material changes to the contractor's status, at any time, must be reported in writing within ten (10) days of its occurrence to the City of Evanston. The pre-qualification designation is solely within the discretion of the City of Evanston and it specifically reserves the right to change or revoke the designation for a stated written reason(s).

Denial of pre-qualification shall be in writing and shall be forwarded to the contractor within seven (7) working days of such decision. Any contractor denied or losing pre-qualification status may request reconsideration of the decision by submitting such request in writing to the City of Evanston within five (5) business days of receipt of notice of denial.

Section 5. Lowest Bidder Not Chosen

When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by the City of Evanston.

Section 6. Multiple Low Bids

When two or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the City of Evanston, unless one bidder is a local

contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

Section 7. Project Labor Agreement

The City of Evanston may require the use of a Project Labor Agreement when it approves bid specifications and the letting of a project out for bid. When so specified, the public works construction projects covered under this Ordinance shall be performed under a Project Labor Agreement in such form as prescribed and adopted by the City of Evanston and which has been agreed to by the affiliates of the Cook County Building Trades Council. Such agreements shall provide for decent wages and working conditions for qualified and skilled craftsmen and craftswomen so as to achieve professionally and competently completed projects; while maintaining labor peace and harmony in and amongst the various trades organizations.

Any firm, union affiliated or not, may bid on any City of Evanston project that utilizes a Project Labor Agreement provided that the successful bidder becomes party to the Project Labor Agreement for the duration of the project. However, there shall be no obligation or requirement by any successful bidder to become affiliated with any trade union or association, and any such affiliation, or lack thereof, shall not be used, or considered by the City of Evanston in making a determination to award a project to the lowest responsible bidder as defined by this ordinance.

In the event that no qualified bidders bid on a project or portion thereof, the City of Evanston reserves the right to request new proposals without including the Project Labor Agreement. Additionally, this Section shall specifically not apply to private construction projects and/or developments which hereinafter occur in the City of Evanston.

Section 8. Public Records

All information submitted by a successful bidder pursuant to this Ordinance are public records subject to review pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

Section 9. Materiality

The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

Section 10. Severability

If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this Ordinance are severable.

Section 11. Other Ordinances

Any prior ordinance or portion thereof in conflict with this Ordinance is hereby revoked.

Section 12. Effective Date

This ordinance shall take effect upon passage by _____.

This ordinance was passed by _____ on this ____ day of _____, 2024.

Responsible Bidder Affidavit of Compliance

To be completed by Contractor/Subcontractor

Project: _____ **Contract Number:** _____
Business Name: _____
Business Address: _____
Contact Person: _____ **Phone:** _____
Fax: _____ **E-mail:** _____

For Office Use Only

Evidence of compliance with laws pre-requisite to doing business in the State	Yes <input type="checkbox"/> No <input type="checkbox"/>
Valid Federal FEIN or SS#	Yes <input type="checkbox"/> No <input type="checkbox"/>
Evidence of registration with Illinois Department of Revenue	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
Evidence of registration with Illinois Department of Employment Security	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
Disclosure of tax liens or delinquencies against contractor in last 5 years	Yes <input type="checkbox"/> No <input type="checkbox"/>
List of employees covered under workers' compensation policy, verification that employees are properly classified and evidence of coverage	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
Statement of past compliance with the Illinois Prevailing Wage Act and agreement to pay prevailing wages on this project	Yes <input type="checkbox"/> No <input type="checkbox"/>
Compliance with Equal Opportunity Employer provisions	Yes <input type="checkbox"/> No <input type="checkbox"/>
Written substance abuse prevention program or certification that employees are covered under a collective bargaining agreement	Yes <input type="checkbox"/> No <input type="checkbox"/>
Verification that individuals are properly classified as employees or independent contractors	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
Disclosure for any federal, state, or local claim for unpaid compensation to contractor's employees filed against the contractor in the last 5 years	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
Required professional or trade licenses:	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
Evidence of participation in applicable apprenticeship program(s) graduating (5) apprentices in each of past (5) years	Yes <input type="checkbox"/> No <input type="checkbox"/>
Safety and Health Information:	
OSHA 10-hour or greater safety program for all employees working on project	Yes <input type="checkbox"/> No <input type="checkbox"/>

