By Supervisor Mayo, Sr. File No. 15-783

**A SUBSTITUTE RESOLUTION/ORDINANCE**

From the Director of Community Business Development Partners recommending the adoption of a resolution and ordinance to amend Chapters 42, 32, and 56 of the Milwaukee County Code of General Ordinances to expand the scope of Disadvantaged Business Enterprises (DBE) to include Target Enterprises

WHEREAS, currently Milwaukee County Ordinances only recognizes Disadvantaged Business Enterprises (DBE) for contracting opportunities; and

WHEREAS, there are many enterprises that are socially and economically disadvantaged that may not qualify as a DBE, these categories include Minority-Owned Enterprises (MBE), Woman-Owned Business Enterprises (WBE) and Small Business Enterprises (SBE) (together with DBE, “Targeted Enterprises”); and

WHEREAS, the Community Business Development Partners division of the Department of Administrative Services (CBDP) seeks to increase participation in county contracting opportunities for Targeted Enterprises; and

WHEREAS, for federally funded projects the County is limited to utilizing DBE and Airport Concessions Disadvantaged Business Enterprises (ACDBE) and therefore no changes in ordinances are requested for federally funded projects utilizing DBE or ACDBE; and

WHEREAS, the proposed ordinance change will set targets for aggregate use of Targeted Enterprises on non-federally funded projects; and

WHEREAS, to effectively manage the DBE, ACDBE and Targeted Enterprise goals, changes are needed to Chapters 42, 32 and 56 to clarify “good faith” language, provide uniform procedures, and use of modern software systems; now, therefore

BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby amends Chapters 42, 32 and 56 of the Milwaukee County Code of General Ordinances by adopting the following:

**AN ORDINANCE**

The Milwaukee County Board of Supervisors does ordain as follows:

**Section 1. Chapter 42 of the Milwaukee County Ordinances is amended as follows:**

Chapter 42 – ~~DISADVANTAGED BUSINESS ENTERPRISE AND AIRPORT CONCESSION DISADVANTAGED BUSINESS~~ TARGET BUSINESS ENTERPRISE PARTICIPATION IN COUNTY CONTRACTING

42.01. - Policy.

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

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

It is the county’s policy to comply with state requirements relating to minority and women business enterprises as applicable, and fully comply with laws and regulations related to use of state funds.

It is the county’s policy to require opportunities for participation of Disadvantaged Business Enterprise (DBE), Minority-Owned Business Enterprises (MBE), Woman-Owned Business Enterprises (WBE), Airport Concession Disadvantaged Business Enterprise (ACDBE), and Small Business Enterprise (SBE), to be known as Milwaukee County Target Enterprises (MCTE), in identified Milwaukee County contracting.

42.02. - Definitions.

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

(a) *Airport* *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.

~~(a)~~(b) *Airport concession disadvantaged business enterprise (ACDBE)* means a concession that is a for-profit small business concern that is at least fifty-one (51) percent owned by one (1) or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which fifty-one (51) percent of the stock is owned by one (1) or more such individuals; and whose management and daily operations are controlled by one (1) or more socially and economically disadvantaged individuals who own it. Milwaukee County shall use the definition of ACDBE, now in effect or to take effect in the future, as defined by the United States Department of Transportation.

~~(b)~~(c) *Commercially useful function.* A ~~DBE~~ MCTE 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~~ MCTE 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~~ MCTE 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~~ MCTE 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~~

~~(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 the 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.~~

(d) *Concessionaire* means a firm that owns and controls a concession or a portion of a concession. Concession for purposes of the Chapter is a business located on Milwaukee County lands or within its facilities engaged in the sale of consumer goods and services directly to the public under an agreement with Milwaukee County.

(e) *Contract* means a legally binding relationship obligating a seller to furnish materials, 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 (1) or more individuals who are both socially and economically disadvantaged or, in the case of a corporation in which fifty-one (51) percent of the stock is owned by one 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. Milwaukee County shall use the definition of DBE, now in effect or to take effect in the future, as defined by the United States Department of Transportation and associated certification requirements.

(g) *Good faith efforts* means efforts to achieve a ~~DBE or ACDBE~~ MCTE goal or other requirement, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

(h) *Joint venture* means an association of a ~~DBE or ACDBE~~ MCTE firm and one (1) or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ~~DBE or ACDBE~~MCTE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

(i) *Milwaukee County Target Enterprise (MCTE)* means a for-profit small business that qualifies as an Airport Concession Disadvantaged Business Enterprise (ACDBE), Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), Small Business Enterprise (SBE), Woman-Owned Business Enterprise (WBE) and/or similarly designated business as defined and/or qualified within this chapter.

(j) *Minority-Owned Business Enterprise (MBE)* means a for-profit small business that is at least fifty-one (51) percent owned by one (1) or more individuals who both belong to an ethnic minority group such as but not limited to: Native American, Black American, Hispanic American, Asian Pacific American, or Sub-continent Asian American 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 ethnic minority individuals who own it.

1. *~~Race conscious measure or program~~* ~~is one that focuses specifically on assisting only DBEs or ACDBEs, including women-owned DBEs and ACDBEs.~~

~~(j)~~ *~~Race neutral measure or program~~* ~~is one that is, or can be, used to assist all small businesses. For purposes of this part, race neutral includes gender neutrality.~~

(k) *Small business enterprise (SBE)* means an organized, for-profit business that is independently owned and operated and not dominant in its field. ~~Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume average over a three-year period.~~ ~~In no case will a firm be an eligible SBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by United States Small Business Administration (SBA) regulations (see 13 CFR 121.402), over the firm's previous three fiscal years in excess of $4 million, or if the owner(s) of the firm exceed the personal net worth (PNW) described in 49 CFR Part 26.~~ Milwaukee County shall use the definition of SBE, now in effect or to take effect in the future, as defined by the United States Small Business Administration (SBA) and associated identification requirements.

(l) *Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States, ~~and who is~~ as defined by the United States Small Business Administration (SBA) and associated identification requirements:

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

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

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

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

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

(iv) "Asian Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Burnei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marinas, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;

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

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA at such time the SBA designation becomes effective.

(m) *Women-Owned Business Enterprise (WBE)* means a for-profit small business which is at least fifty-one (51) percent owned by one (1) or more women or, in the case of a corporation in which fifty-one (51) percent of the stock is owned by one or more women; and whose management and daily operations are controlled by one or more of the women who own it.

42.03. - Enforcing department.

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

42.04. - Function of the community business development partners department (CBDP).

