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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 as small business
50 enterprises as defined in chapter 42.02(k). In such event, the bid announcements
51 shall indicate such reservation, citing this subsection as authority therefor.
52 Reservations by the purchasing administrator may be on a commodity basis or
53 on an individual contract basis.

54
55 **32.25(7)(e). - Purchasing and contracting procedure**

56
57 Annually the county board shall adopt by resolution a recommended minimum
58 percentage goal for the participation of disadvantaged business enterprise
59 vendors in contracts awarded pursuant to Chapter 32. Such goals are not
60 mandatory; however, the purchasing administrator shall make diligent efforts to
61 achieve or exceed such annual participation goals. All written solicitations and
62 notices for bids promulgated or published pursuant to this chapter shall contain
63 language advising potential bidders of the provisions of this subsection.
64

65 **32.40. - General**

66
67 32.40(6) Solicitation for services as defined in section 32.20(2) and (17) with an
68 aggregate value in excess of fifty thousand dollars (\$50,000) shall be approved
69 by the county board prior to award. Approval shall not be requested until after
70 completion of the protest and appeal process outlined in 32.50 and 32.51 of this
71 section.
72

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

75
76 (7) Notwithstanding any other provisions of this chapter to the contrary, where
77 adequate competition exists, the purchasing administrator shall have the
78 authority, in any situation where a contract is to be let through the negotiated
79 acquisition process, to reserve such contract exclusively for vendors listed as
80 small business enterprises as defined in chapter 42.02(k). In such event, the
81 solicitation announcements shall indicate such reservation, citing this subsection
82 as authority therefore. Reservations by the purchasing administrator may be on
83 a commodity basis or on an individual contract basis.
84

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

87
88 **Chapter 42. - Title**

89

90 Chapter 42 - DISADVANTAGED BUSINESS ENTERPRISE AND AIRPORT
91 CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
92 IN COUNTY CONTRACTING
93

94 **Section 4.** Sections 42.01, 42.02(1)(a), 42.02(1)(b), 42.02(1)(c), 42.02(1)(e),
95 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),
96 42.04(4), 42.04(5), 42.04(7), 42.04(8), 42.04(9), 42.04(10), 42.04(11), 42.04(12),
97 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),
98 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),
99 42.07(1), 42.07(2), 42.07(3), 42.07(4), 42.07(5), 42.07(6), 42.07(7), 42.08(1),
100 42.08(2), 42.08(3), and 42.08(4) of the General Ordinances of Milwaukee County
101 are amended as follows:
102

103 **42.01. - Policy.**
104

105 Based upon the findings contained in county board file no. 92-474 and all other
106 documents and reports contained therein, it is the county's policy to comply with
107 all federal requirements relating to the Disadvantaged Business Enterprise (DBE)
108 Program and the Airport Concession Disadvantaged Business Enterprise
109 (ACDBE) Program and to require opportunities for participation by DBE and
110 ACDBE firms in county contracting. The provisions of this chapter will apply to
111 both county and federally funded projects.
112

113 Disadvantaged Business Enterprises Program and Airport Concession
114 Disadvantaged Business Enterprises Program for all projects funded with federal
115 money, including but not limited to the Federal Transit Administration (FTA),
116 Federal Aviation Administration (FAA) and Federal Highway Administration
117 (FHWA) shall comply with Title 49 of the Code of Federal Regulations, Parts 23
118 and 26, as amended from time to time, and all other appropriate federal laws and
119 regulations, as applicable, now in effect or to take effect in the future.
120

121 **42.02. - Definitions.**
122

123 (1) For all projects subject to this chapter funded with federal and county
124 money and those funded only by county money, the following definitions shall
125 apply;
126

127 (a) *Airport concession disadvantaged business enterprise (ACDBE)*
128 means a concession that is a for-profit small business concern (1) that is at
129 least fifty-one (51) percent owned by one (1) or more individuals who are
130 both socially and economically disadvantaged, or in the case of a
131 corporation, in which fifty-one (51) percent of the stock is owned by one (1)
132 or more such individuals; and whose management and daily operations are
133 controlled by one (1) or more socially and economically disadvantaged
134 individuals who own it.
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(b) *Commercially useful function.* 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) *Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

(f) *Disadvantaged business enterprise (DBE)* means a for-profit small business concern which is at least fifty-one (51) percent owned by one 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 or more such individuals; and whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(g) *Good faith efforts* means efforts to achieve a DBE or ACDBE goal or

182 other requirement, which by their scope, intensity, and appropriateness to
183 the objective, can reasonably be expected to fulfill the program requirement.