Affidavit of Compliance - 1
Contract No. _____

List of subcontractors (if applicable): N/A Yes No

Evidence of relevant experience: N/A Yes No

Evidence of direct performance (35%): N/A Yes No

Additional Criteria (if applicable):

Statements as to past performance	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>
No violations of federal/state/local laws	N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/>

Affidavit of Compliance - 2
Contract No. _____

Affidavit of Compliance

Contractor and all subcontractors shall complete this Affidavit of Compliance ("Affidavit") and submit supporting documentation as required pursuant to *An Ordinance Establishing Responsible Bidder Requirements on Public Works Projects*. Contractor must submit this Affidavit and all related evidence with its bid. Contractor shall be responsible for providing this Affidavit to all subcontractors who will perform work on the project. All subcontractors' Affidavits and supporting documentation must be submitted no later than the date and time of the contract award. Failure to comply with all submission requirements may result in a determination that the Contractor is not a responsible bidder.

For the remainder of this Affidavit, "Contractor" refers to the general contractor and all subcontractors. Each item must be answered. If the question is not applicable, answer "NA." If the answer is none, answer "none."

The certifications set forth in this Affidavit and all documents attached hereto shall become a part of any contract awarded to the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

The undersigned _____, as _____ and on behalf
(Name) (Title)
of _____ having been duly sworn under oath certifies that:
(Contractor)

Business Organization

The form of business organization of the Contractor is (check one):

- Sole Proprietor or Partnership LLC
 Corporation Independent Contractor (Individual)

If contractor/subcontractor is a corporation, indicate the state and the date of incorporation:

Authorized to do business in the State of Illinois: Yes [] No []

Describe supporting documentation attached: _____

Federal Employer I.D. #: _____

Social Security # (if an individual or sole proprietor): _____

Affidavit of Compliance - 3
Contract No. _____

Registered with Illinois Department of Revenue: Yes No

Describe supporting documentation attached (if "No," explain):

Registered with Illinois Department of Employment Security: Yes No

Describe supporting documentation attached (if "No," explain):

Tax liens or tax delinquencies

Disclosure of any federal, state or local tax liens or tax delinquencies against the contractor or any officers of the contractor in the last five (5) years Yes No

"No" means "not applicable." If "yes," describe lien/delinquencies and resolution: _____

Workers' Compensation

Contractor's employees who will perform work on the project are:

Covered under a current workers' compensation policy: Yes No

Properly classified under such policy: Yes No

Describe supporting documentation attached:

Prevailing Wage Compliance

Contractor has complied with all provisions of the Illinois Prevailing Wage Act and federal Davis-Bacon and related Acts, and all rules and regulations therein, for the past five (5) years. Yes No

Contractor has reviewed the applicable prevailing wage law, including the Illinois Prevailing Wage Act, and federal Davis-Bacon Act. Yes No

Contractor will pay the applicable prevailing wage rates. Yes No

Contractor will strictly comply with applicable prevailing wage laws. Yes No

Affidavit of Compliance - 4
Contract No. _____

Contractor has not been found by the Illinois Department of Labor to be in violation of the Illinois Prevailing Wage Act twice within the past three year period.
("Yes" indicates compliance with the Act): Yes No

If the above answer is "No," list the date(s) of the Department's finding of a violation:

EOE Compliance

Contractor is in compliance with provisions of Section 2000e 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). Yes No

Substance Abuse

Contractor complies with the Substance Abuse Prevention on Public Works Projects Act by:

Attaching a written substance abuse program in effect for its employees that meets or exceeds the requirements of the Act; or: Yes No

Attaching applicable provision from a collective bargaining agreement in effect for its employees that deals with the subject matter of the Act. Yes No