1. In accordance with 49 CFR Parts 23 and 26, the CBDP director ~~of CBDP~~ is designated as the county's disadvantaged business enterprise liaison officer ("DBELO") and the airport concession disadvantaged business enterprise liaison officer ("ACDBELO") with duties and responsibilities as defined by United States Department of Transportation.
2. ~~Recommend to the county board appropriate annual percentage requirements for DBE and ACDBE participation in county contracting. The director shall ensure that the overall triennial DBE and ACDBE percentage goals, including race neutral and race conscious components, are set in accordance with the requirements of 49 CFR Parts 23 and 26 as currently enforced or as amended.~~ The CBDP director shall report annually to the county board appropriate annual percentage goals for participation of Target Enterprises in Milwaukee County contracting and associated activities and efforts to achieve said goals.
3. The CBDP director shall ensure that the overall triennial DBE and ACDBE percentage goals, including race neutral and race conscious components, are set in accordance with the federal requirements as established by the United States Department of Transportation.

 ~~(3)~~(4) The CBDP director shall recommend to the county board other appropriate policies which encourage ~~SBE, DBE and ACDBE~~ Target Enterprise participation in county contracting.

~~(4)~~(5) The CBDP director ~~Ii~~n consultation with the county's office of corporation counsel, ~~the director~~ shall revise and/or update the ~~DBE~~ Target Enterprise participation utilization specification~~s~~ language to ensure such language is included in county contracts.

~~(5)~~(6) The CBDP director shall establish ~~SBE, DBE and ACDBE~~ Target Enterprise contract compliance monitoring and reporting procedures.

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

(8) The CBDP director shall provide outreach services to Target Enterprises and community organizations to advise them on contracting opportunities within the county.

~~(8)~~(9) The CBDP director shall ensure all ~~that~~ department/division heads and contract administrators make available bid notices and requests for proposals to ~~SBEs, DBEs and ACDBEs~~ Target Enterprises in a timely manner.

~~(9)~~(10) ~~The director shall assist department/division heads and contract administrators to identify contracts where DBE and ACDBE race conscious and race neutral goals can be included in contract solicitations.~~ The CBDP director shall assist all department/division heads and contract administrators to identify opportunities where Target Enterprise participation goals can be included in competitive solicitations, purchases and acquisitions performed within Milwaukee County.

~~(10)~~(11) ~~County contracts may not be awarded without the written approval of the CBDP director or designee who will ensure that the required SBE, DBE or ACDBE participation is included on all contracts.~~ County contracts, subject to this chapter shall be countersigned by the CBDP director or designee providing that requirements of this Chapter have been satisfied. No contract is valid until so countersigned.

(12) Milwaukee County Board of Supervisors shall not approve any contract covered by this chapter that requires positive board action, without a CBDP counter signature.

~~(11)~~(13) ~~All contract solicitations subject to this chapter will require the approval of the CBDP director or designee who will ensure that an appropriate DBE or ACDBE goal is assigned and/or consideration is given to participation by SBEs.~~ All solicitations subject to this chapter shall be reviewed by CBDP director or designee who shall ensure that an appropriate Target Enterprise goal is assigned or consideration is given to participation prior to release of any solicitation. All department/division heads and contract administrators shall comply with this requirement. The CBDP director shall establish a format to ensure compliance. The CBDP director shall carryout this responsibility without delay, but within three business days.

~~(12)~~(14) ~~CBDP is responsible for reviewing and approving good faith effort waiver requests when the contractually assigned DBE or ACDBE goal is not met by a contractor or consultant.~~ CBDP is solely responsible for reviewing and determining prior to any award that the established participation goal has been properly achieved, the partial achievement/good faith effort has been properly achieved and/or good faith effort has been properly achieved. This determination shall be made as a matter of responsiveness in all competitive solicitations. The CBDP director shall carryout this responsibility without delay, within three business days.

42.05. - ~~Certification of DBEs and ACDBEs, and verification of SBEs.~~ Certification, verification, and establishment of status as a Milwaukee County Target Enterprise (MCTE).

 (1) Certification of DBEs and ACDBEs

~~(1)~~(a)The certification of DBE and ACDBE~~, and verification of SBE~~ firms shall be the responsibility of CBDP.

~~(2)~~(b) Certification of DBE and ACDBE firms shall be governed by the standards and guidelines of 49 CFR Parts 23 and 26 and the processes and procedures established by the Wisconsin Unified Certification Program (WIUCP) or other certifying bodies recognized by the United States Department of Transportation. ~~Verification of SBE firms shall be governed by these same standards, minus any and all reference to race, gender and/or social disadvantage.~~

~~(3)~~(c) As a member of the Wisconsin Unified Certification Program (WIUCP), all DBE and ACDBE certification and removal decisions may be appealed to the WIUCP in accordance with 49 CFR Parts 23 and 26.

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

(2) Recognition, certification, verification and establishment of MBE, WBE and SBE status.

(a) As an alternative, or in addition to, conducting its own certification or establishment of status, as defined in this chapter, the CBDP director may designate certain eligible public agencies to recognize businesses as meeting eligibility standards and requirements necessary to participate as a MBE, WBE or SBE in Milwaukee County contracting. Such designation may be by way of (i) entering a memorandum of understanding with any agency and to accept MBE, WBE and SBE designations issued by such agencies; or (ii) accepting MBE, WBE and SBE status as accepted and recognized by other governmental agencies. The CBDP director is empowered to enter into such contractual agreements or memoranda of understanding on such terms and conditions as he or she may deem necessary or appropriate. CBDP may also recognize any combination of Target Enterprise classification statuses toward goal attainment where one or more of Milwaukee County status designations are applicable.

(b) If in the CDBP director’s judgment, or otherwise required by law, additional requirements to the certification or recognition by any eligible certifying agency or governmental body are warranted, the director is authorized to impose such additional requirements before accepting such a firm’s MCTE designation.

(c) If CBDP terminates an MCTE’s recognition, certification, verification or establishment of status as a MBE, WBE and SBE, the change in status, as a Target Enterprise, shall have no impact on current county contracts.

(d) The CBDP director shall make available the names, contact information, and other information regarding agency bodies and processes related to attaining status as a MCTE. The CBDP director shall make efforts to raise awareness and actively provide information to the business community for attainment of status as a MCTE.

 (e) The CBDP director is authorized to adopt such rules and regulations as he or she may deem appropriate to assure proper administration and enforcement of the provisions of this section.

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 any solicitation or contract ~~soliciting~~ for professional and non-professional services contracts as defined in sections 32.20(2) and (17) and 56.30 of this Code with an anticipated total dollar value exceeding $10,000 that are subject to the provision of the Chapter. ~~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) *Notification.* For all contracts requiring passive or positive approval by the Milwaukee County Board ~~Regardless of the dollar amount of the contract~~, all county department/division heads and contract administrators shall ~~are required to~~ notify CBDP in writing, in a format to be determined by CBDP. This notification shall occur prior to publication of ~~an RFP or an RFQ~~ any solicitation or entry into any unsolicited contract. Notification shall not be less than three business days prior to release or signature. ~~The department/division head and contract administrator is required to submit a DBE participation recommendation form to CBDP for approval.~~ Notification shall include a Target Enterprise participation goal recommendation for review by CBDP. ~~The department/division head and/or contract administrator shall notify the office and the comptroller, 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.~~ CBDP may administratively require notification and processes for departments for contracts not subject to passive or positive approval by the Milwaukee County Board.

