

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

FROM THE OFFICE OF JOSPEH J. CZARNEZKI

MILWAUKEE COUNTY CLERK

County Ordinance No. 12-10

File No. 12-210

BE IT FURTHER RESOLVED, that to ensure the above-noted revisions are properly codified, the County Board of Supervisors does hereby adopt the following:

AN ORDINANCE

To amend Chapter 32, 42, 44 and 56 of the General Ordinances of Milwaukee County as appropriate to comply with federal legislative and regulatory changes related to Title 49 of the Code of Federal Regulations, Part 26, that impact the Disadvantaged Business Enterprise Program of Milwaukee County and to clarify the operation and administration of the Disadvantaged Business Enterprise Program of Milwaukee County.

The County Board of Supervisors of the County of Milwaukee County does ordain as follows:

Section 1. Sections 32.20(6), 32.23(4), 32.25(7)(d), 32.25(7)(e), 32.40(6), of the General Ordinances of Milwaukee County are hereby amended as follows:

32.20(6). - Words and phrases defined

32.20(6) "Procurement" means buying, purchasing renting, leasing, or otherwise acquiring any supplies, materials, equipment and contractual services. It also encompasses all functions that pertain to obtaining the above including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of administration; including disadvantaged business enterprise administration as defined in chapter 42, where applicable.

32.23(4). - Purchasing standardization committee

32.34(4) Hear appeals as defined in section 32.26 and 32.51.

32.25(7)(d). - Purchasing and contracting procedure

46 Notwithstanding any other provisions of this chapter to the contrary, where
47 adequate competition exists, the purchasing administrator shall have the
48 authority, in any situation where a contract is to be let through the bidding
49 process, to reserve such contract exclusively for vendors listed ~~on the minority~~
50 ~~business enterprise and women~~ as small business enterprises as defined in
51 chapter 42.02(k). In such event, the bid announcements shall indicate such
52 reservation, citing this subsection as authority therefor. Reservations by the
53 purchasing administrator may be on a commodity basis or on an individual
54 contract basis.

55

56 **32.25(7)(e). - Purchasing and contracting procedure**

57

58 Annually the county board shall adopt by resolution a recommended minimum
59 percentage goal for the participation of disadvantaged business enterprise
60 vendors in contracts awarded pursuant to Chapter 32. Such goals are not
61 mandatory; however, the purchasing administrator shall make diligent efforts to
62 achieve or exceed such annual participation goals. All written solicitations and
63 notices for bids promulgated or published pursuant to this chapter shall contain
64 language advising potential bidders of the provisions of this subsection.

65

66 **32.40. - General**

67

68 32.40(6) Solicitation for services ~~affecting county employees~~ as defined in
69 section 32.20(2) and (17) ~~shall be governed by section 56.30~~ with an aggregate
70 value in excess of fifty thousand dollars (\$50,000) shall be approved by the
71 county board prior to award. Approval shall not be requested until after
72 completion of the protest and appeal process outlined in 32.50 and 32.51 of this
73 section.

74

75 **Section 2.** Section 32.40(7) of the General Ordinances of Milwaukee County is
76 added as follows:

77

78 (7) Notwithstanding any other provisions of this chapter to the contrary, where
79 adequate competition exists, the purchasing administrator shall have the
80 authority, in any situation where a contract is to be let through the negotiated
81 acquisition process, to reserve such contract exclusively for vendors listed as
82 small business enterprises as defined in chapter 42.02(k). In such event, the
83 solicitation announcements shall indicate such reservation, citing this subsection
84 as authority therefore. Reservations by the purchasing administrator may be on
85 a commodity basis or on an individual contract basis.

86

87 **Section 3.** Title of Chapter 42 of the General Ordinances of Milwaukee County
88 is amended as follows:

89

90 **Chapter 42. - Title**

91

Chapter 42 - DISADVANTAGED BUSINESS ENTERPRISE AND AIRPORT
CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
IN PROFESSIONAL SERVICES, TIME AND MATERIAL, AND PUBLIC WORKS
COUNTY CONTRACTING

Section 4. Sections 42.01, 42.02(1)(a), 42.02(1)(b), 42.02(1)(c), 42.02(1)(e),
42.02(1)(f), 42.02(1)(g), 42.02(1)(k), 42.03, 42.04, 42.04(1), 42.04(2), 42.04(3),
42.04(4), 42.04(5), 42.04(7), 42.04(8), 42.04(9), 42.04(10), 42.04(11), 42.04(12),
42.05, 42.05(1), 42.05(2), 42.05(3), 42.05(4), 42.06, 42.06(1), 42.06(2), 42.06(3),
42.06(4), 42.06(5), 42.06(5)(a), 42.06(5)(b), 42.06(5)(c), 42.06(5)(d), 42.06(5)(e),
42.07(1), 42.07(2), 42.07(3), 42.07(4), 42.07(5), 42.07(6), 42.07(7), 42.08(1),
42.08(2), 42.08(3), and 42.08(4) of the General Ordinances of Milwaukee County
are amended as follows:

42.01. - Policy.