184
185 (k) *Small business enterprise (SBE)* means an organized, for-profit
186 business that is independently owned and operated and not dominant in its
187 field. Depending on the industry, size standard eligibility is based on the
188 average number of employees for the preceding twelve months or on sales
189 volume average over a three-year period. In no case will a firm be an
190 eligible SBE in any Federal fiscal year if the firm (including its affiliates) has
191 had average annual gross receipts, as defined by United States Small
192 Business Administration (SBA) regulations (see 13 CFR 121.402), over the
193 firm's previous three fiscal years in excess of \$22.41 million, or if the
194 owner(s) of the firm exceed the personal net worth (PNW) described in 49
195 CFR Part 26.

196
197 **42.03. - Enforcing department.**

198
199 The community business development partners department will be the enforcing
200 department and is hereinafter referred to as "CBDP".

201
202 **42.04. - Function of the community business development partners department**
203 **(CBDP).**

204
205 (1) In accordance with 49 CFR Parts 23 and 26, the director of CBDP is
206 designated as the county's disadvantaged business enterprise liaison officer
207 ("DBELO") and the airport concession disadvantaged business enterprise liaison
208 officer ("ACDBELO").

209
210 (2) Recommend to the county board appropriate annual percentage
211 requirements for DBE and ACDBE participation in county contracting. The
212 director shall ensure that the overall triennial DBE and ACDBE percentage goals,
213 including race neutral and race conscious components, are set in accordance
214 with the requirements of 49 CFR Parts 23 and 26 as currently enforced or as
215 amended.

216
217 (3) The director shall recommend to the county board other appropriate
218 policies which encourage SBE, DBE and ACDBE participation in county
219 contracting.

220
221 (4) In consultation with the county's office of corporation counsel, the director
222 shall revise and/or update the DBE utilization specifications language to ensure
223 such language is included in county contracts.

224
225 (5) The director shall establish SBE, DBE and ACDBE contract compliance
226 monitoring procedures.

227

228 (7) The department shall report annually to the county board on SBE, DBE
229 and ACDBE participation levels on all contracts subject to this chapter. The
230 director shall provide outreach services to SBEs, DBEs and ACDBEs and
231 community organizations to advise them of contracting opportunities with the
232 county.

233
234 (8) The director shall ensure that department/division heads and contract
235 administrators make available bid notices and requests for proposals to SBEs,
236 DBEs and ACDBEs in a timely manner.

237
238 (9) The director shall assist department/division heads and contract
239 administrators to identify contracts where DBE and ACDBE race conscious and
240 race neutral goals can be included in contract solicitations.

241
242 (10) County contracts may not be awarded without the written approval of the
243 CBDP director or designee who will ensure that the required SBE, DBE or
244 ACDBE participation is included on all contracts.

245
246 (11) All contract solicitations subject to this chapter will require the approval of
247 the CBDP director or designee who will ensure that an appropriate DBE or
248 ACDBE goal is assigned and/or consideration is given to participation by SBEs.

249
250 (12) CBDP is responsible for reviewing and approving good faith effort waiver
251 requests when the contractually assigned DBE or ACDBE goal is not met by a
252 contractor or consultant.

253
254 **42.05. - Certification of DBEs and ACDBEs, and verification of SBEs.**

255
256 (1) The certification of DBE and ACDBE, and verification of SBE firms shall be
257 the responsibility of CBDP.

258
259 (2) Certification of DBE and ACDBE firms shall be governed by the
260 standards and guidelines of 49 CFR Parts 23 and 26 and the processes and
261 procedures established by the Wisconsin Unified Certification Program (WIUCP).
262 Verification of SBE firms shall be governed by these same standards, minus any
263 and all reference to race, gender and/or social disadvantage.

264
265 (3) As a member of the Wisconsin Unified Certification Program (WIUCP), all
266 certification and removal decisions by CBDP may be appealed to the WIUCP in
267 accordance with 49 CFR Parts 23 and 26.

268
269 (4) The CBDP director is authorized to establish new or amended procedures for
270 certification in accordance with the WIUCP agreement signed by the county and
271 the members of the WIUCP and 49 CFR Parts 23 and 26.

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42.06. - Professional and non-professional service contracting.