(2) *Notification Review and Goal Establishment.* CBDP will review each notification provided and establish, where feasible, a percentage goal for ~~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.~~ a Milwaukee County Target Enterprise. Participation goals shall be set based upon the nature of the contract or acquisition and capacity within the Target Enterprise community and other factors as established by CBDP. Milwaukee County Departments shall be provided training by CBDP and shall make themselves knowledgeable of the factors related to contract participation by MCTEs. The MCTE participation goal shall be established without delay, but within three business days of notification.

(3) 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. The CBDP director, with agreement by the department may during the notification review and goal establishment process set aside participation goals for Target Enterprises with an SBE status.

~~(3)~~(4) ~~CBDP requires contractors/consultants to submit DBE documentation with their original bid/proposal as a matter of responsiveness~~ *Documents and language, upon goal establishment.* CBDP shall provide department/division heads and contract administrators with the appropriate and complete ~~DBE~~ MCTE specification language, required contract provisions, instructions, forms, documents, and procedures to be included with the bid/proposal solicitations or contract. ~~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.~~ Department/division heads and contract administrators shall be encouraged to provide CBDP opportunities to explain MCTE utilization requirements at pre-bid meetings and shall be identified as a resource to bidders/proposers in solicitation documents.

(5) *Responsiveness.* Department/division heads and contract administrators shall require contractors/consultants, to submit participation documentation as provided by CBDP with their original bid/proposal as a matter of responsiveness.

(6) *Review of responsiveness and achievement.* The department/division head, solicitation administrator, or contract administrator shall provide CBDP all documents undersection 42.06. CBDP shall review bid/proposal submissions for the required forms and documentation. Solely, using original submissions, CBDP shall make a determination as to each bidder/proposer having met the participation goal, or having provided a good faith effort. The determination shall be rendered on a pass/fail basis. CBDP and the contracting department shall reject and remove from further consideration all bids/proposals determined to have failed participation responsiveness in their submission. Determination results shall be submitted to the contracting department without delay, but within three business days of CBDP having been provided documentation. Any bidder or proposer having failed shall be notified by CBDP, in writing, 24 hours after determination. Bidders/proposers may appeal determination as provided within MCGO, Chapter 32 or 110, as applicable, based upon original submission, and shall not be provided opportunity to add or subtract from their original submission.

~~(4)~~(7) The ~~owner~~ contracting department shall require all prime contractors/consultants to submit a ~~DBE or ACDBE~~ Target Enterprise participation utilization report with all payment requests, in a format to be determined by CBDP. ~~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~~ Target Enterprise participation requirement has been met, either at the prime or sub-contracted level.

~~(5)~~(8) Department/division heads and contract administrators shall comply with the provisions of this section to ensure opportunities for the utilization of ~~DBE and ACDBE firms~~ Target Enterprises on county professional and non-professional service contracts. All department/division heads shall submit annually to CBDP a ~~DBE/ACDBE~~ Target Enterprise participation utilization plan form, as provided by CBDP, no later than ~~by~~ December 15 of each year. The plan shall provide the following information:

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

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

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

(d) Value of contracts/subcontracts the department/division estimates will be awarded to ~~DBEs or ACDBEs~~ Target Enterprises on professional and non-professional services contracts.

(e) Percentage of total contract dollars that the department/division estimates will be awarded to ~~DBEs or ACDBEs~~ Target Enterprises.

(9) CBDP shall establish processes for implementing the provisions in this section.

42.07. - Construction and Public Works Contracting.

(1) ~~The owner department shall consult with CBDP to determine an appropriate goal on all contracts.~~ *Notification*. The owner department of any construction project shall submit written notification to CBDP prior to the publication of any solicitation or entry into any unsolicited contract for Construction and Public Works. Contracts as defined in Chapter 44 of this Code, with an anticipated total dollar value exceeding $10,000 are subject to the provision of the Chapter. Notification shall not occur less than three business days prior to release or signature. The notification method shall be determined by CBDP and include a Target Enterprise participation goal recommendation.

(2) ~~The owner department shall submit an approved DBE participation recommendation form for each project. 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.~~ *Notification Review and Goal Establishment.* CBDP will review each notification provided and establish, where feasible, a percentage goal, for participation by Milwaukee County Target Enterprises. Participation goals shall be set based upon the nature of contract or acquisition and capacity within the Target Enterprise community and other factors as established by CBDP. Milwaukee County Departments shall be trained by CBDP and shall make themselves knowledgeable of factors related to contract participation by MCTEs. The MCTE participation goal shall be established without delay, but within three business days of notification.

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

(3) 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. The CBDP Director, with agreement by the department may during the notification review and goal establishment process set aside participation goals for Target Enterprises with a SBE status.

(4) ~~CBDP requires contractors/consultants to submit DBE documentation with their original bid/proposal as a matter of responsiveness~~. *Documents and language, upon goal establishment.* CBDP shall provide department/division heads and contract administrators with the appropriate and complete ~~DBE~~ specification language, required contract provisions, instructions, forms, documents, and procedures to be included with the bid/proposal solicitations or contract. ~~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.~~ Department/division heads and contract administrators shall be encouraged to provide CBDP opportunities to explain MCTE utilization requirements at pre-bid meetings and shall be identified as a resource to bidders/proposers in solicitation documents.

(5) *Responsiveness*. Department/division heads and contract administrators shall require contractors/consultants to submit participation documentation as provided by CBDP with their original bid/proposal as a matter of responsiveness.

(6) *Review of responsiveness and achievement*. The department/division head, solicitation administrator or contract administrator shall provide to CBDP all documents provided under section 42.07(5) ‘Responsiveness’. Submission shall occur immediately following submission deadline. CBDP shall review bid/proposal submissions for the required forms and documentation. Solely using original submissions, CBDP shall make a determination as to each bidder/proposers having met participation goal, or having provided a good faith effort. The determination shall be rendered on a pass/fail basis. CBDP and the department/division head, solicitation administrator or contract administrator shall reject and remove from further consideration all bids/proposal’s having been determined to have failed participation responsiveness within their submission. Determinations results shall submitted to the owner department without delay, but within three business days of CBDP having been provided documentation. Any bidder of proposer having failed shall be notified by CBDP writing 24 hours of determination. Any bidder of proposer having failed shall be notified by CBDP, in writing, 24 hours after determination. Bidders/proposers may appeal determination as provided within MCGO, Chapter 32 or 110, as applicable, based upon original submission, and shall not be provided opportunity to add or subtract from their original submission.