Based upon the findings contained in county board file no. 92-474 and all other documents and reports contained therein, it is the county's policy to comply with all federal requirements relating to the Disadvantaged Business Enterprise (DBE) Program and the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program ~~identified in section 42.02(2)(a) and to require opportunities for participation by Disadvantaged Business Enterprises (DBE) and Airport Concession Disadvantaged Business Enterprises (ACDBE) DBE and ACDBE firms~~ in county ~~professional services, time and material, and public works~~ contracting. The provisions of this chapter will apply to both county and federally funded projects.

Disadvantaged Business Enterprises Program and Airport Concession Disadvantaged Business Enterprises Program for all projects funded with federal money, including but not limited to the Federal Transit Administration (FTA), Federal Aviation Administration (FAA) and Federal Highway Administration (FHWA) shall comply with Title 49 of the Code of Federal Regulations, Parts 23 and 26, as amended from time to time, and all other appropriate federal laws and regulations, as applicable, now in effect or to take effect in the future.

42.02. - Definitions.

(1) For all projects subject to this chapter funded with federal and county money and those funded only by county money, the following definitions shall apply;

(a) *Airport concession disadvantaged business enterprise (ACDBE)* means a concession that is a for-profit small business concern (1) that is at least fifty-one (51) percent owned by one (1) or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which fifty-one (51) percent of the stock is owned by one (1)

138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183

or more such individuals; and ~~(2)~~ and whose management and daily operations are controlled by one (1) or more socially and economically disadvantaged individuals who own it.

(b) *Commercially useful function.* ~~In addition to the herein described definitions, various standard and criteria, as developed by the director of transportation and public works, and approved by the county board, will be implemented in conjunction with and by the Community Business Development Partners Office or such other process as recommended by the Director of the Community Business Development Partners Office and approved by the county board in order to determine eligibility and certification of a disadvantaged business enterprise or an airport concession disadvantaged business enterprise. A DBE 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 DBE 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 DBE is performing a commercially useful function, all facts and circumstances are considered including, but not limited to, 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 DBE credit claimed for its performance of the work, and other relevant factors.~~

(c) *Concession* means one (1) or more of the types of for-profit businesses defined in 49 CFR Part 23, Section 23.3 under the definition listed in paragraphs (1) or (2) of this definition:

- (1) A business, located on an airport that is engaged in the sale of consumer goods or services to the public under an agreement with Milwaukee County, another concessionaire, or the owner or lessee of a terminal, if other than Milwaukee County; or
- (2) A business conducting one (1) or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport, as long as the activities take place on the airport: management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

(e) ~~*Disadvantaged business enterprise (DBE)* means a for-profit small business concern which is at least fifty-one (51) percent owned by one (1) or~~

184 more individuals who are both socially and economically disadvantaged or,
185 in the case of a corporation in which fifty-one (51) percent of the stock is
186 owned by socially and economically disadvantaged individuals who own it.
187 Contract means a legally binding relationship obligating a seller to furnish
188 supplies or services (including, but not limited to, construction and
189 professional services) and the buyer to pay for them. For purposes of this
190 part, a lease is considered to be a contract.

191
192 (f) ~~Good faith efforts~~ means efforts to achieve a DBE or ACDBE goal or
193 other requirement, which by their scope, intensity, and appropriateness to
194 the objective, can reasonably be expected to fulfill the program requirement.
195 Disadvantaged business enterprise (DBE) means a for-profit small business
196 concern which is at least fifty-one (51) percent owned by one or more
197 individuals who are both socially and economically disadvantaged or, in the
198 case of a corporation in which fifty-one (51) percent of the stock is owned by
199 one or more such individuals; and whose management and daily operations
200 are controlled by one or more of the socially and economically
201 disadvantaged individuals who own it.

202
203 (g) ~~Good faith effort waiver~~ refers to a request to use a prime
204 contractor/consultant in the event that the DBE or ACDBE goal cannot be
205 met. Good faith efforts means efforts to achieve a DBE or ACDBE goal or
206 other requirement, which by their scope, intensity, and appropriateness to
207 the objective, can reasonably be expected to fulfill the program requirement.