All county department/division heads and contract administrators are required to provide written notification to CBDP as further described herein prior to soliciting for professional and 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 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 CBDP in writing prior to publication of an RFP or an RFQ. The department/division heads and contract administrator is required to submit a DBE participation recommendation form to CBDP for approval. The department/division head and/or contract administrator shall notify the office and the controller, in writing, of its selection regardless of whether or not a DBE or ACDBE is selected. No contract shall be issued without review and written approval by CBDP that provisions of this section have been met.

(2) CBDP will establish, where feasible, a percentage, up to the total contract value, of prime contract and subcontract awards to be set aside for participation by SBEs during DBE participation recommendation review. A “set aside” is the reserving of a contract or a portion of a contract exclusively for participation by SBEs, regardless of the owner’s race or gender.

(3) CBDP requires contractors/consultants to submit DBE documentation with their original bid/proposal as a matter of responsiveness. CBDP shall provide department/division heads and contract administrators with the appropriate DBE specification language, required contract provisions, instructions, forms and procedures to be included with the bid/proposal solicitations. The department/division head or contract administrator shall forward all DBE submissions to CBDP. CBDP will review responses to assure submission of the required forms and documentation. CBDP shall make determinations as to bidder/proposer responsiveness to DBE requirements, and may reject and remove from further consideration all bids/proposals submitted without proper documentation.

(4) The owner department shall require all prime contractors/consultants to submit a DBE or ACDBE utilization report with all payment requests. Copies of utilization reports and payment requests shall be forwarded to CBDP for review. Department/Division heads and contract administrators shall ensure that all final payment requests are accompanied with a signed affidavit verifying that the DBE and/or ACDBE requirement has been met, either at the prime or sub-contracted level.

318 (5) Department/Division heads and contract administrators shall comply with the
319 provisions of this section to ensure utilization of DBE and ACDBE firms on county
320 professional and non-professional service contracts. All department/division
321 heads shall submit annually to CBDP a DBE/ACDBE utilization plan form by
322 December 15 each year. The plan shall provide the following information:

323
324 (a) Total number of projected professional and non-professional services
325 contracts to be awarded by department/division for the year.

326
327 (b) Total value of professional and non-professional services contracts
328 to be awarded and a dollar value by contract type.

329
330 (c) Designation of a department and/or division staff person as contact
331 person(s) for professional and non-professional services contracts.

332
333 (d) Value of contracts/subcontracts the department/division estimates
334 will be awarded to DBEs or ACDBEs on professional and non-
335 professional services contracts.

336
337 (e) Percentage of total contract dollars that the department/division
338 estimates will be awarded to DBEs or ACDBEs.

339
340 **42.07. - Construction contracting.**

341
342 (1) The owner department shall consult with CBDP to determine an appropriate
343 goal on all contracts.

344
345 (2) The owner department shall submit an approved DBE participation
346 recommendation form for each project. CBDP will establish, where feasible, a
347 percentage, up to the total contract value, of prime contract and subcontract
348 awards to be set aside for participation by SBEs during DBE participation
349 recommendation review. A "set aside" is the reserving of a contract or a portion
350 of a contract exclusively for participation by SBEs, regardless of the owner's race
351 or gender.

352
353 (3) CBDP shall provide the director of the owner department with appropriate
354 DBE specification language and required contract provisions to be included in
355 bidding and contract documents.

356
357 (4) CBDP requires contractors/consultants to submit DBE documentation with
358 their original bid/proposal as a matter of responsiveness. CBDP shall provide
359 department/division heads and contract administrators with the appropriate DBE
360 specification language, required contract provisions, instructions, forms and
361 procedures to be included with the bid/proposal solicitations. The
362 department/division head or contract administrator shall forward all DBE
363 submissions to CBDP. CBDP will review responses to assure submission of the

364 required forms and documentation. CBDP shall make determinations as to
365 bidder/proposer responsiveness to DBE requirements, and may reject and
366 remove from further consideration all bids/proposals submitted without proper
367 documentation.

368
369 (5) The owner department shall require all prime contractors/consultants to
370 submit a DBE or ACDBE utilization report with all payment requests. Copies of
371 utilization reports and payment requests shall be forwarded to CBDP for review.
372

373 (6) Department/Division heads and contract administrators shall ensure that all
374 final payment requests are accompanied with a signed affidavit verifying that the
375 DBE and/or ACDBE requirement has been met, either at the prime or
376 subcontracted level.
377

378 (7) The owner department shall submit an annual list of approved projects as
379 defined in chapter 44, section 44.001, whether funded with federal funds or solely
380 with county funds. The director of the owner department must submit the
381 DBE/ACDBE utilization plan by December 15 of each year to CBDP based on
382 the county board adopted budget. The list shall provide the following information:
383