(7)~~(5)~~The owner department shall require all prime contractors/consultants to submit a Target Enterprise ~~DBE or ACDBE~~ utilization report with all payment requests prepared in a method determined by CBDP. ~~Copies of utilization reports and payment requests shall be forwarded to CBDP for review.~~ ~~(6)~~Department/Division heads and contract administrators shall ensure that all final payment requests are accompanied with a signed affidavit verifying that the Target Enterprise participation ~~DBE and/or ACDBE~~ requirement has been met, either at the prime or subcontracted level.

 (8)~~(7)~~The owner department with responsibility for project budget and schedule shall submit an annual list of approved projects as defined in chapter 44, section 44.001, whether funded with federal funds or solely with county funds. The director of the owner department with responsibility for project budget and schedule must submit the Target Enterprise participation ~~DBE/ACDBE~~ utilization plan by December 15 of each year to CBDP based on the county board adopted budget. The list shall provide the following information:

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

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

42.08. - Enforcement and monitoring.

(1) All contracts shall include provisions for Milwaukee County’s right to perform ~~C~~compliance reviews and audits. The county and CBDP reserve~~s~~ the right to conduct compliance reviews and request, both from the prime contractor/consultant and subcontractors/subconsultants or suppliers, ~~concessionaires,~~ documentation necessary to verify each party’s level of compliance. If the contractor/vendor is not in compliance with ~~DBE and/or ACDBE~~ Target Enterprise participation contract requirements, CBDP will notify the contractor/vendor in writing of required corrective action ~~to be taken~~ and the associated time frame to bring into full compliance.

(2) All contracts shall include provisions, as provided by CBDP, stating should ~~If~~ the contractor/consultant fail or refuse to take corrective action within the time specified in the notice, the county at CBDP's request, may terminate or cancel the contract, in whole or in part; withhold payments on the contract ~~until DBE and/or ACDBE contract compliance issues are resolved to the county's satisfaction;~~ or impose other appropriate sanctions, including the one identified in section 42.08(3) below. The director of the owner department shall be notified by the director of CBDP when sanctions are made against a contractor/consultant and shall comply with determination.

(3) All contracts shall include provisions, as provided by CBDP, for t~~T~~he CBDP director or designee ~~shall~~ to have the authority to withhold contractor/consultant payments until ~~DBE and/or ACDBE~~ Target Enterprise participation requirements have been met per contract. If the contractor/consultant has completed its contract, and the goal was not met ~~due to an~~ and in absence of good faith on the part of the contractor/consultant, the proper measure of damages for such noncompliance shall be the dollar amount of the unmet portion of the ~~DBE and/or ACDBE~~ contracted Target Enterprise participation goal. The county may in such case retain any unpaid contract amounts and retainage otherwise due the contractor/consultant, up to the amount of the unmet goal. Milwaukee County may bring suit to recover damages up to the amount of unmet goal, including interest at the rate of twelve (12) percent annually, plus the county's costs, expenses and actual attorney's fees incurred in the collection action.

(4) All contracts shall include provisions, as provided by CBDP, ~~P~~pursuant to 49 CFR Part 26 it is county policy to ensure that all direct subcontractors or subconsultants are promptly paid within seven (7) days of the prime contractor/consultant receiving payment from the county, for all work satisfactorily completed. Subcontractors receiving payments shall pay lower-tier subcontractors according to this same prompt payment requirement. In the event a prime contractor/consultant fails to pay subcontractors/ subconsultants within the stated timeframe, the CBDP director or designee ~~may direct the owner department or~~ shall notify accounts payable ~~head~~ to withhold payment to the prime contractor/consultant or impose other appropriate sanctions in accordance with county ordinance. ~~The CBDP director or designee may authorize a waiver of the requirements of this chapter, as determined by CBDP pursuant to section 42.04(1), on a contract-by-contract basis, upon good cause shown.~~

(5) The CBDP Director may authorize a waiver of the requirements of this chapter on a contract-by-contract basis, upon good cause shown and as permitted by statues, laws, state and federal regulations.

42.09. - Appeals.

An aggrieved ~~prime contractor/consultant~~ party under chapter 42 of these ordinances may appeal ~~findings of noncompliance~~ in accordance with procedures established in Chapter 110 or Chapter 32 as applicable, of this Code.

**Section 2. Chapter 32 of the Milwaukee County Ordinances is amended as follows:**

32.20. - Words and phrases defined.

In this subchapter, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

(1) "Blanket contract" means a contract for purchases to be made as required over a specific period of time for a fixed price, but no guaranteed quantity.

(2) "Contractual service" means all services except utilities, professional services, chapter 44 public works contracts, and repairs or alterations to buildings or structures.

(3) "Day" means the normal working day which excludes Saturdays, Sundays or major holidays.

(4) "Department head" means the chief executive officer of a principal administrative unit of county government who administratively reports directly to a board, commission, the county executive or is an elected official.

(5) "Lowest bidder" means a person or firm which has submitted the most advantageous price.

(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 of these ordinances, where applicable.

(7) "Professional service" carries the definition found in section 56.30(1)(a) of the Code. Departments contracting for professional services will follow the procedures set forth therein.

(8) "Qualified bidder" means a person or firm which has not been disqualified from selling to the county because of unsatisfactory performance.

(9) "Responsible bidder" means a person or firm which has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assume good faith performance.

(10) "Responsive bidder" means a person or firm which has submitted a bid which conforms in all material respects to the invitation to bid.

(11) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply service or other item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or other item for delivery.

(12) "Standard" means that which is set and established by authority, custom or general consent as the quality, quantity or method that is proper and adequate for a given purpose.

(13) "Supplies, materials and equipment" means all commodities and other tangible articles or things purchased from a county appropriation.

(14) Computation of time limits expressed in hours or days shall exclude Saturdays, Sundays and legal holidays.

(15) "Negotiations" means contracting through the use of either competitive or other-than-competitive proposals and/or discussions. Any contract having an estimated aggregate value in excess of twenty thousand dollars ($20,000.00) awarded without using sealed bidding procedures is a negotiated contract.

(16) "Competitive range" means all offerors that are determined to have a reasonable chance of being selected for award based on cost or price and other factors stated in the solicitation. This definition applies only to negotiated procurements as set forth in sections 32.36 through 32.52.

(17) "Service contract" means an agreement primarily related to staff services including, but not limited to, housekeeping, security, landscaping, maintenance, clerical services, food services, and other non-professional services.

32.22. - Department of administrative services.