208
209 (k) ~~Socially and economically disadvantaged individual~~ means any
210 individual who is a citizen (or a lawful permanent resident) of the United
211 States and who is a member of one (1) of the following groups:

212
213 (1) ~~Any individual who the county on a case-by-case basis~~
214 ~~determines is socially and economically disadvantaged;~~

215
216 (2) ~~Any individual in the following groups, members of which are~~
217 ~~rebuttably presumed to be socially and economically disadvantaged:~~

218
219 (i) ~~"African Americans" which includes persons having origins in~~
220 ~~any of the black racial groups of Africa;~~

221
222 (ii) ~~"Hispanic Americans" which includes persons of Mexican,~~
223 ~~Puerto Rican, Cuban, Central or South American or other Spanish~~
224 ~~culture or origin, regardless of race;~~

225
226 (iii) ~~"Native Americans" which includes persons who are~~
227 ~~American Indians, Eskimos, Aleuts or Native Hawaiians;~~

228
229 (iv) ~~"Asian Pacific Americans" which includes persons whose~~

230 origins are from Japan, China, Taiwan, Korea, Burma (Myanmar),
231 Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia,
232 Indonesia, the Philippines, Burnei, Samoa, Guam, the U.S. Trust
233 Territories of the Pacific and Northern Marinas, Macao, Fiji, Tonga,
234 Kirbati, Juvalu, Nauru, Federated States of Micronesia or Hong
235 Kong;

236
237 (v) "~~Sub-continent Asian Americans~~" which includes persons whose
238 origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives
239 Islands, Nepal or Sri Lanka;

240
241 (vi) ~~Women~~;

242
243 (vii) ~~Any additional groups whose members are designated as~~
244 ~~socially and economically disadvantaged by the United States~~
245 ~~Small Business Administration at such time the United States~~
246 ~~Small Business Administration designation becomes effective.~~
247 *Small business enterprise (SBE)* means an organized, for-profit
248 business that is independently owned and operated and not
249 dominant in its field. Depending on the industry, size standard
250 eligibility is based on the average number of employees for the
251 preceding twelve months or on sales volume average over a three-
252 year period. In no case will a firm be an eligible SBE in any
253 Federal fiscal year if the firm (including its affiliates) has had
254 average annual gross receipts, as defined by United States Small
255 Business Administration (SBA) regulations (see 13 CFR 121.402),
256 over the firm's previous three fiscal years in excess of \$22.41
257 million, or if the owner(s) of the firm exceed the personal net worth
258 (PNW) described in 49 CFR Part 26.

259
260 **42.03. - Enforcing office department.**

261
262 The community business development partners office department will be the
263 enforcing office department and is hereinafter referred to as "CBDP" office.

264
265 **42.04. - Function of the ~~office of~~ community business development partners**
266 **department (CBDP).**

267
268 (1) In accordance with 49 CFR Parts 23 and 26, the ~~office of the~~ director of
269 the ~~community business development partners~~ CBDP is designated as the
270 county's disadvantaged business enterprise liaison officer ("DBELO") and the
271 airport concession disadvantaged business enterprise liaison officer
272 ("ACDBELO").

273
274 (2) Recommend to the county board appropriate annual percentage
275 requirements for DBE and ACDBE participation in county ~~professional services~~,

276 ~~time and materials and public works~~ contracting. The director shall ensure that
277 the overall ~~annual~~ triennial DBE and ACDBE percentage goals, including race
278 neutral and race conscious components, are set in accordance with the
279 requirements of 49 CFR Parts 23 and 26 as currently enforced or as amended.

280

281 (3) The director shall recommend to the county board other appropriate
282 policies which encourage SBE, DBE and ACDBE participation in county
283 ~~professional services, time and materials and public works~~ contracting.

284

285 (4) In consultation with the county's office of corporation counsel, the director
286 shall revise and/or update the ~~disadvantaged business enterprise~~ DBE utilization
287 specifications language to ensure such language is included in ~~professional~~
288 services-county contracts.

289

290 (5) The director shall establish SBE, DBE and ACDBE contract compliance
291 monitoring procedures.

292

293 (7) The ~~office~~ department shall report annually to the county board on SBE,
294 DBE and ACDBE participation levels on all contracts subject to this chapter. The
295 director shall provide outreach services to SBEs, DBEs and ACDBEs and
296 community organizations to advise them of contracting opportunities with the
297 county.

298

299 (8) The director shall ensure that department/division heads and contract
300 administrators make available bid notices and requests for proposals to SBEs,
301 DBEs and ACDBEs in a timely manner.

