

**- REQUEST FOR PROPOSAL -**

**BOND COUNSEL SERVICES**

**Milwaukee County, Wisconsin  
Office of the Comptroller  
September 26, 2013  
Official Notice: #6873**

**Proposals Due by 11 a.m. Central Standard Time  
October 29, 2013 to:**

**c/o Milwaukee County Clerk's Office  
Courthouse, Room 105  
901 North Ninth Street  
Milwaukee, WI 53233**

**Please Label Proposals with Firm's Name and Address  
and "Proposal for Bond Counsel Services"**

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## **A. INTRODUCTION**

The Milwaukee County Office of the Comptroller is seeking proposals for bond counsel services. No joint proposals will be accepted. The Department anticipates entering into a three-year professional services agreement from 2014 through 2016 for services related to the issuing of bonds. The department also anticipates including options for three one-year extensions. This agreement will require review by the County Board Finance, Personnel, and Audit Committee and approval by the full County Board.

## **B. DESCRIPTION OF MILWAUKEE COUNTY**

Milwaukee County serves as a population, economic, and financial center of the state of Wisconsin. Milwaukee County is located in southeastern Wisconsin on the Lake Michigan shoreline. The County covers an area approximately 242 square miles and consists of ten cities and nine villages. The City of Milwaukee, which acts as the County seat, contains approximately 63 percent of the County's population and 48 percent of its taxable property value. Milwaukee County's 2012 population estimate is 951,315.

### **Government**

A County Executive and an 18-member Board of Supervisors govern Milwaukee County. The County Executive and County Supervisors are elected to nonpartisan four-year terms. Each Supervisor is elected from a district with an average population of approximately 50,000. In addition, six constitutional officers are elected to serve two-year terms on a partisan basis.

In November 2011, Wisconsin Act 62 was enacted. The law created the Office of the Comptroller for Milwaukee County. The Comptroller is the chief financial officer of the County and the administrator of the County's financial affairs. The Comptroller oversees all of the County's debt. The Comptroller also countersigns all contracts if he determines that the County has, or will have, the necessary funds. The comptroller also provides independent fiscal analysis at the request of the County Executive or Board and provides a fiscal note for all proposed legislation. Finally, the Comptroller performs all audit functions and prepares a 5-year financial condition forecast for the County.

### **Services Provided by the County**

The County's 2013 Adopted Budget of approximately \$1.4 billion is intended to provide a wide range of services in the areas of health care, human services, public safety, recreation and transportation. The County operates a number of facilities in the provision of these services including a courthouse, criminal justice facility, community correctional facility, zoo, museums, mass transit facilities, parks, recreation and cultural facilities, airports and other public works.

## **C. FINANCIAL MANAGEMENT**

### **Budgeting**

Milwaukee County has an executive budget process for the preparation of the annual operating and capital budgets. The Fiscal Affairs Division of the Department of Administrative Services provides the technical assistance required by the County Executive to review budget requests submitted by County departments and agencies. The Fiscal Affairs Division compiles these requests, along capital improvements, contingency requirements and the required tax levy. It reviews areas where changes may be considered and transmits its

findings to the County Executive. The County Executive holds a public hearing with respect to the requests, meets with departments and submits a recommended budget to the County Board on or before October 1st of each year.

Subsequent to the receipt of the budget by the County Board, the County Board's Finance, Personnel, and Audit Committee reviews the County Executive's budget at public meetings. On the Monday following its regularly scheduled meeting on the first Thursday in November, the County Board acts on the amendments and recommendations submitted by the Finance, Personnel, and Audit Committee, as well as amendments submitted by individual Board members. It adopts a final budget, subject to any vetoes by the County Executive, and levies taxes based upon equalized property values. The County continues to develop an inventory of all County capital assets in order to execute appropriate replacement or reconstruction schedules for the County's infrastructure. This information assists County departments with the County's five-year capital improvements program that is updated annually as part of the regular budget process.

### **Financial Reporting/Debt Issuance**

The Office of the Comptroller reviews all fiscal notes and prepares the Comprehensive Annual Financial Report (CAFR). The Office of the Comptroller is also responsible for determining the annual principal and interest requirements for the County and manages the issuance of all debt.

The Capital Section of the Comptroller Financial Division manages day to day responsibility for the issuance and administration of County debt. The staff of this section works closely with bond counsel to accomplish the services sought in this RFP. The Capital staff works with the bond counsel, to determine bond eligibility for capital projects. The Capital staff is experienced in the issuance of general obligation bonds, revenue bonds, pension obligation bonds, conduit bonds and capital leases.

Historically, Milwaukee County has sold two bond issues each year to finance corporate purpose and airport projects. Corporate purpose issues have financed improvements to the County's mass transit, highway, parks and general government facilities. The County issues general airport revenue bonds backed by passenger facility charge revenues or general airport revenues to make improvements to Timmerman Field and General Mitchell International Airport. The bonds are subject to alternative minimum tax. Airport capital improvements are also financed through a combination of Federal, State, Airport Capital Improvement Reserves and passenger facility charges (PFC) revenues.

In 2013, the County issued approximately \$27 million of corporate purpose bonds. Typically the County issues approximately \$35 million of corporate purpose bonds.

In 2013, the County issued approximately \$47 million of GARBs and \$3 million of refunding GARBs. Another new airport issuance is not anticipated until 2016, although potential refundings could occur in 2014 and/or 2015.

The 2014-2017 Capital Improvements Plan totals \$509,404,832 of which \$300,155,978 would be financed by a combination of general obligation bonds for corporate purpose projects and GARBs for airport projects.

## **Financing Categories**

The County budgets for its capital improvement projects within four categories – Transportation and Public Works; Parks, Recreation and Culture; Health and Human Services and General Government. The category with the largest projected budget over the five-year period is Transportation and Public Works. This category includes Highway projects such as major reconstruction of County trunk highways and bridges, Airport projects such as concourse reconstruction, Transit projects such as new and replacement buses and Environmental projects such as environmental remediation and monitoring of waste sites.

The next largest category is General Government. This area includes Courthouse Complex, House of Correction, and Other Agencies. The Other Agencies area typically funds improvements to the County's technical infrastructure, vehicle acquisition and private activity for arts and cultural facilities.

The category of Parks, Recreation and Culture is third in capital spending. This area includes projects such as new play equipment, improvements and utility upgrades to the various Park, Zoo and Museum facilities , as well as renovations to Zoo and Museum exhibits.