(1) The department of administrative services through its procurement division shall have the following powers and perform the following duties:

(a) Adopt, promulgate, and from time to time amend rules, regulations and procedures and enforce the provisions of this chapter.

(b) Purchase or contract for all supplies, materials, equipment and contractual services.

(c) Prepare and maintain purchasing manuals setting forth the purchasing procedures, rules and regulations.

(d) The director of the department of administrative services, or designee, shall sign contracts or issue purchase orders for supplies, materials, equipment or services when authorized under the provisions of this chapter.

(e) Develop and recommend standards for purchasing standardization committee approval. Enforce the use of standards and specifications established under the provisions of this chapter.

(f) Have charge of storage facilities established centrally for the use of all departments.

(g) Conduct public auctions and accept competitive bids for the sale of county property which has been declared surplus by the departments or the facilities management division of the department of ~~public works~~ administrative services.

(h) Prescribe the manner of inspecting supplies, materials and equipment and of determining compliance with specifications.

(i) Determine if bid deposits or performance bonds are necessary and prescribe the amount.

(j) Make use of the laboratory, engineering, facilities and technical staffs of the county and others as required.

32.23. - Purchasing standardization committee.

(1) There shall be a purchasing standardization committee composed of ~~three (3)~~ five (5) private citizens: a representative of: the department of human resources, the department of parks, recreation and culture, the department of ~~public works~~ transportation, the department of administrative services and the sheriff's department. Each of the departmental representatives shall be selected by the department head. The private citizen members are to be appointed by the county executive for a term of four (4) years, subject to the confirmation of the county board, and shall be residents of the county who are knowledgeable in procurement. A representative of the corporation counsel's office and the procurement director or his or her designee shall be technical advisers to the committee.

(2) The committee is empowered to do the following:

(a) Adopt operating rules and procedures, and shall elect a vice-chairperson, for a one-year term, and such other officers as may be required.

(b) Review supplies, materials and equipment commonly used for adoption of appropriate standards by all departments.

(c) Adopt, revise and promulgate written standards which satisfy the requirements of the county. After adoption, they shall apply to every future purchase and contract for the commodity described, unless exempted by the committee.

(3) Establish technical subcommittees.

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

32.25. - Purchasing and contracting procedure.

(1) Acquisition of goods and services as provided for under Chapter 32 shall strive to implement the principles of active and aggressive efforts to assist Milwaukee County in meeting or exceeding its overall annual goal of participation of Target Enterprise firms. An annual percentage goal for Target Enterprises participation in supplies, materials and equipment purchases shall be established. And an annual percentage goal for Target Enterprises participation in service contracts and contractual services contracts shall be established as set forth by county ordinance. The above procedures shall conform to the provisions as contained in chapter 42 of these ordinances.

 (~~1~~ 2) Purchases of supplies, materials, equipment and contractual services shall be based on competitive bids. Bids may be rejected when it is determined by the procurement director or his or her designee that to award a contract would not be in the best interest of the county. The method of evaluating bids and awarding contracts shall be stated in each bid document. Contracts shall be awarded to the lowest, qualified, responsive, responsible bidder. If equal low and responsive bids are received, the procurement director or his or her designee shall break the tie by a lot drawing in the presence of a buyer and another member of the procurement division at a specific time and date. The tied bidders shall receive written advance notice.

(~~2~~ 3) *Discretionary purchases.* Any procurement having an estimated aggregate value of ten thousand dollars ($10,000.00) or less shall be made at the discretion of the buyer.

(~~3~~ 4) *Open market purchase.* Any procurement having an estimated aggregate value in excess of ten thousand dollars ($10,000.00) and less than twenty-five thousand dollars ($25,000.00) shall be made by solicitation of three (3) quotations documented by the buyer.

(~~4~~ 5) *Informal purchases.* Any procurement having an estimated aggregate value of twenty-five thousand dollars ($25,000.00) and less than fifty thousand dollars ($50,000.00) shall be solicited from all vendors of the item on the vendor's list maintained by the procurement division and the contract awarded by sealed bidding.

(~~5~~ 6) *Formal purchases*. Any procurement having an estimated aggregate value of fifty thousand dollars ($50,000.00) or more shall have sealed bids solicited by public notice inserted at least once on the official county web-site at least two (2) weeks before the bid opening date, and by posting official notice on the procurement board in the procurement division office for the same period. The procurement division shall solicit sealed bids by mail from all vendors of the item on the vendor list maintained by the procurement division.

(~~6~~ 7) *Sealed bids.*

(a) All sealed bids shall be received in the office of the county clerk and transferred to the procurement division at the time of bid opening, which shall be conducted in public at a specified date, time and place.

(b) A summary of each bid, with the name of all bidders, shall be posted for public inspection in the office of the procurement division during regular county business hours for a period of not less than ten (10) days after award.

(c) A ~~noncollusive~~ statement of non-collusion requiring the signature of an authorized officer of the bidder shall be included in each sealed bid. The procurement director or his or her designee shall report suspected collusive bids to the district attorney.

(~~7~~ 8) *Exceptions.*

(a) Competitive bidding requirements of this chapter shall apply, except as follows:

(1) When, after soliciting sealed bids, it is determined by the procurement director or his or her designee, and verified by the purchasing standardization committee, that no valid bids have been received, the purchasing standardization committee may authorize procurement without competition.

(2) Purchases from a single source which, by their nature, are not adapted to award by competitive bidding as determined by the procurement director or his or her designee and approved by the purchasing standardization committee.

(3) Purchases from any federal, state or local governmental unit or agency of surplus materials, supplies, commodities or equipment, as approved by the committee on finance, personnel and audit of the county board, and otherwise when expressly authorized by the county board.

(4) Discretionary purchase of ten thousand dollars ($10,000.00) or less as authorized in subsection 32.25(2) of this section.

(5) Any contract for a public works construction project where the director of ~~public works~~ the appropriate department or the department of administrative services or his/her designee has recommended, and the procurement director or his or her designee has agreed in writing, that the procurement director or his or her designee shall negotiate for the purpose of services, supplies, materials or equipment needed for such project.

(b) Purchase of name brand items for resale may be awarded to other than the low bidder.

(c) Purchases required for immediate budgeted repairs, exclusive of inventory items.

(d) Notwithstanding any other provisions of this chapter to the contrary, where adequate competition exists, the ~~purchasing administrator~~ procurement director or his or her designee shall have the authority, in any situation where a contract is to be let through the bidding process, to reserve such contract exclusively for vendors ~~listed~~ identified as small business enterprises (SBE) as defined in ~~section 42.02(k)~~ chapter 42 of these ordinances. In such event, the bid announcements shall indicate such reservation, citing this subsection as authority therefor. Reservations by the procurement director or his or her designee may be on a commodity basis or on an individual contract basis.