Employee Classification

Contractor's employees who will perform work on the project are properly classified as an employee or independent contractor under all applicable state and federal laws and local ordinances (Form B). N/A Yes No

Unpaid Compensation

Contractor provides disclosure of any federal, state or local claim for unpaid compensation (wages and/or fringe benefits) to contractor's employees filed against the contractor in the last five years, where such claim totals \$100,000 or more. N/A Yes No

If "yes," describe claim and resolution: _____

Affidavit of Compliance - 5
Contract No. _____

Professional or Trade Licenses

Contractor will possess all applicable professional and trade licenses required for performing the Contract work: Yes No

License	Number	Date Issued	Current Expiration	Holder of License

If any of the above license(s) have been revoked or suspended, state the date and reason for suspension/revocation:

Participation in Approved Apprenticeship Program(s)

Contractor participates in apprenticeship and training programs applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organizations and has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Yes No

Describe supporting documentation attached (e.g. Standards of Apprenticeship, Apprenticeship Agreement):

Safety & Health Activities

Contractor provides information regarding its safety and health activities and programs, including:

OSHA cards on file showing 10-hour or greater safety programs completed for all employees participating on project, if requested Yes No

Bidder

Provided evidence of relevant experience on similar size and scope projects in the past (5) years that indicate the necessary capacity to perform the project. Yes No

Directly performed, without the use of affiliates and/or subsidiaries, at least _____% of the services identified in the project solicitation. Yes No

Affidavit of Compliance - 6
Contract No. _____

Subcontractors

Contractor disclosed the name and address of each subcontractor for whom the contractor has accepted a bid and/or intends to hire on any part of the project (Form A). Yes No

Contractor provided this *Affidavit of Compliance* to all of the above-referenced subcontractors. Yes No

Affidavit of Compliance - 7
Contract No. _____

Documentation Attached (Contractor must initial next to each item):

- _____ **Form A:** Name and address of subcontractors from whom Contractor has accepted a bid or intends to hire to perform work on any part of the project.
NOTE: All subcontractors shall complete and submit an Affidavit of Compliance no later than the date the subcontractor commences work on the project.
- _____ **Form B:** List of individuals who will perform work on the project on behalf of the Contractor, verifying that each individual is properly classified as an employee or independent contractor. Contractor also verifies that all Contractor's employees are covered under a current workers' compensation policy, properly classified under the workers' compensation policy, and covered by a health and welfare and retirement plan.
- _____ **Form C** Additional Information (if required)
- _____ **Certificate of Good Standing**
(or other evidence of compliance with laws pre-requisite to doing business in the state)
- _____ **Illinois Department of Revenue registration**
- _____ **Illinois Department of Employment Security registration**
- _____ **Standards of Apprenticeship/Apprentice Agreements**
- _____ **Substance Abuse Prevention program** (or applicable provision from CBA in effect)
- _____ **Written Safety Policy Statement signed by company representative**
- _____ **OSHA cards evidencing 10-hour or greater safety program completed, if requested**
- _____ **Workers' Compensation Coverage**
- _____ **Professional or Trade Licenses**

Affidavit of Compliance - 8
Contract No. _____

Form C

Additional Information Required

If required in the bid specifications, Contractor shall complete items I and/or II below:

- I. Statement of past three (3) years experience on public construction projects.

Public Body/ Project Name/Year	Reference Name/ Phone #	Original Price/ Final price	Subcontractors

Affidavit of Compliance - 11
Contract No. _____

II. List any determinations by a court or governmental agency for violations of federal, state or local laws, including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), or federal Davis-Bacon and related Acts.

Date	Law	Determination	Penalty

Affidavit of Compliance - 12
 Contract No. _____

BIDDER VERIFICATION

I certify that I am authorized to execute this Affidavit of Compliance on behalf of the Contractor set forth on page one (1), that I have personal knowledge of all the information set forth herein and that all statements, representations, information and documents provide in or with this Affidavit and attachments hereto are true and accurate.