The category of Health and Human Services comprises the smallest share of the overall capital budget. This category involves improvements to buildings and structures for the Department of Health and Human Services (DHHS), DHHS – Behavioral Health Division and County Grounds.

## **D. DEBT MANAGEMENT POLICIES**

On July 21, 1994, the County Board of Supervisors adopted several debt management and capital financing policies or goals. These policies included a requirement that the Capital Budget include a summary of the impact that borrowing proposals contained in the budget would have on various measures of debt affordability. The policies also established limitations on capital improvement borrowing by requiring an increase in project pay-as-you-go cash financing.

The following section contains a summary of selected debt affordability indicators.

1. Tax supported debt service costs shall not exceed actual sales and use tax revenues.
2. Cash financing for capital improvements shall provide for a minimum of 20 percent of County financed project costs.
3. Direct debt shall not exceed 1.5 percent of equalized property value.
4. Financing terms shall not exceed 16 years for corporate purpose projects.
5. Average principal maturities shall not exceed 10 years for corporate purpose projects..
6. Net present value savings for proposed advance refundings should total a minimum of 3 percent to 5 percent of refunded principal.
7. Direct debt per capita shall not exceed \$500.

8. Bond insurance will be used when it provides a net economic benefit.
9. Corporate purpose bond issues for 2008 and forward would be limited to a principal amount of \$30 million plus three percent per year for inflation.

#### **E. NON-DISCRIMINATION REQUIREMENTS**

In accordance with Section 56.17 of the General Ordinances of Milwaukee County, the proposer must agree not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, sex or handicap, which shall include, but not be limited to: recruitment or recruitment advertisement; employment; upgrading, demotion or transfer; lay-off or selection for training, including apprenticeship. The Proposer will be required to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the County setting forth the provisions of the nondiscrimination clause. A violation of this provision shall be sufficient cause for the County to terminate the agreement without liability for the uncompleted portion or for any services purchased or paid for by the Proposer for use in completing the agreement.

#### **F. SCOPE OF SERVICES REQUESTED**

Bond counsel will be required to perform the following duties:

1. Assist in the drafting of proposed legislation or ordinances related to County debt issuance, including legislation at any level of government.
2. Review the eligibility of projects proposed for debt financing and consult with County committees and officers and staff and investment bankers or financial advisors regarding legal aspects for proposed financings.
3. Inform County officials about changes in State and Federal legislation regarding debt and tax regulations and assist the County in complying with regulations such as federal arbitrage rebate requirements or project expenditure targets.
4. Prepare all proceedings and documents relating to each financing including public hearing notices, notices of sale, authorizing resolutions, closing documents and those portions of the official statement which describe the bonds within the time frames established by the Office of the Comptroller.
5. Offer general assistance in concert with the County's financial advisor to help ensure that the County complies with disclosure guidelines and advise the County with respect to "undertaking" regarding primary and secondary market disclosure.
6. Meet with representatives of the credit rating agencies or bond insurers, if required, to present information about proposed financings.
7. Upon request, provide written legal opinions in addition to the bond counsel opinions provided for the official statements for the financings.

8. Attend Finance, Personnel, and Audit Committee and County Board meetings, as requested, to answer questions about proposed financings proposals.
9. Prepare closing documents and supervise closing and prepare a compilation of all important documents, contracts and records associated with each financing.
10. Issue an approving opinion with respect to each financing when authorization and issuance is duly accomplished.
11. Assist County officials in evaluating alternative financing proposals from a legal perspective, as requested.
12. Familiarity with various types of bond financings and well as capital leases.
13. Perform other general services and provide advice related to debt financing as may be requested by the County throughout the year.
14. Experience with continuing disclosure and compliance for bond transactions.

## **G. PROPOSAL FORMAT**

Completed proposals should include the following proposal elements:

- Table of Contents
- Proposer's Approach to Providing the Requested Services
- Profile of Organization and Summary of Experience and Qualifications
- Experiences with Various Debt Issuances
- Disadvantaged Business Enterprises (DBEs)
- Cost Proposal Summary (in a separate, sealed envelope)

### Table of Contents

The table of contents of the proposal should include a clear and complete identification of the materials submitted by section and page number.

### Proposer's Approach to Providing the Requested Services

1. Describe in general terms the division of duties between partners, associates, and tax professionals as these duties relate to the services requested by Milwaukee County.
2. Describe the firm's procedure for providing continuing uninterrupted service if staffing changes occur or if the requested scope of services is significantly increased.
3. Summarize the firm's procedure and policy for addressing conflicts of interest or appearances of conflicts of interest. Disclose all client relationships which are directly adverse to Milwaukee County for cases which may be material to the County's financial condition.
4. Specify the type of malpractice insurance carried by the firm, if any, and indicate the limits of coverage for performing bond counsel services.

### Profile of Organization, Summary of Experience/Qualifications, and Reference Evaluation

A profile of the respondent firms is requested for general background information. The description of the proposer's qualifications will be used in the evaluation of the bond counsel proposal. Proposals should describe the experience and qualifications. Please include the following information:

1. Describe the respondent firm's organizational structure and size. Describe the firm's scope of operation and areas of concentration.
2. Discuss the location of the office from which the work is to be performed and indicate the number of professional staff employed at that office. Include a description of the range of activities performed at that office.
3. Indicate the name, location, telephone number, fax number and email address of the attorney who will serve as the primary contact person for your firm. Please provide a resume that describes his/her background and relevant experience. In addition, provide names and brief resumes for other attorneys who will assist the primary attorney.
4. Describe the ability of your firm and assigned personnel to evaluate legal issues, prepare documents and complete other tasks of a bond transaction in a timely manner.
5. Indicate the name, location, telephone number, fax number and email address of the tax professional who will serve as the tax contact person (attorney, CPA) for your firm. Please provide a resume that describes his/her background and relevant experience.



6. List current on-going relationships with governmental units located within Milwaukee County. Include the name of a contact person for each organization.
7. List current on-going relationships with governmental units having populations of 500,000 or above. Include the name of a contact person for each organization.
8. Describe your firm's experience with and its approach to applicable Federal securities laws and regulations.
9. Describe your firm's approach and the experience with continuing disclosure and compliance.
10. Describe any current bond counsel work directly involving Milwaukee County in cases where your firm represents non-county participants in a financing transaction.
11. Proposals should include the name, title, address and telephone number of at least three (3) officials of financial institutions or other municipal finance industry professionals who may be contacted as references.