384 (a) A listing by division within the department of types of contracts to be
385 awarded and a dollar value by contract type based on the county board
386 adopted budget.
387

388 (b) Designation of a department staff person as contact person(s) for each
389 construction contract.
390

391 **42.08. - Enforcement and monitoring.**
392

393 (1) Compliance reviews and audits. The county and CBDP reserves the right to
394 conduct compliance reviews and request, both from the prime
395 contractor/consultant and subcontractors/subconsultants or concessionaires,
396 documentation necessary to verify level of compliance. If the contractor/vendor is
397 not in compliance with DBE and/or ACDBE contract requirements, CBDP will
398 notify the contractor/vendor in writing of corrective action to be taken.
399

400 (2) If the contractor/consultant fails or refuses to take corrective action within
401 the time specified in the notice, the county at CBDP's request, may terminate or
402 cancel the contract, in whole or in part; withhold payments on the contract until
403 DBE and/or ACDBE contract compliance issues are resolved to the county's
404 satisfaction; or impose other appropriate sanctions, including the one identified in
405 section 42.08(3) below. The director of the owner department shall be notified by
406 the director of CBDP when sanctions are made against a contractor/consultant.
407

408 (3) The director of CBDP or designee shall have the authority to withhold
409 contractor/consultant payments until DBE and/or ACDBE participation

410 requirements have been met. If the contractor/consultant has completed its
411 contract, and the goal was not met due to an absence of good faith on the part of
412 the contractor/consultant, the proper measure of damages for such
413 noncompliance shall be the dollar amount of the unmet portion of the DBE and/or
414 ACDBE goal. The county may in such case retain any unpaid contract amounts
415 and retainage otherwise due the contractor/consultant, up to the amount of the
416 unmet goal. Milwaukee County may bring suit to recover damages up to the
417 amount of unmet goal, including interest at the rate of twelve (12) percent
418 annually, plus the county's costs, expenses and actual attorney's fees incurred in
419 the collection action.

420

421 (4) Pursuant to 49 CFR Part 26 it is county policy to ensure that all
422 subcontractors or subconsultants are promptly paid within seven (7) days of the
423 prime contractor/consultant receiving payment from the county, for all work
424 satisfactorily completed. In the event a prime contractor/consultant fails to pay
425 subcontractors/subconsultants within the stated time frame, the CBDP director or
426 designee may direct the owner department or accounts payable head to withhold
427 payment to the prime contractor/consultant or impose other appropriate
428 sanctions in accordance with county ordinance. The CBDP director or designee
429 may authorize a waiver of the requirements of this chapter, as determined by
430 CBDP pursuant to section 42.04(1), on a contract-by-contract basis, upon good
431 cause shown.

432

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

435

436 **42.02(1)(l)** *Socially and economically disadvantaged individual* means any individual
437 who is a citizen (or lawfully admitted permanent resident) of the United States and who
438 is:

439

440 (1) Any individual who the county finds to be a socially and economically
441 disadvantaged individual on a case-by-case basis

442

443 (2) Any individual in the following groups, members of which are
444 rebuttably presumed to be socially and economically disadvantaged:

445

446 (i) "Black Americans" which includes persons having origins in any
447 of the black racial groups of Africa;

448

449 (ii) "Hispanic Americans" which includes persons of Mexican,
450 Puerto Rican, Cuban, Dominican, Central or South American
451 or other Spanish or Portuguese culture or origin, regardless of
452 race;

453

454 (iii) "Native Americans" which includes persons who are American
455 Indians, Eskimos, Aleuts or Native Hawaiians;

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- (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.

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

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

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

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

44.16. Disadvantaged business enterprise program.

Legislative intent: To assure that all county construction, repair or remodeling or

502 improvement contractors for any public works shall be awarded only on the basis
503 of ability or potential to do the job, and to assure full participation of all qualified
504 individuals:

- 505
- 506 (1) The disadvantaged business enterprise (DBE) program authority and
507 procedures shall apply as set forth in chapter 42 of the Code.
508
- 509 (2) Any act required to be performed or prohibited by chapter 42 of the Code is
510 hereby incorporated herein by reference.
511
- 512 (3) The appropriate director of transportation (or designee) or the director of
513 administrative services (or designee) is further authorized and empowered by
514 this section to effectuate and establish appropriate procedures, standards and
515 bid specifications to implement and achieve the county policies and goals
516 contained in chapter 42.
517

