**Section 6.801 Small Business Set-Asides**

a) The CPO, in consultation with the Department, may determine categories of construction, supply, and service procurements that will be set aside for small businesses. The set-aside designation may be made for current and future procurements for a fair proportion of a specific construction, supply, or service, or for a class of like construction, supplies or services. A fair proportion of construction contracts means no less than 25% nor more than 40% of the annual total contracts for construction. A set-aside designation may last indefinitely or for a stated period of time, as determined by the Department. (See Section 45-45(a) and (c) of the Code.)

b) A business that meets the State (under Section 45-45(b) of the Code) or federal definition of a small business or small business concern on the day of bid or proposal opening will be considered a small business for the duration of the contract. The definition will be stated in the contract proposal.

c) If the Department wishes to make a procurement covered by a small business set-aside designation, the solicitation will note that responses are limited to those from responsible small businesses. Bids or proposals received from businesses other than small businesses will be rejected as nonresponsive. (See Section 45-45(a) of the Code.)

d) If the Department determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Department will reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification will be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement will be conducted in accordance with the limitations of the Code and this Part. (See Section 45-45(d) of the Code.)

e) Unless the Department provides a definition for a particular procurement that reflects industrial characteristics or uses a federal standard, a small business is one:

1) Independently owned and operated.

2) Not dominant in its field of operations, which means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration will be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

3) With annual sales for most recently ended fiscal year no greater than:

A) $13,000,000 for wholesale business;

B) $14,000,000 for construction business; or

C) $8,000,000 for retail business.

4) With no more than 250 employees if a manufacturing business.

A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year.

B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.

5) If the business is any combination of retailer, wholesaler or construction business, the annual sales for each component may not exceed the amounts shown in subsection (e)(3). For example, a business that is both a retailer and wholesaler may not have total sales exceeding $21,000,000; the retail component may not exceed $8,000,000; and the wholesale component may not exceed $13,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4).

6) When computing the size of a business, the number of employees and annual sales and receipts, as applicable, of the business and all affiliates will be considered. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or, when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration will be given to all appropriate factors, including the use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship will not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure. (See Section 45-45(b) of the Code.)

f) Small Business Specialist

1) The CPO shall designate one or more individuals to serve as its small business specialist, who shall have the duties set forth in Sections 45-45 and 45-90 of the Code, and who shall also act as coordinator of small business. The designated small business specialist shall compile statistics provided by the Department needed to make the small business annual report to the General Assembly required by Section 45-45(f) of the Code.

2) The small business specialist shall provide written instruction to any business registered as a small business pursuant to Section 45-45 of the Code on how to register for the Bulletin. Notice shall be provided within 30 days after the small business certification as required in Section 15-25 of the Code.

g) Small Business Contracts

1) Goal

A) It is the goal of the State of Illinois to award not less than 10% of the total dollar amount of State contracts to small businesses.

B) Small businesses are defined as those businesses meeting the criteria established in Section 45-45 of the Code and subsection (e) of this Section.

2) Goal Measurement

A) The goal shall be measured on a full fiscal year basis.

B) The Department's expenditures, whether against contracts established by the Department or against contracts established on behalf of the Department, shall be included in the Department's goal attainment statistics.

C) The Department may satisfy its goal, in whole or in part, by counting expenditures made by State vendors to subcontractors that are small businesses.

3) Department Compliance Plan

A) The Department shall submit an annual compliance plan of how it intends to reach its goal, and a timetable for reaching its goal, as required by Section 45-90(c) of the Code. The CPO will establish the format and timetable for submission of the compliance plan. The CPO will approve the plan if it meets the requirements of the Act and this Part.

B) The Department shall submit an annual utilization report of small business contracts during the preceding fiscal year, including lapse period spending and a mid-fiscal year utilization report. The CPO will establish the format and timetable for submission of the utilization plan and will provide a copy of the utilization report to the PPB.

C) The CPO or small business specialist appointed under Section 45-45 of the Code may recommend ways in which the Department may reach its goal. Upon a finding by the CPO that the Department's compliance plan is insufficient to reach the Department's goal, the CPO will recommend ways in which the Department can reach its goal.

D) If the compliance plans or utilization reports indicate the Department goal will not be reached, the CPO may request the Department to explain the Department's noncompliance. If the CPO determines the Department is not making a serious effort to reach the goal, the CPO will prepare a report for submission to the Governor and General Assembly with recommendations for remedial action.

h) Contractors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses or small business concerns shall submit information verifying that the contractor qualifies as a small business. The Department may establish procedures for verifying such information.

(Source: Section 6.801 renumbered from Section 6.125 and amended at 44 Ill. Reg. 6222, effective April 8, 2020)