The Contractor may report any change in any of the facts stated in this Affidavit within fourteen (14) days of the effective date of such change by completing and submitting a new Affidavit. Failure to comply with this requirement is grounds for the Contractor to be deemed a non-responsible bidder.

Signature of Authorized Officer

Name of Authorized Officer (Print or Type)

Title

Telephone Number

State of Illinois
County of _____

Subscribed and sworn to
before me this ____ day of
_____, 201__.

Notary Public Signature & Seal

Affidavit of Compliance - 13
Contract No. _____

SUBCONTRACTOR VERIFICATION

I certify that I am authorized to execute this Affidavit of Compliance on behalf of the Contractor set forth on page one (1), that I have personal knowledge of all the information set forth herein and that all statements, representations, information and documents provide in or with this Affidavit and attachments hereto are true and accurate.

The Contractor may report any change in any of the facts stated in this Affidavit within fourteen (14) days of the effective date of such change by completing and submitting a new Affidavit. Failure to comply with this requirement is grounds for the project owner to withhold payment due for work performed.

Signature of Authorized Officer

Name of Authorized Officer (Print or Type)

Title

Telephone Number

State of Illinois
County of _____

Subscribed and sworn to
before me this ____ day of
_____, 201__.

Notary Public Signature & Seal

N:\RB\RB-00023,Responsible Bidder Materials/Forms - IL\IL Checklist Affidavit - Oct 2013.doc

Affidavit of Compliance - 14
Contract No. _____



Memorandum

To: Councilmember Bobbie Burns, MWDEBE Chair
MWDEBE Development Committee

From: Tammi Nunez, Purchasing Manager

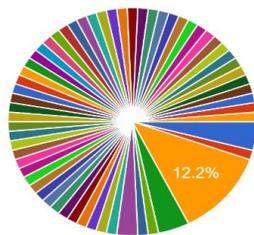
Subject: City of Evanston M/W/D/EBE Evanston Business Survey

Date: July 17, 2024

The City of Evanston M/W/D/EBE Evanston Business Survey link was live on the City of Evanston website and sent to Economic Development Evanston Business Owners and various city lists on April 17, 2024, via email. We had a total of 74 Business Owners respond to the survey. The survey results are as follows:

1. What stage of business are you in? 74 responses
 - 2% Seed & Development
 - 8% Startup
 - 41% Growth & Establishment
 - 19% Expansion
 - 31% Maturity

2. What types of services are offered by your firm?
74 responses



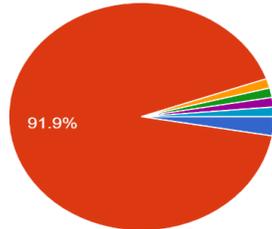
- Architecture, Engineering & Land Surv...
- Construction & Maintenance
- Consulting
- Equipment, Materials, Supplies
- Equipment Rental or Leasing
- Furniture and Office Supplies
- Machinery, Electrical and Electronic E...
- Office and Building Leasing

▲ 1/9 ▼

12.2%		Consulting
4.1%		Equipment, Material, Supplies
4.1%		Architecture, Engineering & Land Survey
2.7%		Retail
1.4%		Construction & Maintenance

3. Is your firm currently performing any contracts in Evanston or for the City of Evanston?

74 responses



- Yes (please include estimated contract value below in "Other" Field)
- No
- We are currently doing very little with the city, but we are maintaining the libraries website
- 2,500,000.00
- 250,000
- Approx. \$10,000 (two large & some smaller local projects)

4. Is your firm certified as a DBE, MBE, or WBE? 73 responses

16% Yes 84% No

5. If your firm is certified as an MBE or WBE, please check the boxes that apply to your work in connection with local contracts. 55 responses

80% non-Applicable
9% We directly bid or compete for work.