302

303 (9) The director shall assist department/division heads and contract
304 administrators to identify contracts where DBE and ACDBE race conscious and
305 race neutral goals can be included in contract solicitations.

306

307 (10) ~~Professional services and County~~ County contracts may not be awarded without
308 the written approval of the CBDP director or designee who will ensure that the
309 required SBE, DBE or ACDBE participation is included on all contracts.

310

311 (11) All contract solicitations subject to this chapter will require the approval of
312 the CBDP director or designee who will ensure that an appropriate DBE or
313 ACDBE goal is assigned and/or consideration is given to participation by SBEs.

314

315 (12) ~~The CBDP office~~ is responsible for reviewing and approving good faith
316 effort waiver requests when the contractually assigned DBE or ACDBE goal
317 ~~cannot be~~ is not met by a contractor or consultant.

318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363

42.05. - Certification of disadvantaged business enterprises (DBE) and airport disadvantage business enterprises (ACDBE) DBEs and ACDBEs, and verification of SBEs.

- (1) The certification of DBE and ACDBE, and verification of SBE firms shall be the responsibility of ~~the~~ CBDP office.
- (2) Certification of DBE ~~firms~~ and ACDBE firms shall be governed by the standards and guidelines of 49 CFR Parts 23 and 26 and the processes and procedures established by the Wisconsin Unified Certification Program (WIUCP). Verification of SBE firms shall be governed by these same standards, minus any and all reference to race, gender and/or social disadvantage.
- (3) As a member of the Wisconsin Unified Certification Program (WIUCP), all ~~denials of initial certification and recertification~~ removal decisions by the CBDP office may be appealed to the WIUCP in accordance with 49 CFR Parts 23 and 26.
- (4) The CBDP director is authorized to establish new or amended procedures for certification ~~and recertification~~ in accordance with the WIUCP agreement signed by the county and the members of the WIUCP and 49 CFR Parts 23 and 26.

42.06. - Professional services and ~~other~~ non-professional service contracting.

All county ~~departmental and institutional~~ department/division heads and contract administrators are required to provide written notification to ~~the~~ CBDP office as further described herein prior to ~~entering into~~ soliciting for professional services and ~~other~~ non-professional services contracts as defined in sections 32.20(2) and (17) and 56.30 of this Code. Annual percentage goals for DBE and ACDBE participation on professional and non-professional services contracts ~~either at the prime or sub-contracted level,~~ will be established as set forth by county ordinance.

- (1) Regardless of the dollar amount of the contract, all county department/division heads and contract administrators are required to notify ~~the~~ office CBDP in writing prior to publication of an RFP or an RFQ. The department/division heads and contract administrators ~~are~~ is required to submit an ~~approved CBDP a DBE participation~~ recommendation form to the CBDP office for approval. ~~The office will then furnish to the department administrator a list of certified DBEs and ACDBEs that the department administrator shall use in its selection process unless waived for good cause by the CBDP office upon written request from the department administrator. Written request from the department administrator shall involve the CBDP office in development of CBDP will provide DBE or ACDBE specification language to be utilized in the appropriate~~

364 ~~selection process.~~ The department/division head and/or contract administrator
365 shall notify the office and the controller, in writing, of its selection regardless of
366 whether or not a DBE or ACDBE is selected. No contract shall be issued without
367 review and written approval by the CDBP office that provisions of this section
368 have been met.

369
370 (2) ~~If the proposer selected is not a DBE or ACDBE, department~~
371 ~~administrators shall be responsible for working with the CDBP office to utilize a~~
372 ~~DBE or ACDBE in any subcontracting work by the departmental or institutional~~
373 ~~administrator in consultation with the CDBP office, unless waived for good cause~~
374 ~~by the director of the CDBP office. CDBP will establish, where feasible, a~~
375 ~~percentage, up to the total contract value, of prime contract and subcontract~~
376 ~~awards to be set aside for participation by SBEs during DBE participation~~
377 ~~recommendation review. A "set aside" is the reserving of a contract or a portion~~
378 ~~of a contract exclusively for participation by SBEs, regardless of the owner's race~~
379 ~~or gender.~~

380
381 (3) ~~It is the intention and purpose of this section and the process described~~
382 ~~herein, in addition to procedure and process further detailed in the administrative~~
383 ~~manual code regarding this section, that each department attain the minimum~~
384 ~~goal as established by the county either at or through the prime or subcontracted~~
385 ~~level. CDBP requires contractors/consultants to submit DBE documentation with~~
386 ~~their original bid/proposal as a matter of responsiveness. CDBP shall provide~~
387 ~~department/division heads and contract administrators with the appropriate DBE~~
388 ~~specification language, required contract provisions, instructions, forms and~~
389 ~~procedures to be included with the bid/proposal solicitations. The~~
390 ~~department/division head or contract administrator shall forward all DBE~~
391 ~~submissions to CDBP. CDBP will review responses to assure submission of the~~
392 ~~required forms and documentation. CDBP shall make determinations as to~~
393 ~~bidder/proposer responsiveness to DBE requirements, and may reject and~~
394 ~~remove from further consideration all bids/proposals submitted without proper~~
395 ~~documentation.~~