(e) Annually the county board shall adopt, as defined in chapter 42 of these ordinances, by resolution a recommended minimum percentage goal for the participation of ~~disadvantaged business enterprise vendors~~ Target Enterprises in contracts awarded pursuant to chapter 32. Such goals are not mandatory; however, the procurement director or his or her designee shall make diligent efforts to achieve or exceed such annual participation goals. All written solicitations and notices for bids promulgated or published pursuant to this chapter shall contain language advising potential bidders of the provisions of this subsection.

(~~8~~ 9) All contracts issued by the procurement division shall be reviewed for approval by the corporation counsel prior to use.

(~~9~~ 10) Comptroller responsibility.

(a) All contracts issued by the division shall be reported to and countersigned by the comptroller, under policies established by the comptroller, if he or she determines that the county has, or will have, the necessary funds to pay the liability that the county may incur under the contract. No contract is valid until so countersigned.

(b) The comptroller shall, on a monthly basis, summarize the reports received from the division concerning blanket contracts and provide one (1) copy to the committee on finance, personnel and audit and one (1) copy to the county executive.

(c) The comptroller shall deny payment for any payment request submitted by a vendor to an administrator if all conditions of this chapter have not been met. The comptroller shall report such denials and the reason for denial to the committee on finance, personnel and audit along with the monthly report. In such cases, the administrator may appeal the decision to the committee on finance, personnel and audit.

32.40. - General.

(1) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate county requirements to prospective vendors and to solicit proposals from them. Solicitations shall contain the information necessary to enable prospective vendors to prepare proposals properly. Solicitation provisions and contract clauses may be incorporated into the solicitations and contracts by reference.

(2) The procurement director or his or her designee shall furnish identical information concerning a proposed acquisition to all prospective vendors.

(3) The procurement director or his or her designee shall solicit proposals only when there is a definite intention to award a contract.

(4) A proposal received in response to an RFP is an offer that can be accepted by the county to create a binding contract.

(5) Letter RFPs should be as clear and concise as possible, exclude any unnecessary verbiage or notices; and, as a minimum, contain the following:

(a) RFP number and date.

(b) Name and address of contracting office.

(c) Type of contract contemplated.

(d) Quantity, description, and required delivery for the item.

(e) Applicable certifications and representations.

(f) Contract terms and conditions.

(g) Offer due date.

(h) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support and different data requirements.

(6) Solicitation for services as defined in section 32.20(2) and (17) with an aggregate value in excess of fifty thousand dollars ($50,000.00) shall be approved by the county board prior to award. Approval shall not be requested until after completion of the protest and appeal process outlined in sections 32.50 and 32.51 of this subchapter.

(7) Notwithstanding any other provisions of this chapter to the contrary, where adequate competition exists, the ~~purchasing administrator [~~procurement director or his or her designee~~]~~ shall have the authority, in any situation where a contract is to be let through the negotiated acquisition process, to reserve such contract exclusively for vendors ~~listed~~ identified as small business enterprises (SBE) as defined in ~~section 42.02(k)~~ chapter 42 of these ordinances. In such event, the solicitation announcements shall indicate such reservation, citing this subsection as authority therefore. Reservations by the ~~purchasing administrator [~~procurement director or his or her designee~~]~~ may be on a commodity basis or on an individual contract basis.

32.96. - Real estate.

(1) Manage, sell and acquire real estate for the county. Specific responsibilities include managing and leasing improved and unimproved properties, including air space parking lots for the state department of transportation (~~WIDOT~~ WisDOT). County surplus real estate and tax foreclosure properties in the county suburbs are sold by the division.

(2) Land sales shall follow the policy and procedure for disposition of real estate as recommended by the committee on economic and community development (ECD committee), approved by the county board and implemented by the Department of ~~Administration~~ Administrative Services (DAS) - Economic Development Division.

(3) Sales of tax foreclosure properties shall be consistent with the provisions of s. 6.03.

(4) All land sales not covered by 6.03 shall be referred to the ECD committee for disposition and the ECD committee may consider any of the following policies for such disposition:

(a) A site-specific plan because of the unique character or location of the property.

(b) A request for proposal (RFP) process which is intended to be a formal process that is generally reviewed in closed hearings if such hearings are deemed appropriate by opinion of corporation counsel.

(c) A request for information (RFI) process which is intended to be a less formal process that is generally reviewed in an open hearing unless corporation counsel provides an opinion that proprietary information must be protected. Such RFI process may be followed by a more specific procedure as recommended by the ECD committee.

(d) Any other policy for disposition that the ECD committee establishes as appropriate which may be determined by the totality of the circumstances regarding the real estate involved.

(e) A development agreement negotiated by DAS - Economic Development Division that the ECD committee established with regard to a specific developer to develop an identified real estate parcel.

(5) The ECD committee may, at their discretion, recommend to the county board any community benefit requirements for either the surplus disposition plan or development agreement.

(6) All negotiations and review of RFP, RFI, or any other negotiated procedures shall be conducted by the DAS - Economic Development Division which shall make final recommendations to the ECD committee for review and recommendation to the county board.

(7) No officer or employee, either part-time or full-time, whether elected or appointed, in either the classified or unclassified service, shall purchase real estate acquired by the county, pursuant to this chapter, through an agent. However, the aforementioned individuals, if not involved directly in the sale, may purchase real estate themselves or with their spouses, if their county employment is disclosed in the offer.

(8) The county executive and county clerk shall sign all conveyances on behalf of the county for the sale of lands acquired by the county under the procedure authorized by this chapter when approved as ready for execution by the corporation counsel.

**Section 3. Chapter 56 of the Milwaukee County Ordinances is amended as follows:**

56.12. - Architectural and engineering planning revolving funds.

(1) *Funds established.* There is hereby established a revolving fund of one hundred thousand dollars ($100,000.00) to be used for architectural and engineering planning for public works projects under the jurisdiction of the department of ~~public works~~ administrative services and a revolving fund of fifty thousand dollars ($50,000.00) to be used for architectural and engineering planning for projects under the jurisdiction of the county department of parks, recreation and culture.

(2) *Restrictions*. No expenditures shall be made from these funds unless the director of ~~public works~~ administrative services has certified that he/she is unable to ---provide the engineering or architectural services required, and that the employment of an outside architect or consultant is approved.

(3) *Responsibilities of director of ~~public works~~ administrative services.* It shall be the responsibility of the director of ~~public works~~ administrative services to supervise the use of these funds and to coordinate and to give general inspection to all public works projects undertaken by any department or agency of the county government.

(4) *Restoration of funds.* The revolving funds created by this section shall be restored by credits transferring costs to the public works projects for which the services were specifically provided. If subsequent to the preliminary planning and engineering, a project is abandoned or the county board does not appropriate funds for the project, the county board's committee on finance, personnel and audit may recommend an appropriation sufficient to restore the fund to its original amount.