6. Is your firm interested in being certified as a DBE, MBE, or WBE? 71 responses

52% Yes 48% No

7. Of which city services or business support are you currently aware? 37 responses

43% Storefront Modernization
16% Entrepreneurship Support Grant
5% Lending for Evanston and Northwestern Development (LEND)
35% Small Business Recovery Program

8. What city services or business support have you taken advantage of in the past? 14 responses

21% Storefront Modernization
29% Entrepreneurship Support Grant
14% Lending for Evanston and Northwestern Development (LEND)
36% Small Business Recovery Program

9. Which city services or business support would you like more information about? 42 responses

33% Great Merchant Grant
10% Storefront Modernization
26% Entrepreneurship Support Grant
12% Lending for Evanston and Northwestern Development (LEND)
19% Small Business Recovery Program

10. What is the biggest challenge for the growth of your business at this time (Please circle all letters that apply)?

70 responses



19%		Limited network for building business relationships
17%		Access to capital or funds for operational costs
17%		Inflation of other business costs, including costs of borrowing
11%		Inflation of wages
9%		Lack of qualified applicants for hiring or turnover

11. In what areas are you least confident in running your business (Please circle all letters that apply)? 65 responses

- 10% Understanding contracts, leases, liability, and insurance
- 19% Accounting and bookkeeping
- 9% Human resources management
- 14% Technology
- 31% Marketing
- 2% All other categories were less than