518 **Section 8.** Sections 56.30(1)(a), 56.30(1)(b), 56.30(1)(d), 56.30(1)(e),
519 56.30(2)(a), 56.30(2)(b), 56.30(2)(d), 56.30(6)(g), and 56.30(8)(a) of the General
520 Ordinances of Milwaukee County are amended as follows:

521

522 **56.30(1) - Definitions.**

523

524 (a) "Professional services" means services, the value of which is
525 substantially measured by the professional competence of the person performing
526 them and which are not susceptible to realistic competition by cost of services
527 alone. The services provided must be materially enhanced by the specific
528 expertise, abilities, qualifications and experience of the person that will provide
529 the service. Professional services shall typically include services customarily
530 rendered by architects; engineers; surveyors; real estate appraisers; certified
531 public accountants; attorneys; financial personnel; medical services, except when
532 such services are delivered to county employees as part of a workers
533 compensation claim; system planning; management and other consultants; and
534 services for promotional programs. Administrative Manual Procedure on DBE
535 Contracting Requirements provides additional definition regarding services that
536 meet professional service contracting requirements under this ordinance. If a
537 department administrator or other department personnel is uncertain if their
538 contract should follow professional service contracting provisions under this
539 ordinance, the department administrator must make a request of Corporation
540 Counsel for final clarification, before beginning the contracting procedures.

541

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

546

547 (d) "Contractor" means a firm or individual who formally undertakes to do

548 anything for another. Independent contractors must maintain a separate
549 business and hold themselves out to and render service to the general public and
550 must have a right to control the details of the work performed. Questions
551 regarding independent contractor status must be directed to Corporation
552 Counsel. Appendix F lists federal criteria to be considered in determining
553 independent contractor status.

554
555 (e) "Contract" means a legally binding relationship obligating a seller to
556 furnish supplies or services (including, but not limited to, construction and
557 professional services) and the buyer to pay for them. For purposes of this part, a
558 lease is considered to be a contract.

559
560 **56.30(2) - Policy.**

561
562 (a) *General policy statement.* All county departments and institution
563 administrators are responsible for procuring professional services and for
564 soliciting, negotiating and entering into contracts as defined in accordance with
565 the provisions of this section. However, the office of the county executive and the
566 county board shall be exempt from the provisions contained herein as shall be
567 the department of administration for the purpose of securing credit rating services
568 related to debt issuance and administration.

569
570 (b) *Disadvantaged business enterprise requirement.* All county departments
571 and institutions administrators are required to notify the Community Business
572 Development Partners department (CBDP) division in writing prior to soliciting for
573 professional service contract opportunities. Annual percentage goals for DBE
574 participation on professional services contracts will be established as set forth by
575 county ordinance. The procedures to be followed by departments regarding DBE
576 participation shall conform to provisions as contained in chapter 42. No
577 professional services contract shall be issued without review and written approval
578 by CBDP that all provisions of chapter 42 regarding disadvantaged business
579 participation have been met.

580
581 (c) *Reference to ordinance.* When a county department/division head or contract
582 administrator is preparing to begin a contract for professional services the
583 department/division head or contract administrator shall follow the requirements
584 of this section and chapter 42 on the requirements for using disadvantaged
585 business enterprises in county contracting, including professional services, and
586 administrative manual section 1.13, which provides further guidance on
587 complying with professional service contracting requirements.

588
589 **56.30(6) - Policy.**

590
591 (g) All county department/division heads and contract administrators are
592 required to notify the Community Business Development Partners department
593 (CBDP) in writing prior to soliciting for professional services contracts. Annual

594 percentage goals for DBE participation on professional services contracts will be
595 established as set forth by county ordinance. The procedures to be followed by
596 departments regarding DBE participation shall conform to provisions as
597 contained in Chapter 42. No professional services contract shall be issued
598 without review and written approval by CDBP that all provisions of Chapter 42
599 regarding disadvantaged business participation have been met.

600

601 **56.30(8) - Controller responsibility.**

602

- 603 (a) The controller shall, on a quarterly basis, summarize the reports received
604 from department administrators concerning professional services contracts
605 and send one (1) copy to the committee on finance and audit and one (1)
606 copy to the county executive and one (1) copy to CDBP.

607

608 **Section 9.** Sections 56.30(1)(f) and 56.30(1)(g) of the General Ordinances of
609 Milwaukee County are removed in their entirety.

610

611 **56.30(1) - Definitions.**

612

613

614 **Section 10.** This ordinance shall become effective upon publication.

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Adopted by the Milwaukee County Board of Supervisors

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March 15, 2012

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