56.17. - Nondiscriminatory contracts.

(1a) All contracts except those exclusions listed in paragraph (e) let by or on behalf of the county, shall include the following provisions:

In the performance of work or execution of this contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, 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. The contractor will post in conspicuous places, available for employment, notices to be provided by the county setting forth the provisions of the nondiscriminatory clause. A violation of this provision shall be sufficient cause for the county to terminate the contract without liability for the uncompleted portion or for any materials or services purchased or paid for by the contractor for use in completing the contract.

(1b) Where federal regulations in regard to bidding and contracting procedures and equal employment practices apply, all contracts let by or on behalf of the county shall be consistent with said requirements, regulations, procedures and practices. However, all contractors having fifty (50) or more total employes, including noncraft employes, shall be required to have affirmative action plans on file with the county or other appropriate government agency.

(1c) All contracts except those exclusions listed in paragraph (1e) let by or on behalf of the county involving nonfederal funds shall contain language based on and reflecting federal and county equal employment opportunity and ~~minority business enterprise~~ Target Enterprise requirements~~:~~.

~~a. The minority and women's business enterprise program authority and procedures shall apply as set forth in chapter 32 of the Code.~~

~~b. Any act required to be performed or prohibited by chapter 32 of the Code is hereby incorporated herein by reference.~~

(1d) All contracts except those exclusions listed in paragraph (1e) let by or on behalf of the county, shall include the following provisions:

The contractor agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the contract, which 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 the contractor's workforce, where these groups may have been previously under-utilized and under-represented. The contractor also agrees that in the event of any dispute as to compliance with the aforestated requirements, it shall be his/her responsibility to show that he/she has met all such requirements.

The contract agrees that it will strive to implement the principles of active and aggressive efforts to assist Milwaukee County in meeting or exceeding its overall annual goal of participation of Target Enterprise firms.

(1e) The exclusions applicable to paragraphs (1a), (1c), (1d) and (2) are as follows:

1. Departmental purchase orders.

2. Emergency purchases when immediate action is required to preserve property or protect life, health or welfare of persons.

3. Sole source procurements, as determined by the purchasing standardization committee.

4. Purchases from foreign countries.

5. Purchases from governmental agencies.

6. Purchases from petty cash (limit of fifty thousand dollars ($50,000.00)).

(2) Except for exclusions in paragraph (1e) all directors, administrators and managers shall be responsible for obtaining compliance with the nondiscrimination provisions of this section and shall, in cooperation with the contract compliance auditor, verify compliance prior to the award of all contracts with an aggregate value of twenty thousand dollars ($20,000.00) or more.

(3) When a violation of this section has been determined by the party responsible for the enforcement of the nondiscrimination provision, the violating party 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 immediate steps to prevent further violations.

(4) If, after notice of a violation to the violating party, further violations of this section are committed during the term of the contract, the county may terminate the contract without liability for the uncompleted portion or any materials or services purchased or paid for by the contracting party for use in completing the contract, or it may permit the violating party to complete the contract, but in either event, the violating party shall be ineligible to bid on any future contracts to be let by the county.

(5) No contract by or on behalf of the county shall be let to any party whose name appears on the list of ineligible contractors maintained by the state department of administration because of failure to comply with the provisions of s. 16.765, Wis. Stats~~.~~, unless, in the opinion of the director, the violation party has offered clear proof that the violation has been corrected and will not be repeated.

(6) A violation by a prime contractor shall not impute to a subcontractor, nor shall a violation by a subcontractor impute to a contractor.

56.30. - Professional services.

(1) Definitions. The meanings of certain terms used in this section are as follows, unless the context otherwise provides:

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

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

(c) "Request for proposal" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

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

(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.

(2) *Policy.*

(a) *General policy statement.* All county departments and institution administrators are responsible for procuring professional services and for soliciting, negotiating and entering into contracts as defined in accordance with the provisions of this section. However, the office of the county executive and the county board shall be exempt from the provisions contained herein with the exception of subsections (6)(a) and (6)(i) as shall be the department of administration with the exception of subsections (6)(a) and (6)(i) for the purpose of securing credit rating services related to debt issuance and administration.

(b) ~~Disadvantaged business enterprise requirement.~~ All county departments and institution~~s~~ administrators are ~~required to notify the Community Business Development Partners department (CBDP) division in writing prior to soliciting for professional service contract opportunities~~ responsible for procuring professional services and for soliciting, negotiating and entering into contracts as defined in accordance with the provisions of chapter 42 of these ordinances. Annual percentage goals for ~~DBE~~ Target Enterprise participation on professional services contracts will be established as set forth by ~~county ordinance~~ chapter 42 of these ordinances. ~~The procedures to be followed by departments regarding DBE participation shall conform to provisions as contained in chapter 42. No professional services contract shall be issued without review and written approval by CBDP that all provisions of chapter 42 regarding disadvantaged business participation have been met.~~

(c) *Fiscal constraint statement*. Notwithstanding any other provisions of section 56.30, during a period of fiscal constraint the county board may, by resolution, adopt a procedure which requires the committee on finance, personnel and audit review and county board approval of all professional services expenditures prior to execution of said contracts.

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

~~(e)~~ *Justification for using professional services.* Contract administrators must document in the contract file the justification for utilizing a professional service contract as opposed to completing the work using county staff. This justification may or may not employ a formal cost benefit analysis, depending on the circumstances.

(3) *Availability of appropriations.* It is the responsibility of the administrator who will sign a professional services contract to insure that monies are available in the appropriate budget account for the expenditures required by the contract.

(4) *Professional services procedures*. It shall be the responsibility of the administrator to conform with the following provisions when entering into a professional services contract and expending budgeted funds:

(a) *Professional services—Capital improvements.* The following conditions shall apply to all capital projects.

(1) During its annual budget process, departments shall provide a list to the county board of which capital projects contained in the recommended budget are intended to require the assistance of a professional services consultant. Departments are authorized to enter into contractual services or professional services agreements as may be required for specific capital improvement projects which have been approved by the county board through the budget process. Expenditures shall only be for those projects and professional services specifically identified in the budget write-up reviewed by the committee on finance, personnel and audit during the budget review process and approved by the county board, or for those projects approved by action of the county board. The budget write-up shall contain specific information as to the scope of the project, professional services required and estimated cost of the professional services work to be performed. The appropriate department of transportation or the department of administrative services shall provide in February of each year to the committee on finance, personnel and audit and the committee on transportation, public works and transit an updated report on public works capital projects requiring the use of a professional services contract. Any professional services work costing more than twenty thousand dollars ($20,000.00) which is not identified in the February report shall require county board approval.