City of Evanston M/W/D/EBE Evanston Business Survey

12. What can anchor institutions and agencies do to collaborate with banks and alternative lenders, such as CDFIs and mission-based lenders, to support contracting by providing better access to capital?	13. How significant are bonding and insurance requirements as they relate to being financial obstacles for your businesses? What has your organization done to circumvent this requirement, if applicable?	14. What are the topics you are most interested in?	15. As a business owner, what is an immediate action you think can take that will increase your success in contracting?
32 Responses	44 Responses	38 Responses	44 Responses
Unsure; cannot say; None; I have no ideas on this; This question doesn't make sense to me.; I'm not sure what this means.	N/A; cannot say; None; I don't know; Not sure...	Unsure; In regards to what?; N/A; Cannot say; Any you have to offer	N/A/ Not interested in this. Unsure/
Help small businesses flesh out business plans and growth strategies.	N/A (I am a sole proprietor and no employees) I pay for Liability Insurance required by the state at rate of \$265. per year.	Contracts with Evanston and the State	Staffing; I'm a very busy sole proprietor that needs to add staff for growth.; Hiring quality personnel
Secure lower interest rates; Low interests SBA loans; Grant development; City	These are not obstacles; Not an obstacle	New developments and city projects requiring architectural or interior design services	Lower property taxes so we can compete with china; Eliminate the very high contract amount; lower businesses costs and eliminate red tape; Capital
Language access so we can share	The Cost of insurance;We have insurance; Liability insurance cost has increased substantially (69% increase this year).; We've been able to secure the insurance we need.	Collaborations; How to use social media.; How to connect with interested clients	Making it easier for shoppers by not giving somnys parking tickets. We loose many customers because of the parking regulations; Parking
lend capital earlier, with less personal guarantees, match grants with equity	Our trade association provides some of this for us.	How the city can help us sell food to events where they are a purchaser.	ED: We need to attract more potential buyers/renters to our space.
would not need if you would lower property taxes, what do we get for our taxes????	We have not circumvented it	How to become a WBE and how to work with the city as a contractor; aid in becoming MBE certified and help in securing and managing larger contracts.	We need more inquiries.; identify an information source to stay informed
Expand who qualifies for their services.	They are expensive but not yet obstacles.	Marketing and funding for startups.; grants, marketing and sales; Marketing and building a network of small businesses that are similar to my own.; Business development; Employee retention & Technology	How to Do Business with COE: More opportunities to work with the city. I think Local Business Entity should be just if not more valuable than some of the other classification entities.; Identifying and connecting with decision makers
Intuit, us bank	significant	How to access and qualify for municipal photography contracts.	To be honest, I haven't done anything because I didn't think there were any. Contracts we would qualify for. So I need to take a minute a loom into this.
I am not sure I understand not am I qualified to answer that question. Not my scope of practice. I have zero	Not significant. I have high professional costs; Not a problem; Not significant; insignificant	Would love to get local press interested on helping promote local businesses and using them as subject experts	As a business owner focused on operational optimization for nonprofits and cooperatives, an immediate action I can take to increase my success in contracting is to enhance my networking efforts with local nonprofits and community-based organizations. By actively participating in community events and workshops, and engaging more with local business groups, I can build stronger relationships that may lead to more contracting opportunities. This approach not only expands my professional network but also aligns with my mission of empowering community-focused organizations through improved operational strategies.
Provide workshops where we can receive assistance to apply for capital.	We can obtain the insurance we need to operate.	Signage and wayfinding consulting and design; I'd love to know how to make my office handicap accessible and if any grants are available	Business Networking; Start promoting my capabilities and market my skill.; More outreach to potential customers; Networking; Advertising; Do more sales calls; Build awareness of my business and website; jackweissassociates.com; I could use an updated web site.; step up networking, update marketing materials; Getting the word out across my network that I am open for business.; Joining one of the many business networking clubs (rotary, chamber of commerce, etc)
I wish I knew. Kicking-off my business this year has led to some unforeseen capital costs that could be offset with a small entrepreneurship loan. The obstacle at present is not having an income stream to serve as collateral.	Not an issue for my business as currently structured (B2B); We do not have this issue; They present no real barrier.	How to get Evanston to GROW Up and quit funding illegal immigrants through sanctuary city designation. We are being property taxed out of Evanston. I am on board with supporting our poor and unhoused. I am NOT on board with funding the housing and education of the world's poor. We are going to have to leave due to the majority "progressive" wing in Evanston.	Getting rid of the city's policy of lowest bid. We produce in Evanston and employ Evanston residents. We lose bids to companies they produce out of the city at a lower cost and therefor can undercut us. Evanston sends its dollars out of the city instead of supporting businesses that produce here in Evanston.
Engage in development through specific projects.	bonding should be eliminated from MBE, DBE, and WBE companies	Understanding the hiring process and correctly classifying employees vs ICs, technology use in my area of business	Smaller scale projects opportunities, a place where small business can find subcontracting opportunities if you are Evanston based, assistance with bids and marketing assistance. Workshops, centralized bidding for small contractors, creating a compliance process for us to be work ready with the City and its large contractors would be great. Many of us have the skills and documentation to work but projects are very large scale an unattainable for small businesses.
N/A - self funded; I have never borrowed money for my business	Workman's comp has really increased!	Access to capital and securing business with the City; Small business lending/support. City/county/state service contract opportunities.; Starting and running a business	