*Experience with Various Debt Issuances*

Discuss your firm's experience in the issuance of airport revenue bonds, pension obligation bonds, Build America Bonds. Please list three or more financings in which your firm has participated. Describe your firm's role in the financings.

Cost Proposal Summary **(The Cost Proposal must be submitted in a separate, sealed envelope.)**

The County will pay bond counsel services fees on an hourly basis. Itemized estimates of charges for reimbursable expenses such as travel expenses that would be in addition to hourly charges or transaction based fees must be identified separately. Fee information must be sufficiently detailed to allow evaluators to calculate the overall cost to the County given the hypothetical debt financings described below.

Hypothetical Debt Financings

Please explain how your firm would advise the County on each of the following debt financings and provide estimated costs for each should be in a separate envelope. Please use format below to list the expenses for each scenario.

Scenario 1: The County plans to issue \$35 million in general obligation bonds, on a competitive basis, structured over a 15-year term, to finance its 2014 capital program. Describe your firm’s involvement on this bond issue. In addition, please describe the criteria that your firm uses in determining whether a project is eligible for general obligation bond financing.

Scenario 2: The County plans to issue \$20 million in General Airport Revenue Bonds (GARBs), on a negotiated basis, structured over a 25-year term, to finance its Airport capital program. Describe your firm’s involvement on this bond issue.

Scenario 3: The County has entered into a private/public partnership. On behalf of a private organization, the County will serve as a conduit in issuing \$25 million in general obligation bonds, structured over a 20-year term. As part of the issue, the County will receive a portion of the revenues collected by the private entity as a result of the new enterprise. Describe your firm’s involvement on this bond issue.

**Rates would be the same regardless of the financing type and would be the same for the term of the contract.**

**2013 Hour and Rates (A separate set of data in the format below should be used for each scenario. Only the cost data from Scenario 2 will be scored in the cost evaluation) The cost data that will be evaluated in scenario 2 will be based on total costs and the hourly rate for the primary.**

Classification or Position	Name	Estimated Hours	Rate per Hour	2013 Expense
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Total 2013 Labor Costs:				_____
Estimate of 2013 Reimbursable Expenses				_____
Total 2013 Expenses				_____

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

For Information regarding the County's DBE Requirements, see Attachment 2

### **H. EVALUATION OF PROPOSALS**

An ad hoc committee appointed by the Comptroller, will evaluate proposals. Finalists are expected to be selected by the committee and may be invited for oral interviews. The evaluation criteria will consist of the following:

- Proposer's Approach to Providing Requested Services (5%)
- Profile of Organization, Summary of Experience/Qualifications, and Reference Evaluation (40%)
- Experience with Various Debt Issuances (35%)
- Proposal Cost (20%)

### **I. TERMS AND CONDITIONS**

The County has the right to reject any and all proposals; to disqualify any proposals not meeting the Request for Proposal due dates; to disqualify any proposals not following Request for Proposal communication procedures; and to disqualify any proposals not responsive to the criteria specified for evaluation. The County has the right to take into consideration the abstract and the formal content of the proposal. The County will not be liable for any costs incurred by proposers prior to the issuance of an agreement nor will pre-agreement costs be authorized to any firm. The County reserves the right to request clarification of submitted information and to request additional information from applicants.

Prior to making a final decision, the County reserves the right to negotiate with the recommended firm(s) any terms and conditions which may be different from those originally proposed or required by this RFP.

All proposals and materials submitted in conjunction with the proposals will become the property of the County.

All contracts will be reviewed and approved, in writing, by the County's Risk Manager for financial responsibility and liability management, including appropriate insurance provisions and modification in indemnity agreements.

If there is a discrepancy between this RFP and the contract, the language of the contract will rule.

### **J. CONTENTS OF PROPOSAL**

All attachments, additional pages, addenda or explanation supplied by the vendor in the submission package will be considered as part of the RFP response. The material will be evaluated as part of the vendor's response to the RFP and will eventually be incorporated as part of the terms and conditions of the successful proposer's contract with Milwaukee County.

Include the cost proposal summary in a separate sealed envelope.

**K. MILWAUKEE COUNTY CONTACT PERSON**

Questions about request for proposal requirements should be put in writing and directed to Pamela Bryant, Capital Finance Manager at [pamela.bryant@milwcnty.com](mailto:pamela.bryant@milwcnty.com). Specific questions regarding the Disadvantage Business Enterprise (DBE) requirements should be directed to the CBDP Compliance Team at [cbdpcpliance@milwcnty.com](mailto:cbdpcpliance@milwcnty.com) or 414.278.4747.

Please do not contact members of the County Board of Supervisors, the County Executive or any other County representatives or employees between September 26, 2013 and the end of the RFP process (signed contract). If you do contact a Milwaukee County representative during this time period, your response should identify, in writing, the name of the party you contacted and the content of the communication. Please also notify Ms. Bryant, in writing, if you contact anyone after your firm’s submission. All communications will be posted on the Milwaukee County website.

**L. CHANGES IN REQUEST FOR PROPOSAL**

If it becomes necessary to revise any part of this RFP or otherwise provide additional information to potential bidders, an addendum or revised RFP will be posted on the County’s website.

**M. PROPOSAL PROCESS TIMELINE AND DUE DATE**

Please Label Proposals with Firm’s Name and Address and “Proposal for Bond Counsel Services”. Eight (8) sealed copies of the proposal for bond counsel services shall be submitted. All eight (8) copies must be received in the Office of the County Clerk, no later than 11:00 am, Central Daylight Time on October, 29, 2013.

**Copies of Proposal to:**  
Scott Manske, Comptroller  
Office of the Comptroller  
C/O Milwaukee County Clerk’s Office  
Courthouse, Room 105  
901 North Ninth Street  
Milwaukee, Wisconsin 53233  
Attention: Pamela Bryant

**OFFICIAL NOTICE NO. 6873  
PROPOSAL FOR BOND COUNSEL SERVICES**

Proposals will be evaluated by a review panel. At the sole discretion of the County, interviews may be held with selective firms. The anticipated schedule of events is shown below:

Action	Date
Request for Proposal Issued	September 26, 2013
Proposals Due to County Clerk	October 29, 2013
Proposals Reviewed	October 29- November 14 2013
Interviews with selected firms(s)	Week of November 11 2013
Intent to award contract	December 2013

**ATTACHMENT 1**

**PROFESSIONAL SERVICE CONTRACT**

**[INSERT BUSINESS NAME]**

This Contract between Milwaukee County, a Wisconsin municipal body corporate (hereinafter called “County”), represented by its **[INSERT DEPARTMENT]**, and **[INSERT BUSINESS NAME]** (hereafter called “Contractor”), as represented by **[NAME]**, [(xxx) xxx-xxxx], is entered into on \_\_\_\_\_, 20\_\_.