396
397 (4) ~~The department/division heads and contract administrators will assist the~~
398 ~~office by submitting quarterly DBE and ACDBE reports that will enable the CDBP~~
399 ~~office to monitor DBE and ACDBE compliance. All final payment requests must~~
400 ~~be accompanied by a signed affidavit verifying that the DBE or ACDBE~~
401 ~~requirements have been met. The owner department shall require all prime~~
402 ~~contractors/consultants to submit a DBE or ACDBE utilization report with all~~
403 ~~payment requests. Copies of utilization reports and payment requests shall be~~
404 ~~forwarded to CDBP for review. Department/Division heads and contract~~
405 ~~administrators shall ensure that all final payment requests are accompanied with~~
406 ~~a signed affidavit verifying that the DBE and/or ACDBE requirement has been~~
407 ~~met, either at the prime or sub-contracted level.~~

408
409 (5) ~~It shall be the responsibility of the department administrators to conform~~

410 to the provisions of this section to ensure utilization of DBEs on county
411 professional service contracts. All directors of county departments must submit
412 an annual disadvantaged business enterprise or airport concession
413 disadvantaged business enterprise utilization plan by February 1 of each year to
414 the CBDP office. The plan shall provide the following information
415 Department/Division heads and contract administrators shall comply with the
416 provisions of this section to ensure utilization of DBE and ACDBE firms on county
417 professional and non-professional service contracts. All department/division
418 heads shall submit annually to CBDP a DBE/ACDBE utilization plan form by
419 December 15 each year. The plan shall provide the following information:

420
421 (a) Total number of projected professional and non-professional services
422 contracts to be awarded by department/division for the year.

423
424 (b) Total value of professional and non-professional services contracts
425 to be awarded and a dollar value by contract type.

426
427 (c) Designation of a department and/or division staff person as contact
428 person(s) for professional and non-professional services contracts.

429
430 (d) ~~Department's plan to secure participation of DBEs and ACDBEs in~~
431 ~~professional services contracts which shall include:~~

432
433 ~~(1) Contracts where DBEs or ACDBEs will be included in the~~
434 ~~request for qualifications (RFQ) or request for proposal (RFP)~~
435 ~~process.~~

436
437 ~~(2) Contracts where proposals can informally be solicited from and~~
438 ~~awarded to DBEs and ACDBEs. Value of contracts/subcontracts the~~
439 ~~department/division estimates will be awarded to DBEs or ACDBEs~~
440 ~~on professional and non-professional services contracts.~~

441
442 (e) ~~Value of contracts/subcontracts the department estimates will be~~
443 ~~awarded to DBEs or ACDBEs on professional services contracts.~~
444 Percentage of total contract dollars that the department/division estimates
445 will be awarded to DBEs or ACDBEs.

446 447 **42.07. - Construction contracting.**

448
449 (1) The owner department of ~~public works~~ shall consult with the CBDP office
450 to determine an appropriate goal on all contracts.

451
452 (2) The owner department shall ~~be required to~~ submit an approved DBE
453 participation recommendation form for each ~~public works~~ project. CBDP will
454 establish, where feasible, a percentage, up to the total contract value, of prime
455 contract and subcontract awards to be set aside for participation by SBEs during

456 DBE participation recommendation review. A “set aside” is the reserving of a
457 contract or a portion of a contract exclusively for participation by SBEs,
458 regardless of the owner’s race or gender.
459

460 (3) ~~The CDBP director shall provide the director of public works the owner~~
461 ~~department with appropriate DBE specification language and required contract~~
462 ~~provisions to be included in bidding and contract documents.~~