12. What can anchor institutions and agencies do to collaborate with banks and alternative lenders, such as CDFIs and mission-based lenders, to support contracting by providing better access to capital?	13. How significant are bonding and insurance requirements as they relate to being financial obstacles for your businesses? What has your organization done to circumvent this requirement, if applicable?	14. What are the topics you are most interested in?	15. As a business owner, what is an immediate action you think can take that will increase your success in contracting?
I have no idea; I don't know enough to answer this.; I don't know	None, we have had insurance since we started. It's a hard cost but necessary to doing business in my line of work.	Justice, Equity, Inclusivity, and Diversity issues, anything related to sustainable business and doing good business, and culture/community engagement innovation programs; Our client base is aging out, how do we get younger clients to know us	
Hold them accountable. CDFI's and CDI's are mandated by the government to lend to social and economically disadvantaged communities but they are not at the levels we need them to. How many lending products are going to truly BIPOC, veteran, women-owned businesses across these institutions? We know they aren't because of a myriad of systemically racist systems, but the organizations aren't moving to remedy this balance. Evanston can be a solution to this challenge by partnering with experts in the business community that are training these institutions to be more inclusive to meet their business goals to lend more. TOBY Agency is also a small disadvantaged business that has to jump through several hoops to get a business loan or line of credit, government contracts, or grants to operate my business. Never mind, I've served my country for over 20 years I still am required to go through 1000 certifications, trainings, to say I actually qualify for the disadvantage programs because of who I am and who my company supports. If other community organizations or lending to businesses without the many hurdles that the large ones aren't why aren't we raising voices to get those government resources removed from institutions that aren't being accountable and into the hands of those that want to do the right thing.	I haven't run into this issue yet, I'm sure it will be a constraint financially because it's a required out of pocket business expense for an entrepreneur that's more than likely fully self funding their company. If it's a requirement to even submit a proposal to an RFP or RFA then it will more than likely affect minorities from applying. Where would they get the budget expense to cover this required cost. As a person that spent 10 years working in federal government contracting for the US Department of State, I know the 100's of requirements we put into the listings to deter certain businesses from even applying (i.e. \$1m annual revenue, etc). That's the systemic racist structures I'm referring to. I've dedicated my company to being a solution to these systems. I am a part of a national corporate business coalition made up of CEO's from more than 3200 companies that have pledged DEI in their companies and working together to end systemic racism in business.	1. Digital Marketing Trends for Small Businesses: Covering the latest tools and strategies in digital marketing, including social media, content marketing, and SEO, to help small businesses enhance their online presence. 2. Effective Cash Flow Management: Essential tips and tools for managing cash flow, including budgeting, forecasting, and cash management strategies to keep businesses financially healthy. 3. Customer Relationship Management: Best practices for using CRM systems to improve customer relationships, increase customer retention, and drive sales growth. 4. E-commerce Optimization: Strategies for maximizing e-commerce platforms to increase sales, including website optimization, customer experience enhancements, and conversion rate optimization. 5. Remote Work and Team Management: Tips for managing remote teams effectively, including tools for collaboration, maintaining productivity, and building a remote work culture. 6. Cybersecurity for Small Businesses: Essential cybersecurity practices to protect sensitive business and customer data from cyber threats. 7. Local SEO and Community Engagement: Strategies for improving local SEO and engaging with community networks to drive local business and build brand loyalty.	
To address the challenge of accessing capital without relying solely on traditional loans, anchor institutions and agencies could foster partnerships that directly enhance deal flow for small businesses like mine. One creative approach could involve these institutions setting up a business matching system where small businesses are paired with larger companies or government agencies that require their services. This system would not only provide direct business opportunities but also help in building a reliable client base. Additionally, these anchor institutions could facilitate the creation of a cooperative fund. This fund would be managed by a consortium of small businesses, allowing members like myself to invest collectively and draw upon these resources when needed to cover operational costs or invest in growth opportunities. This reduces dependency on external funding sources and enhances our collective bargaining power and sustainability. Another innovative solution could be the development of micro-grant programs that target specific needs of small businesses undergoing pivots, such as mine. Grants could be awarded based on the potential impact or innovation level of the business model, helping to fuel growth without the burden of repayment. Moreover, anchor institutions could advocate for and support the implementation of legislation that incentivizes larger businesses to contract with local small businesses, thereby directly boosting deal flow. These policies could include tax breaks or subsidies for companies that demonstrate a consistent commitment to engaging with small businesses in their operational ecosystem. Implementing these initiatives would provide businesses like mine with the vital support needed to thrive without becoming dependent on traditional loan structures, aligning with my goal to bootstrap through enhanced deal flow and strategic partnerships.		How to bid on city projects, can the city scale down projects to give small businesses opportunities to bid on work or ensuring large contractors reach out to us or let us know how to subcontract from them. Emails like these from contractors who are looking for subs would be great. I personally and looking for work opportunities more than anything.	
		We have a vacant property at 2822 Central that we've been trying to sell or lease for over two years. The taxes continue to scare away prospective buyers/renters, as well as difficulty accessing capital.; Lower my property taxes.	