1. SCOPE OF SERVICES.

Contractor shall specifically perform all of the tasks set forth in the Scope of Services that was included in the RFP and incorporated herein..

The Contract consists of the following (**number**) documents listed below in the order of precedence that will be followed in resolving any inconsistencies between the terms of the Contract and the terms of any Exhibits, Schedules, or Attachments thereto:

- a) This Professional Service Contract
- b) Request for Proposal
- c)

2. STAFFING.

Contractor’s employees listed below are to be assigned to the project:

	<u>Name</u>	<u>Position</u>	<u>Billing Rate</u>
1.			
2.			
3.			
4.			

Contractor shall not replace [List name(s) and position(s)] without the prior approval of the County. If the successor to said [List name(s) and position(s)] cannot be mutually agreed upon, the County shall have the right to terminate this Contract upon thirty (30) days’ notice. Any replacement of other listed personnel shall be by persons of equal qualifications, which shall be attested to by Contractor. The [List name(s) and position(s)] shall be required to give this contractual obligation top priority.

Contractor represents that its employees and subcontractors possess the necessary skill, expertise, and capability, including sufficient personnel with the necessary qualifications, to perform the services required by this Contract. Contractor shall provide, at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be the employees of, or have any other contractual relationship with, the County.

4. DATES OF PERFORMANCE.

The term of this Contract shall commence upon the execution and, unless terminated earlier in accordance with the provisions hereof, will continue until the latest of (a) December 31, 2016, or (b) such time as the work on financings in progress on December 31, 2016 is completed, or (c) such time as the County Board takes further action designating bond counsel. At its sole option, the County may extend the contract for additional one-year periods beyond December 31, 2016, up to a maximum of three (3) additional years.

5. COMPENSATION.

Contractor shall be compensated for work performed on an hourly basis at the billing rate listed in section 2 of this Contract. As a matter of practice, the County attempts to pay all invoices in thirty (30) days. This compensation shall include any and all out-of-pocket expenses incurred by Contractor or its employees

6. BILLING.

Contractor shall provide County with billings for each financing, which shall include, but not be limited to, the following:

- A. Name
- B. Dates and hours worked
- C. General task performed
- D. Detail out-of-pocket expenses, indicating their purpose such as telephone, travel, hotel, graphic reproduction, postage, etc., for these expenditures provided for in the Contract.

7. OWNERSHIP OF DATA.

Upon completion of the work or upon termination of the Contract, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Contractor has collected or prepared in carrying out this Contract shall be provided to and become the exclusive property of the County. Therefore, any reports, information and data, given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of County.

No reports or documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

8. AUDIT AND INSPECTION OF RECORDS.

Contractor shall permit the authorized representatives of County, after reasonable notice, to inspect and audit all data and records of Contractor related to carrying out this Contract for a period up to three (3) years after completion of the Contract. The prime consultant must obtain prior written Milwaukee County approval for all subconsultants and/or associates to be used in performing its contractual obligations. There must be a written contractual agreement between the prime consultant and its County approved subconsultant and/or associates which binds the subconsultant to the same audit contract terms and conditions as the prime consultant.

9. AFFIRMATIVE ACTION.

The Contractor assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will require that its covered suborganizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

10. DISADVANTAGED BUSINESS ENTERPRISE.

The Contractor shall comply with Milwaukee County Ordinance Chapter 42 and CFR 49 part 23, which has an overall goal of seventeen percent (17%) participation of certified disadvantaged, business enterprises (DBE) on professional service contracts. In accordance with this, the Contractor shall ensure that DBE's have the maximum opportunity to participate in this project. The specific goal for this project is \_\_\_\_\_ percent (\_\_\_%).

11. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS.

In the performance of work under this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex, or handicap, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor will post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the non-discriminatory clause.

Contractor agrees to strive to implement the principles of equal employment opportunity through an effective Affirmative Action program, and has so indicated on the Equal Employment Opportunity Certificate attached hereto as and made a part of this Contract. The program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment, in all divisions of Contractor's work force, where these groups may have been previously under-utilized and under-represented. Contractor also agrees that in the event of any dispute as to compliance with the aforesaid requirements, it shall be its responsibility to show that it has met all such requirements.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this section has been determined by County, Contractor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Contractor, further violations of the section are committed during the term of the Contract, County may terminate the Contract without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing



the Contract, or it may permit Contractor to complete the Contract, but, in either event, Contractor shall be ineligible to bid on any future contracts let by County.

12. INDEMNITY.

Contractor agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, County, and its agents, officers and employees, from and against all loss or expense including costs and attorney’s fees by reason of statutory benefits under Workers Compensation Laws, or liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this Contract.

Contractor shall indemnify and save the County harmless from any award of damages and costs against County for any action based on U.S. patent or copyright infringement regarding computers programs involved in the performance of the tasks and services covered by this Agreement.

13. INSURANCE.

The Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor’s employees and agents, shall rest with the Contractor. The Contractor may effect and maintain any insurance coverage, including, but not limited to, Worker’s Compensation, Employers Liability and General Contractual, Profession and Automobile Liability, to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker’s Compensation laws or other insurance provisions.

The Contractor shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers’ Compensation or Proof of All States Coverage	Statutory (waiver of subrogation)
Employer’s Liability	\$100,000/500,000/100,000
Commercial or Comprehensive General Liability Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$1,000,000 Per Occurrence \$1,000,000 General Aggregate
Professional Liability	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
Automobile Liability Bodily Injury & Property Damage All Autos-Owned, non-owned and/or hired Uninsured Motorists	\$1,000,000 Per Accident Per Wisconsin Requirements

Milwaukee County will be named as an additional insured for General and Automobile Liability, as respects the services provided in this Contract. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Contract.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Contract.

The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.

A.1. Compliance with Governmental Requirements.

Contractor shall evidence satisfactory compliance for Unemployment Compensation and Social Security reporting as required by Federal and State Laws.

A.2. Professional Liability – Additional Provisions.

Contractor agrees to provide additional information on their professional liability coverages as respects policy type, i.e. errors and omissions for consultants, architects, and/or engineers, etc.; applicable retention levels; coverage form, i.e. claims made, occurrence; discover clause conditions, and effective retroactive and expiration dates, to the County Director of Risk Management and Insurance as may be requested to obtain approval of coverages as respects this section.