463
464 (4) ~~The department administrator shall ensure that the prime contractor shall~~
465 ~~comply with the assigned DBE or ACDBE goal and/or with the requirements of~~
466 ~~49 CFR Part 26, and make a good faith effort to achieve the required DBE or~~
467 ~~ACDBE participation. If the prime contractor is unable to meet the required DBE~~
468 ~~or ACDBE participation, the prime contractor must submit a good faith effort~~
469 ~~waiver request to the CDBP office. CDBP requires contractors/consultants to~~
470 ~~submit DBE documentation with their original bid/proposal as a matter of~~
471 ~~responsiveness. CDBP shall provide department/division heads and contract~~
472 ~~administrators with the appropriate DBE specification language, required contract~~
473 ~~provisions, instructions, forms and procedures to be included with the~~
474 ~~bid/proposal solicitations. The department/division head or contract administrator~~
475 ~~shall forward all DBE submissions to CDBP. CDBP will review responses to~~
476 ~~assure submission of the required forms and documentation. CDBP shall make~~
477 ~~determinations as to bidder/proposer responsiveness to DBE requirements, and~~
478 ~~may reject and remove from further consideration all bids/proposals submitted~~
479 ~~without proper documentation.~~

480
481 (5) ~~The owner department of public works shall require the all prime~~
482 ~~contractors/consultants to submit a DBE or ACDBE utilization report with all~~
483 ~~payment requests. Copies of utilization reports and payment requests should~~
484 ~~shall be forwarded to the CDBP office for review.~~

485
486 (6) ~~The department administrator~~ Department/Division heads and contract
487 administrators shall ensure that all final payment requests must be are
488 accompanied with a signed affidavit verifying that the DBE and/or ACDBE
489 requirement has been met, either at the prime or subcontracted level.

490 (7) ~~The owner department of public works shall submit an annual list of~~
491 ~~approved public works projects as defined in chapter 44, section 44.001, whether~~
492 ~~funded with federal funds or solely with county funds. The director of public works~~
493 ~~the owner department must submit the disadvantaged business enterprise~~
494 DBE/ACDBE utilization plan by December 15 of each year to the CDBP office
495 based on the county board adopted budget. The list shall provide the following
496 information:

497
498 (a) A listing by division within the department of types of contracts to be
499 awarded and a dollar value by contract type based on the county board
500 adopted budget.
501

502 (b) Designation of a department staff person as contact person(s) for each
503 construction contract.

504

505 **42.08. - Enforcement and monitoring.**

506

507 (1) Compliance reviews and audits. ~~During contract performance, the~~ The
508 county and CBDP reserves the right to conduct compliance reviews and request,
509 both from the prime contractor/consultant and ~~DBE~~
510 subcontractors/subconsultants or ~~ACDBE~~ concessionaires, documentation ~~that~~
511 ~~would indicate~~ necessary to verify level of compliance. If the contractor/vendor is
512 not in compliance with DBE and/or ACDBE contract requirements, CBDP will
513 notify the contractor/vendor in writing of corrective action to be taken.

514

515 (2) If the contractor/consultant fails or refuses to take corrective action within
516 the time specified in the notice, the county at CBDP's request, may terminate or
517 cancel the contract, in whole or in part; withhold payments on the contract until
518 DBE and/or ACDBE contract compliance issues are resolved to the county's
519 satisfaction; or impose other appropriate sanctions, including the one identified in
520 section 42.08(3) below. The director of the owner department ~~of public works or~~
521 ~~appropriate department head~~ shall be notified by the director of the CBDP office
522 when sanctions are made against a contractor/consultant.

523

524 (3) The director of ~~the CBDP office~~ or designee shall have the authority to
525 withhold contractor/consultant payments until DBE and/or ACDBE participation
526 requirements have been met. If the contractor/consultant has completed its
527 contract, and the goal was not met due to an absence of good faith on the part of
528 the contractor/consultant, the proper measure of damages for such
529 noncompliance shall be the dollar amount of the unmet portion of the DBE and/or
530 ACDBE goal. The county may in such case retain any unpaid contract amounts
531 and retainage otherwise due the contractor/consultant, up to the amount of the
532 unmet goal. Milwaukee County may bring suit to recover damages up to the
533 amount of unmet goal, including interest at the rate of twelve (12) percent
534 annually, plus the county's costs, expenses and actual attorney's fees incurred in
535 the collection action.

536

537 (4) Pursuant to 49 CFR Part 26 it is county policy to ensure that all
538 subcontractors or subconsultants are promptly paid within seven (7) days of the
539 prime contractor/consultant receiving payment from the county, for all work
540 satisfactorily completed. In the event a prime ~~contractor or prime~~
541 contractor/consultant fails to pay ~~subcontractors or~~
542 subcontractors/subconsultants within the stated time frame, the CBDP director or
543 designee may direct the owner department or accounts payable head to withhold
544 payment to the prime contractor/consultant or impose other appropriate
545 sanctions in accordance with county ordinance. The CBDP director or designee
546 may authorize a waiver of the requirements of this chapter, as determined by
547 CBDP pursuant to section 42.04(1), on a contract-by-contract basis, upon good

548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592

cause shown.

