

**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:

<b><i>DISADVANTAGE-OWNED BUSINESS ENTERPRISE or DBE.</i></b>	A firm must be at 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 his or her designee shall determine which DBE certifications shall be accepted by the City.
<b><i>EVANSTON-OWNED BUSINESS ENTERPRISE or EBE.</i></b>	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).
<b><i>MINORITY-OWNED BUSINESS ENTERPRISE or MBE.</i></b>	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.
<b><i>M/W/D/EBE GOALS.</i></b>	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.
<b><i>WOMEN-OWNED BUSINESS ENTERPRISE or WBE.</i></b>	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 Contracts. All bidders for public works contracts must comply with the below specifications in bid submission and during the project for a successful bidder. The City Council may, by a majority vote of the members present, waive any of these requirements for an Evanston-Owned Business Enterprise as defined in Section 1-17-1(D)(1) or a Nearby Business Enterprise as defined in Section 1-17-1(E)(1).

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

<u><b>APPRENTICESHIP TRAINING PROGRAM.</b></u>	<u><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</i></u>
--	--

	<u>the bidder will perform on the project. Evidence of graduation rates are not required for apprentice able crafts dedicated exclusively to the transportation of material and equipment to and from the public works project.</u>
<u>BIDDER.</u>	<u>A contractor that submits a bid in response to a City of Evanston Request for Proposal.</u>
<u>COMMERCIALLY USEFUL FUNCTION.</u>	<u>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.</u>
<u>NEARBY BUSINESS ENTERPRISE ("NBE").</u>	<u>A business enterprise located within five (5) miles of Evanston City limits for a minimum of one (1) year and performs a commercially useful function.</u>
<u>PUBLIC WORKS CONTRACT.</u>	<u>Any construction, alteration, demolition, or repair work done under contract on City owned property.</u>
<u>RELIABLE, RESPONSIVE AND ACCEPTABLE BIDDER.</u>	<u>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.</u>

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.

(a) Public Works contracts for over \$25,000 amount or greater shall only be let to: (i) a contractor with evidence of participation in an Apprenticeship Training Program applicable to the work to be performed on the project; or (ii) a contractor who has satisfied the experience requirements under subsection (d).

(b) All contracts submitted to the City Council must identify whether the contractor meets this requirement.

(c) Required evidence of participation in an apprenticeship program 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.

(d) Contractors may alternatively satisfy this requirement by certifying that all workers who will perform work on the public works project have relevant experience in lieu of participation in an apprenticeship program. Relevant experience may

include: (i) performing at least 1,800 hours of work in the trade the worker will perform on the public works project over the preceding two (2) years; (ii) completion of an apprenticeship program in the trade the worker will perform on the public works project; or (iii) obtaining a journeyman credential in the trade the worker will perform on the public works project. Required evidence to be eligible under this section includes but is not limited to W-2 records, journeyman credentials, apprenticeship completion cards, or certificates of graduation from apprenticeship programs.

(e) Additional evidence of apprenticeship participation, graduation requirements, or previous experience 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 five (5) 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 five (5) 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 five (5) 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 five (5) 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 for 12-Month Period.* 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 for 12-Month Period" and shall not be required to resubmit these certifications for a period of twelve (12) months following the notification. 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. *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)~~ (F) 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 subcontract will contain a certification by the bidder, contractor, or 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: May 27, 2025

Approved:

Adopted: May 27, 2025

May 30, 2025

*Daniel Biss*  
box SIGN 4LR35Q59-4PXY3YY

Daniel Biss, Mayor

Attest:

*Stephanie Mendoza*  
box SIGN 1RXPY3KL-4PXY3YY

Stephanie Mendoza, City Clerk

Approved as to form:

*Alexandra B. Ruggie*  
box SIGN 1VWXZ88Z-4PXY3YY

Alexandra B, Ruggie, Corporation Counsel