It is understood and agreed that coverages which apply to the services inherent in this Contract will be extended for two (2) years after completion of all work contemplated in this project if coverage is written on a claims-made basis.

The Contractor shall certify and make available loss information from any Insurer as to any claims filed or pending against any and all professional liability coverages in effect for the past five (5) years, if requested.

The Contractor shall certify to inform the County of any claims filed for errors and omissions that may be covered under professional coverages pursuant to the work within ten (10) days of notice of the occurrence or claim filing, whichever is sooner.

Deviations and waivers may be requested in writing based on market conditions to the County Director of Risk Management and Insurance. Approval shall be given in writing of any acceptable deviation or waiver to the Contractor prior to the Contractor effecting any change in conditions as contained in this section. Waivers shall not be unduly withheld nor denied without consultation with the Contractor.

It is understood that the Contractor will obtain information on the professional liability coverages of all subcontractors in the same form as specified above for review of the County.

15. PERMITS, TAXES, LICENSES.  
Contractor is responsible for procuring, maintaining and paying for all necessary federal, state, and local permits, licenses, fees and taxes required to carry out the provisions of this Contract.
16. TERMINATION BY CONTRACTOR.  
Contractor may, at its option, terminate this Contract upon the failure of the County to pay any amount which may become due hereunder for a period of ninety (90) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.
17. TERMINATION BY COUNTY FOR VIOLATIONS BY CONTRACTOR.  
If the Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the County shall there upon have the right to terminate it by giving thirty (30) days written notice of termination of contract, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.
18. UNRESTRICTED RIGHT OF TERMINATION BY COUNTY.  
The County further reserves the right to terminate the Contract at any time for any reason by giving Contractor thirty (30) days written notice of such termination. In the event of said termination, the Contractor shall reduce its activities hereunder as mutually agreed to, upon receipt of said notice, and turn over all work product to the County. Upon said termination, Contractor shall be paid for all services rendered through the date of termination. This section also applies should the Milwaukee County Board of Supervisors fail to appropriate additional monies required for the completion of the Contract.
19. INDEPENDENT CONTRACTOR.  
Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.
20. SUBCONTRACTS.  
Assignment of any portion of the work by subcontract must have the prior written approval of County.
21. ASSIGNMENT LIMITATION.  
This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

22. PROHIBITED PRACTICES.

- A. Contractor during the period of this contract shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

23. NOTICES.

All notices with respect to this Contract shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To Contractor:	To County:
	Department
Attn.:	Attn.:
Address	Address
Address	Address

Either party may designate a new address for purposes of this Lease by written notice to the other party.

24. MISCELLANEOUS.

This Contract shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Contract constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. Contractor acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders.

25. AUTHORIZATION.

The County has executed this Contract pursuant to action taken by its Board of Supervisors on \_\_\_\_\_, Resolution File No. \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day, month and year first above written.

[Business Name]

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name, Title

[County Department]

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name, Title

*Approved as to form and independent status:*

*Reviewed by:*

By: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_ Date: \_\_\_\_\_  
Corporation Counsel Risk Management

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Community Business Development Partners

**ATTACHMENT 2A**



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

## DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

1. The award of this LEASE CONTRACT is conditioned upon the Good Faith Efforts (GFE) put forth by the bidder/proposer in achieving this project's assigned Disadvantaged Business Enterprise (DBE\*) goal. The bidder/proposer shall ensure that DBEs have the opportunity to participate on this contract.
2. **DBE Goal:** This project's DBE participation goal is 17% of all PROPERTY MAINTENANCE & IMPROVEMENT FUNDS. For purposes of responsiveness, this participation goal shall be met based upon the dollar value of the PROPERTY MAINTENANCE & IMPROVEMENT FUNDS included in the initial offer. As it may be in the best interest of Milwaukee County to accept the inclusion of negotiations, or a best-final offer, verification of DBE participation shall be based upon total PROPERTY MAINTENANCE & IMPROVEMENT FUNDS included in LEASE CONTRACT. Likewise, if the successful LEASEE performs additional PROPERTY MAINTENANCE & IMPROVEMENT work on the PROPERTY, DBE participation shall increase proportionally.

### PRIOR TO BID/PROPOSAL OPENING

3. As a matter of responsiveness, the bidder/proposer shall submit with its original offer, the completed **Subcontractor/Subconsultant/Supplier Information Sheet (DBE-02)** and the signed and notarized **Commitment to Contract with DBE (DBE-14)** form(s). In the event the bidder/proposer is not successful in meeting the DBE goal, a complete **Certificate of Good Faith Efforts (DBE-01)** form and all relevant documentation shall be submitted with the bid/proposal in addition to the aforementioned forms. Milwaukee County's Community Business Development Partners Department (CBDP) reserves the right to reject a bid/proposal, as non-responsive, if the required documentation is not submitted with the original bid/proposal.
4. CBDP determines the sufficiency of the intended contract awardee's good faith efforts undertaken to achieve the assigned DBE participation goal. These efforts are proven by doing either of the following:
  - a. Evidencing that it has met the DBE participation goal by submitting with its bid/proposal a signed and notarized **Commitment to Contract with DBE (DBE-14)** form for each DBE documenting sufficient participation; or
  - b. Documenting the good faith efforts made to meet the DBE participation goal, even though it did not succeed in achieving the goal. In this case, the contractor/consultant shall submit the **Certificate of Good Faith Efforts (DBE-01)** and all relevant documentation, which will include a signed and notarized **Commitment to Contract with DBE (DBE-14)** form for each DBE documenting the participation achieved toward satisfying the goal, with its bid/proposal. CBDP is prohibited, under 49 CFR, Part 26, from ignoring *bona fide* good faith efforts when making determinations on requests for modification of the contract goal, in whole or part. Determinations are made on a contract-by-contract basis.
5. The efforts employed by the bidder/proposer should be those that one could reasonably expect to be taken if the bidder/proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the goal. Mere pro forma efforts are not good faith efforts. (49 CFR, §26.53, and Appendix A to 49 CFR, Part 26, provide guidance regarding GFE).
6. In the event CBDP determines that the bidder/proposer has failed to meet the GFE requirements, the bidder/proposer is entitled to appeal this determination. The provisions of 49 CFR, §26.53(d), apply to such an appeal.
7. Listing a DBE on the **Commitment to Contract with DBE (DBE-14)** form shall constitute a written representation and commitment that the bidder/proposer has communicated and negotiated directly with the DBE firm(s) listed. If awarded the contract, the contractor/consultant shall enter into contract agreement, directly or through subcontractors, with the firm listed on each **Commitment to Contract with DBE (DBE-14)**

\* The term "DBE" means small business concerns known as Disadvantaged Business Enterprise (DBE) firms owned at least 51% by socially and economically disadvantaged individuals, and certified by the State of Wisconsin UCP under CFR, 49 Part 26.