Section 5. Section 42.02(1)(l) of the General Ordinances of Milwaukee County is added as follows:

42.02(1)(l) *Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Any individual who the county finds to be a socially and economically disadvantaged individual on a case-by-case basis
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans" which includes persons having origins in any of the black racial groups of Africa;
 - (ii) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
 - (iv) "Asian Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Burnei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marinas, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
 - (v) "Sub-continent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA at such time the SBA designation becomes effective.

593 **Section 6.** Section 42.06(5)(f) of the General Ordinances of Milwaukee County
594 is deleted in its entirety:

595
596 ~~42.06(5)(f) — Percentage of total contract dollars that the department estimates~~
597 ~~will be awarded to DBEs or ACDBEs.~~

598
599 **Section 7.** Sections 44.07(c), 44.16, 44.16(1), and 44.16(3) of the General
600 Ordinances of Milwaukee County are amended as follows:

601

602 **44.07. - Bid requirements, disqualification and rejection of bids.**

603

604 (c) *List of subcontractors.* Each bidder shall submit with the bid a list of
605 subcontractors (or material suppliers when required by the bid documents), with
606 whom it proposed to contract and the class of work to be performed by each. To
607 qualify for such listing, each subcontractor must first submit a bid in writing to the
608 contractor at least forty-eight (48) hours prior to time of bid closing. The list shall
609 not be altered without written consent of the county. A Except the listing of
610 disadvantaged business enterprises, as defined by Milwaukee County Ordinance
611 § 42.02(1)(f), to be used as subcontractors in the bid, a bid shall not be invalid if
612 any subcontractor and the class of work to be performed has been omitted. The
613 Except for omissions of the names of disadvantaged business enterprises and
614 the class of work they are to perform, the omission shall be considered
615 inadvertent or a representation that the bidder will perform the work. If
616 inadvertent, the bidder shall supply the list of subcontractors or material suppliers
617 within three (3) working days from date and time of bid opening. Bid may be
618 rejected upon failure to comply.

619

620 **44.16. - Minority/women Disadvantaged business enterprise program.**

621 Legislative intent: To assure that all county construction, repair or remodeling or
622 improvement contractors for any public works shall be awarded only on the basis
623 of ability or potential to do the job, and to assure full participation of all qualified
624 individuals:

625

626 (1) ~~The minority and women's disadvantaged business enterprise (DBE) program~~
627 ~~authority and procedures shall apply as set forth in chapter 42 of the Code.~~

628

629 (2) Any act required to be performed or prohibited by chapter 42 of the Code is
630 hereby incorporated herein by reference.

631

632 (3) ~~The director of the department of public works~~ appropriate director of
633 transportation (or designee) or the director of administrative services (or
634 designee) is further authorized and empowered by this section to effectuate
635 and establish appropriate procedures, standards and bid specifications to
636 implement and achieve the county policies and goals contained in chapter 42.

637

638 **Section 8.** Sections 56.30(1)(a), 56.30(1)(b), 56.30(1)(d), 56.30(1)(e),
639 56.30(2)(a), 56.30(2)(b), 56.30(2)(d), 56.30(6)(g), and 56.30(8)(a) of the General
640 Ordinances of Milwaukee County are amended as follows:
641

642 **56.30(1) - Definitions.**
643

644 (a) "Professional services" means services, the value of which is substantially
645 measured by the professional competence of the person performing them and
646 which are not susceptible to realistic competition by cost of services alone. The
647 services provided must be materially enhanced by the specific expertise, abilities,
648 qualifications and experience of the person that will provide the service.
649 Professional services shall typically include services customarily rendered by
650 architects; engineers; surveyors; real estate appraisers; certified public
651 accountants; attorneys; financial personnel; medical services, except when such
652 services are delivered to county employees as part of a workers compensation
653 claim; system planning; management and other consultants; and services for
654 promotional programs. Administrative Manual Procedure 4.13 on professional
655 services DBE Contracting Requirements provides additional definition regarding
656 services that meet professional service contracting requirements under this
657 ordinance. If a department administrator or other department personnel is
658 uncertain if their contract should follow professional service contracting
659 provisions under this ordinance, the department administrator must make a
660 request of Corporation Counsel for final clarification, before beginning the
661 contracting procedures.
662

663 (b) "Services" means the furnishing of labor, time or effort by a
664 contractor/consultant, not involving the delivery of a specific end product other
665 than usual reports and/or drawings which are incidental to the required
666 performance.
667