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

form for the work and price set forth thereon. The agreement(s) must be submitted to CDBP within seven (7) days from receipt of LEASE award, the "Notice to Proceed," or the purchase order.

8. Bidder/Proposer should note that for the purpose of determining compliance with the DBE requirements of this contract, only DBEs certified by the State of Wisconsin Unified Certification Program (UCP) prior to the bid/proposal submission deadline count towards the satisfaction of the goal. If a bidder/proposer wishes to utilize a DBE certified in another state for credit on this contract, the bidder/proposer shall include a copy of DBE certification from the home state along with its good faith efforts documentation upon submission of bid/proposal as a matter of responsiveness. Additionally, any such named DBE must apply for certification with the Wisconsin UCP prior to bid opening or proposal due date. For assistance related to certified DBE firms, contact the Certification and Compliance Administrator at (414) 278-5037.
9. When evaluating the proposed DBE commitment of bidder/proposer, Milwaukee County reserves the right to request supporting documentation from both the bidder/proposer and any listed DBE. If the information requested is not submitted by the bidder/proposer within the time specified for such submission, Milwaukee County may determine the bidder/proposer to be non-responsive and thereby remove them from further consideration for contract award.

## **FOLLOWING LEASE CONTRACT AWARD**

10. When evaluating the performance of this LEASE CONTRACT after execution, Milwaukee County reserves the right to conduct compliance reviews and request, both from the LEASEE and any subcontractors or sub-leasees, documentation necessary to verify actual level of DBE participation. If the LEASEE is not in compliance with these specifications, CDBP will notify the LEASEE in writing of the corrective action that will bring the LEASEE into compliance. If the LEASEE fails or refuses to take corrective action as directed, Milwaukee County may take one or more of the actions listed below:
  - a. Terminate or cancel the contract, in whole or in part;
  - b. Remove the LEASEE from the list of qualified LEASEES and refuse to accept future bids/proposals for a period not to exceed three (3) years;
  - c. Impose other appropriate sanctions where the failure to meet the DBE contract commitment is the result of a finding by CDBP of less than adequate good faith efforts on the part of the LEASEE; and/or

If the LEASEE has completed its LEASE CONTRACT, and the DBE contract commitment was not met due to an absence of good faith on the part of the LEASEE as determined under 49 CFR, Part 26, the parties agree that the proper measure of damages for such non-compliance shall be the dollar amount of the unmet portion of the DBE contract commitment. The County may bring suit to recover damages up to the amount of the unmet commitment, including interest at the rate of 12% annually, plus the County's costs, expenses and actual attorney's fees incurred in the collection action.

11. LEASEE shall be credited for expenditures to DBE firms toward the requirements, if the entire identified scope of work has a commercially useful function in the actual work of the contract and is performed directly by the listed DBE firm. CDBP, through the application of 49 CFR, §26.55(c), will be responsible for the determination and evaluation of whether or not the firm is performing a commercially useful function on this project.
12. LEASEE is required to notify CDBP if its DBE subcontractor(s) will further subcontract out work on this project. Work will be credited based on actual participation by DBE firms.
13. LEASEE must maintain DBE participation and performance logs. If the DBE firm(s) cannot perform, if the contractor/consultant has a problem in meeting the goal, or any other problem relative to these requirements, the LEASEE shall immediately contact CDBP at (414) 278-4747. The LEASEE must submit written notification of desire for substitution to the DBE affected, and forward a copy to CDBP, specifying the reason for the request, including the performance log. Any DBE so notified has five (5) business days to provide written objection/acceptance to the prime making the notification. The "right to correct" must be afforded any DBE objecting to substitution/termination for less than good cause as determined by CDBP (Refer to 49 CFR §26.53). Approval must be obtained from CDBP prior to making any substitutions. DBE





## COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

contractors are also required to notify and obtain approval from CBDP when further subcontracting out work on this project. In the case of DBE trucking firms, credit will be given for trucks leased from other DBE firms; however, if the DBE leases trucks from non-DBE firms, only the commission or fee will be counted for DBE crediting.

14. **Reporting:** A **DBE Utilization Report (DBE-16)** form shall be submitted quarterly by the LEASEE after LEASE CONTRACT award. This report must be submitted even if no DBE activity took place during the period being reported. LEASEE must indicate work being performed by DBEs by either a) placing the word "DBE" behind the work item or b) breaking out the work done by DBEs at the end of the report. LEASEE shall notify DBEs of the date on which they must submit their invoices for payment. Failure to submit quarterly report may result in sanctions deemed appropriate by Milwaukee County, including those listed in Section (10), above. LEASEE shall submit a **Contract Close-Out DBE Payment Certification (DBE-18)** form completed by the LEASEE and each DBE in a final report.
15. Milwaukee County reserves the right to waive any of these specifications when it is in the best interest of the County and with the concurrence of CBDP.

**ATTACHMENT 2B**



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

## COMMITMENT TO CONTRACT WITH DBE

(This form is to be completed by the bidder/proposer and the DBE named for submission with bid/proposal)

PROJECT No.: \_\_\_\_\_ PROJECT TITLE: \_\_\_\_\_

TOTAL CONTRACT AMOUNT \$ \_\_\_\_\_ DBE Goal: \_\_\_\_\_

Name & Address of DBE <sup>(*)</sup>	Scope of Work Detailed Description	DBE Contract Amount	% of Total Contract

(\* Separate commitment form must be completed for each DBE firm)

### **Bidder/Proposer Commitment (To be completed by firm committing work to DBE)**

I certify that the DBE firm listed quoted the identified service(s) and cost(s). I further acknowledge our firm having negotiated with, and having received confirmation, on partnering, pricing and delivery from DBE firm listed herein. Our firm \_\_\_\_\_ (Phone No. \_\_\_\_\_), or one of our subcontractors, will enter into contract with the DBE firm listed, for the service(s) and amount(s) specified when awarded this contract. A copy of the contract between our firm and that of the named DBE will be submitted directly to CBDDP within seven (7) days from receipt of Notice-to-Proceed on this contract. The information on this form is true and accurate to the best of my knowledge. I further understand that falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions under applicable law.

\_\_\_\_\_  
Signature of Authorized Representative                      Name & Title of Authorized Representative                      Date

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public                      State of \_\_\_\_\_. My Commission expires \_\_\_\_\_.

[SEAL]

\* Only firms certified as DBEs (within qualifying NAICS codes) by the State of Wisconsin UCP *prior to bid/proposal opening* will be credited on this contract

### **DBE Affirmation (To be completed by DBE Owner/Authorized Representative)**

- I affirm that the State of Wisconsin UCP has certified our company as a DBE, and that our company is currently listed in the State of Wisconsin UCP Directory.
- I acknowledge and accept this commitment to contract with my firm for the service(s) and dollar amount(s) specified herein, as put forth by \_\_\_\_\_.
- I understand and accept that this commitment is for service(s) to be rendered in completion of the Milwaukee County project specified herein to be completed with my own forces, unless otherwise approved by CBDDP.
- I affirm that approval from CBDDP will be obtained prior to subletting any portion of this work awarded to my firm on this project.

\_\_\_\_\_  
Signature of Authorized DBE Representative                      Name & Title of Authorized DBE Representative                      Date

### **FOR CBDDP USE ONLY**

**Commitment number** \_\_\_\_ of \_\_\_\_                      **Project Total:** (A) \_\_\_\_\_ (V) \$ \_\_\_\_\_                      **Total %** \_\_\_\_\_

**Verified with:** \_\_\_\_\_  
\_\_\_\_\_  
Authorized Signature                      Date



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

## COMMITMENT TO CONTRACT WITH DBE

### ADDITIONAL INFORMATION & REQUIREMENTS:

1. The Directory of Certified DBE firms eligible for credit toward the satisfaction of this project's DBE goal will be found at the following link, and can be searched by Name and/or NAICS code.  
<https://app.mylcm.com/wisdot/Reports/WisDotUCPDirectory.aspx>
2. **CONTRACT ADJUSTMENTS:** Prime contractor/consultant shall maintain the approved DBE participation level during the term of the contract with Milwaukee County to include additional work on the contract, e.g., use of allowance, change orders, addendums, extra work, etc. Contract adjustments shall include proportional DBE participation.
3. **WRITTEN CONTRACTS WITH DBEs:** CBDP requires that prime contractors/consultants enter into contract, directly or through subcontractors, with the DBE(s) specifying the work to be completed and the dollar amount as indicated in this form. Agreements must be submitted to CBDP within 7 days of receipt of the Notice-To-Proceed, or execution of the Purchase Order. By executing the above affidavit, your company is certifying, under oath, that you have had contact with the named DBE firm(s), that the DBE firm(s) will be hired, and that the DBE firm(s) will participate to the extent indicated in performance of the contract. VIOLATION OF THE TERMS OF THIS AFFIDAVIT IS GROUNDS FOR TERMINATION OF YOUR CONTRACT.
4. **SUBSTITUTIONS, DBEs SUBCONTRACTING WORK, TRUCKING FIRMS:** The prime contractor/consultant must submit written notification of desire for substitution to the DBE affected, and forward a copy to CBDP, specifying the reason for the request. Any DBE so notified has five (5) business days to provide written objection/acceptance to the prime making the notification. The "right to correct" must be afforded any DBE objecting to substitution/termination for less than good cause as determined by CBDP. Approval must be obtained from CBDP prior to making any substitutions. DBE contractors are also required to notify and obtain approval from CBDP prior to seeking to subcontract out work on this project. In the case of DBE trucking firms, credit will be given for trucks leased from other DBE firms; however, if the DBE leases trucks from non-DBE firms, only the commission or fee will be counted for DBE crediting.
5. **REQUESTS FOR PAYMENT:** Contractor/Consultant must indicate on the Continuation Sheet (AIA form G703) the work being performed by DBEs by either a) placing the word "DBE" behind the work item or b) breaking out the work done by DBEs at the end of the report. Prime contractor/consultant shall notify DBEs of the date on which they must submit their invoices for payment.
6. **DBE UTILIZATION REPORTS:** A DBE Utilization Report (DBE-16) must be submitted with each request for payment for the period's activity, even if no activity takes place during the period being reported. Payments will be withheld from all prime contractors/consultants not in compliance.

If you have any questions on forms or related to Milwaukee County's DBE Program, please contact  
CBDP Compliance Team / [cbdpcompliance@milwcnty.com](mailto:cbdpcompliance@milwcnty.com) / 414.278.4747

**ATTACHMENT 2C**



FIRM: \_\_\_\_\_ Project No: \_\_\_\_\_

**SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER INFORMATION SHEET**

Pursuant to State Statute Chapter 66.0901(7), Milwaukee County requires the following collection of information on all subcontractors, subconsultants and/or suppliers submitting quotes on Milwaukee County projects. This information is to be submitted with bid/proposal.

**PROVIDE THE FOLLOWING INFORMATION ON EACH BID/QUOTE**

(✓)*	Name	DBE Yes/No	Address	Date Firm Established	Annual Gross Receipts (**)	Work or Service to be Performed

(\*) Check if this firm’s quote has been used in your bid/proposal.  
 (\*\*) Annual Gross Receipts:     A: Less than \$250,000     B: \$250,000 to \$500,000     C: \$500,000 to 1 million  
    D: \$1 million to \$5 million     E: \$5 million to \$15 million     F: More than \$15 million

**Note: Information gathered on the background and financial status of firms is protected from disclosure by Federal Regulation.**

**ATTACHMENT 2D**



# COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

## CERTIFICATE OF GOOD FAITH EFFORTS

The intent of this certification is to document the good faith efforts implemented by the contract bidder/proposer in soliciting and utilizing certified firms to meet this project's participation goal. This certificate will assist Milwaukee County in determining whether the bidder/proposer has implemented comprehensive good faith efforts.

Failure to demonstrate good faith efforts to meet the assigned participation goal to the satisfaction of Milwaukee County could result in the rejection of the bid/proposal.

I, \_\_\_\_\_, do hereby acknowledge that I am the \_\_\_\_\_ of \_\_\_\_\_, who has been identified as a bidder/proposer on the following Milwaukee County Project:

Project No.	Project Title	Total Contract Amount	DBE Percentage	
			Goal	Pledged

Provide a brief summary on why you believe your firm is unable to meet the participation goal on this project. (Attach additional pages if necessary)


I hereby certify that I have utilized comprehensive good faith efforts to solicit and utilize certified firms to meet the participation goal of this contract, as demonstrated by my responses to the following questions:

### **A. Identifying Contractible Work Items**

Bidder/Proposer is encouraged to select portions of work to be contracted in a manner that will increase the likelihood of meeting the participation goal. In selecting work to be contracted, bidder/proposer will consider, where appropriate, breaking down contracts into economically feasible units to facilitate small business participation.