668 (d) "Contractor" means a firm or individual who formally undertakes to do
669 anything for another. Independent contractors must maintain a separate
670 business and hold themselves out to and render service to the general public and
671 must have a right to control the details of the work performed. Questions
672 regarding independent contractor status must be directed to Corporation
673 Counsel. Appendix F lists federal criteria to be considered in determining
674 independent contractor status.
675

676 (e) "Contract" means an agreement between two (2) or more persons to do
677 or not to do something a legally binding relationship obligating a seller to furnish
678 supplies or services (including, but not limited to, construction and professional
679 services) and the buyer to pay for them. For purposes of this part, a lease is
680 considered to be a contract.
681

682 **56.30(2) - Policy.**
683

684 (a) *General policy statement.* All county departments and institution
685 administrators are responsible for procuring professional services and for
686 soliciting, negotiating and entering into ~~service~~ contracts as defined in ~~section~~
687 ~~32.20(17)~~ in accordance with the provisions of this section. However, the office of
688 the county executive and the county board shall be exempt from the provisions
689 contained herein as shall be the department of administration for the purpose of
690 securing credit rating services related to debt issuance and administration.

691
692 (b) *Disadvantaged business enterprise requirement.* All county departments
693 and institutions administrators are required to notify the ~~disadvantaged business~~
694 ~~development~~ Community Business Development Partners department (CBDP)
695 division in writing prior to ~~entering into~~ soliciting for professional service ~~contracts~~
696 ~~and service contracts as defined in section 32.20(17)~~ contract opportunities.
697 Annual percentage goals for DBE participation on professional services contracts
698 will be established as set forth by county ordinance. The procedures to be
699 followed by departments regarding DBE participation shall conform to provisions
700 as contained in chapter 42. No professional services contract ~~or service contract~~
701 ~~as defined in section 32.20(17)~~ shall be issued without review and written
702 approval by the CBDP ~~division~~ that all provisions of chapter 42 regarding
703 disadvantaged business participation have been met.

704
705 (c) *Reference to ordinance and administrative manual.* When a county
706 department/division head or contract administrator ~~or institution~~ is preparing to
707 begin a contract for professional services the department/division head or
708 contract administrator ~~should~~ shall follow the ~~ordinances~~ requirements of this
709 section ~~56.30~~, and chapter 42 on the requirements for using disadvantaged
710 business enterprises in county contracting, including professional services, and
711 administrative manual section 1.13, which provides further guidance on
712 complying with professional service contracting requirements.

713
714 **56.30(6) - Policy.**

715
716 (g) All county ~~departments and institutions~~ department/division heads and
717 contract administrators are required to notify the Community Business
718 Development Partners ~~division~~ department (CBDP) in writing prior to ~~entering~~
719 ~~into~~ soliciting for professional services contracts. Annual percentage goals for
720 DBE participation on professional services contracts will be established as set
721 forth by county ordinance. The procedures to be followed by departments
722 regarding DBE participation shall conform to provisions as contained in Chapter
723 42. No professional services contract shall be issued without review and written
724 approval by the CBDP ~~division~~ that all provisions of Chapter 42 regarding
725 disadvantaged business participation have been met.

726
727 **56.30(8) - Controller responsibility.**

728
729 (a) The controller shall, on a quarterly basis, summarize the reports received

730 from department administrators concerning professional services contracts
731 and send one (1) copy to the committee on finance and audit and one (1)
732 copy to the county executive and one (1) copy to the CBDP office.
733

734 **Section 9.** Sections 56.30(1)(f) and 56.30(1)(g) of the General Ordinances of
735 Milwaukee County are removed in their entirety:
736

737 **56.30(1) - Definitions.**
738

739 ~~(f) "Medical services" means services provided by a licensed or recognized~~
740 ~~health care professional, professional group, ambulance or medical~~
741 ~~transportation services operated by governmental units, medical laboratories or~~
742 ~~companies of medical supplies or equipment to county employees whose injury is~~
743 ~~considered a workers compensation claim. Hospitals, community-based clinics,~~
744 ~~faculty physicians and surgeons or other physicians operating from Froedtert~~
745 ~~Memorial Lutheran Hospital, non-municipality operated ambulance and medical~~
746 ~~transportation providers are excluded from this definition.~~
747

748 ~~(g) "Service contract" means an agreement primarily related to staff~~
749 ~~services including, but not limited to, housekeeping, security, landscaping,~~
750 ~~maintenance and other non-professional services.~~
751

752 **Section 10.** This ordinance shall become effective upon publication.
753

754
755 **Adopted by the Milwaukee County Board of Supervisors**
756

757 **March 15, 2012**
758

759
760
761