1. Which portion(s) or section(s) of the contract, in terms of the nature of work, was/were selected to be contracted to certified firms (or broken down into economically feasible units to facilitate participation)?




**B. Notifying Certified Firms of Contracting Opportunities**

2. In the table below, indicate which certified firms received written notification of work items to be subcontracted. In the appropriate space, also indicate when firms received subsequent telephone solicitations. Include copies of written solicitations to certified firms. (Attach additional pages if necessary)

Certified Firm Contacted	Date of Written Notification	DBE (Yes/No)	Date of Follow-up Telephone Call

3. Identify publications in which announcements or notifications were placed and published, if any. Include a copy of each announcement or notification.

Published Announcement/Publication (please describe)	Date

4. Identify minority and/or women’s associations or organizations that received written notifications, including dates of notifications. Provide name of person and date of follow-up call. If no follow-up calls made, explain why not. Include copies of letters sent.

Association/Organization	Date of Notification	Contact Person	Date of Follow-Up Call

5. Were the services of Milwaukee County’s Community Business Development Partners Department (CBDP) used to assist in the recruitment of certified firms?

Yes \_\_\_\_\_ No \_\_\_\_\_

Contact was made by: Telephone \_\_\_\_\_ Correspondence \_\_\_\_\_

Date contacted: \_\_\_\_\_ Person Contacted: \_\_\_\_\_

**C. Providing Certified Firms With Assistance**

6. Explain any efforts undertaken to provide certified firms with adequate information about project scope of work and requirements of the contract.


7. Describe any efforts undertaken to assist certified firms in obtaining lines of credit or insurance required by Milwaukee County and/or the contractor/consultant.


8. Describe any other efforts initiated to provide special assistance to certified firms interested in participating in the project.


**D. Soliciting Proposal/Quotes From Interested Certified Firms**

Bidder/Proposer must solicit quotes in good faith with interested certified firms. Quotes, proposals and/or bids, from interested certified firms shall not be rejected without sound justification.

9. Indicate, in the table below, which certified firms submitted quotes on the contract. Also, if any quotes of certified firms were rejected, provide a brief explanation as to why. Include copies of all quotes received for this project. (Attach additional pages if necessary)

Name, Phone & Address of Contact Person at Certified Firm	Work Quoted and Explanation for Rejecting Quotes

10. Please include all other comments you want Milwaukee County to consider. (Attach additional pages if necessary)


**NOTE:** The information requested as set forth above is the minimum information required by Milwaukee County's Community Business Development Partners Department (CBDP) and CBDP may request the bidder/proposer to submit information on other actions taken to secure participation of certified firms in an effort to meet the contract goal.

### **AFFIDAVIT OF CERTIFICATION**

The undersigned, having been first duly sworn, affirms that the information given in the above certificate is true and correct to the best of his/her knowledge and belief.

Signed: \_\_\_\_\_

Authorized Representative

Subscribed and sworn to before me:

This \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_, 20 \_\_\_\_.

# **GUIDANCE CONCERNING GOOD FAITH EFFORTS**

When Milwaukee County assigns a participation goal, a bidder/proposer shall, in order to be responsive, make good faith efforts to meet this published goal. The bidder/proposer can meet this requirement in either of two ways. First, the bidder/proposer can meet or exceed the goal by documenting commitments for participation by certified firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder/proposer can document adequate good faith efforts toward that end. This means that the bidder/proposer must show that it took all necessary and reasonable steps to achieve the participation goal, which, by their scope, intensity and appropriateness to the objective; could reasonably be expected to obtain sufficient participation, even if they were not fully successful.

Any situation in which Milwaukee County has assigned a participation goal on a contract requires the use of the good faith effort mechanism delineated herein. CBDP will make a fair and reasonable judgment as to whether a bidder/proposer that did not meet the goal made adequate good faith efforts according to these guidelines. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder/proposer has made. The efforts employed by the bidder/proposer should be those that one could reasonably expect a bidder/proposer to take if the bidder/proposer were actively and aggressively trying to obtain participation sufficient to meet the participation goal. Mere pro forma efforts are not good faith efforts to meet the contract requirements. CBDP determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

The following is a list of types of actions, which Milwaukee County will consider as part of the bidder/proposer's good faith efforts to obtain participation of certified firms. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

1. Soliciting, through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices), the interest of all certified firms who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the certified firms to respond to the solicitation. The bidder/proposer must determine with certainty that the certified firms are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by certified firms in order to increase the likelihood that the participation goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate participation, even when the prime contractor/consultant might otherwise prefer to perform these work items with its own forces.
3. Providing interested certified firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. Negotiating in good faith with interested certified firms.
  - a. It is the bidder/proposer's responsibility to make a portion of the work available to certified firms and to select those portions of the work consistent with the available certified firms, so as to facilitate participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of certified firms that were considered; a description of the information provided regarding the plans and specifications for the work selected for contracting; and evidence as to why additional agreements could not be reached for certified firms to perform the work.
  - b. A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including certified subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, **the fact that there may be some additional costs involved in finding and using certified firms is not in itself sufficient reason for a bidder/proposer's failure to meet the participation goal, as long as reasonable.** Also, the ability or desire of a bidder/proposer

to do the work of a contract with its own organization does not relieve it of the responsibility to make good faith efforts. Bidders/Proposers are not, however, required to accept higher quotes from certified firms if the price difference is excessive or unreasonable.

5. Not rejecting certified firms as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder/proposer's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder/proposer's efforts to meet the project goal.
6. Making efforts to assist interested certified firms in obtaining lines of credit or insurance as required by Milwaukee County or the bidder/proposer.
7. Making efforts to assist interested certified firms in obtaining necessary resources or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of certified firms.

In determining whether a bidder/proposer has made good faith efforts, Milwaukee County may take into account the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, Milwaukee County may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder/proposer could have met the goal. If the apparent successful bidder/proposer fails to meet the goal, but meets or exceeds the average participation obtained by other bidder/proposers, Milwaukee County may view this, in conjunction with other factors, as evidence of the apparent successful bidder/proposer having made good faith efforts.