(2) All contracts in excess of twenty thousand dollars ($20,000.00) shall be solicited following a request for proposal process as outlined further in this ordinance.

(b) *Professional services—Non-Capital.*

(1) For professional services resulting in an expenditure of two thousand dollars ($2,000.00) or less, a departmental purchase order or purchase card may be used for the purchase of professional services. County board approval is not required provided monies are available in the appropriate budget account.

(2) For a professional services contract with a value greater than two thousand dollars ($2,000.00) and less than fifty thousand dollars ($50,000.00), county board approval is not required provided monies are available in the appropriate budget account for the expenditures required by the contract.

(3) County board approval.

(a) If a professional services contract with a value greater than two thousand dollars ($2,000.00) and less than fifty thousand dollars ($50,000.00), entered into by a department administrator is to be extended or amended to provide additional reimbursement which extends the total reimbursement beyond fifty thousand dollars ($50,000.00) to the same vendor, county board approval shall be required for each extension.

(b) For a professional services contract with a value of fifty thousand dollars ($50,000.00) or more, approval by the county board is required. Such approval may take place as part of the county board's adoption of the annual county budget. If approval does not take place as part of the adopted budget, then review by the appropriate county board standing committee and approval by the county board is required. If immediate action is required to preserve property or protect life, health and welfare of persons, county board approval may be waived, provided such action shall be reported, in writing, within forty-eight (48) hours after initial emergency action, to the county board, the county executive and the department of administration.

(4) County board approval is not required for reimbursement for medical services as defined under subsection 56.30(1)(f) when those services are provided to county employees as a workers compensation claim provided that sufficient funds are available at the time the invoice for service is submitted in the appropriate expenditure amount.

(a) The risk management division is allowed to issue payments to hospitals whenever services have been rendered to county employes as part of a workers compensation claim.

(5) *Request for proposal.*

(a) *When required*. When it is estimated that a contract for professional services has a value of fifty thousand dollars ($50,000.00) and over, it is required that a request for proposal (RFP) be used to attempt to solicit a minimum of three (3) proposals. Department administrators shall give appropriate notice to prospective vendors of services to be retained. At a minimum, such notice shall include publication of an ad in a newspaper serving the Milwaukee area. The use of an RFP is discretionary for any professional services contract with a value of less than fifty thousand dollars ($50,000.00). If an RFP is used or not, it still is required to document the process and the reasons shall be documented in writing by the administrator and retained in departmental files for a period of seven (7) years after contract completion. Documentation shall include the RFP, memos, proposals, score sheets, analyses, contracts and any other document used in determining the award of a contract.

(1) For a contract with an estimated value between fifty thousand dollars ($50,000.00) and one hundred thousand dollars ($100,000.00), the request for proposal procedure need not be used if it is determined by an administrator to be cost effective to the county not to seek proposals. Such action shall be reported, in writing, with an explanation as to the benefits derived from not seeking proposals, to the county board when the contract is submitted for approval.

(2) The request for proposal procedure need not be used for a contract with an estimated value of fifty thousand dollars ($50,000.00) or more, if immediate action is required to preserve property or protect life, health or welfare of persons. Such action shall be reported in writing within forty-eight (48) hours after the initial emergency action to the county board, county executive and department of administration. Payments shall not be restricted by normal budget limitations. Appropriation transfers, if required, shall be initiated in accordance with fiscal procedures.

(3) The request for proposal procedure must be used for all contracts with an estimated value of one hundred thousand dollars ($100,000.00) or more unless action is required to protect property or protect life, health or welfare of persons, or in circumstances where contractual services are approved by specific county board action.

(b) *Content*. The request for proposal shall contain the evaluation criteria which will be used to select the successful contractor. The relative importance of each of these items will depend to some degree on specific services being sought. It is essential that the RFP enumerate the evaluation criteria which will be used to select the successful contractor. The RFP shall also include the foundation and mechanism for billing for any professional service.

(c) *Evaluation procedure.* More than one (1) person shall evaluate all proposals. Oral presentations should be used to supplement the written proposal if it will assist in the evaluation procedure. The firms to be invited to make an oral presentation can be determined after the initial review and ranking of the proposals based on the criteria outlined in the RFP.

(d) *Disclosure.* Contract administrators, evaluation panel members, or potential members, department administrators and persons selecting evaluation panel members are required to fully disclose on forms approved by the Ethics Board any experience, contact or relationship with bidders that would create a potential conflict of interest, or the appearance of a conflict of interest, as defined in chapter 9 of these ordinances, in awarding or managing a contract. Such disclosure shall be presented to the administrator of the department letting the contract who shall forward the disclosure to the Ethics Board with a written request for a determination as to whether the disclosing party should be disqualified from evaluating, selecting or administering the proposed contract. The determination of the Ethics Board must be documented and included in the department's files for the contract and shall be retained as required under subsection (a) of this section. The provisions of this section are to be included in the Milwaukee County Administrative Procedures Manual. All the provisions set forth in the Milwaukee County Code of Ethics are in full force and effect and are not abrogated in any way by these requirements.

(6) *Contract.*

(a) All contracts, excluding departmental purchase orders, shall be reviewed by the corporation counsel to determine if they meet the definition of professional services and to verify that the contracts comply with all statutes, rules, ordinances, and the county's ethics policy.

(b) Approval. The contract must be approved by the office of the corporation counsel prior to execution. No contract is valid until so countersigned.

(c) All provisions of the Code governing administration of contracts must be followed.

(d) All contracts which have been approved by action of the county board shall contain language referencing the county board file number and date of county board approval.

(e) All professional services contracts shall contain a provision which provides that the contractor shall permit the authorized representatives of the office of the comptroller, after reasonable notice, the right to inspect and audit all data and records of contractor related to carrying out the contract for a period of up to three (3) years after completion of the contract.

(f) 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 modifications in indemnity agreements.

(g) ~~All county department/division heads and contract administrators are required to notify the Community Business Development Partners department (CBDP) in writing prior to soliciting for professional services contracts. Annual percentage goals for DBE participation on professional services contracts will be established as set forth by county ordinance. The procedures to be followed by departments regarding DBE participation shall conform to provisions as contained in chapter 42. No professional services contract shall be issued without review and written approval by CBDP that all provisions of chapter 42 regarding disadvantaged business participation have been met.~~ All contracts will be reviewed and countersigned by CBDP director for compliance with chapter 42 of these ordinances. No contract is valid until so countersigned.

(h) All contracts shall include the foundation and mechanism for billing for any professional service provided under the agreement.

(i) No contract shall be valid until the office of the comptroller has determined that the county has, or will have, the necessary funds to pay the liability that the county may incur under the contract and has countersigned the contract. No contract is valid until so countersigned.

(7) *Department administrator reporting requirement.* All department administrators are responsible for informing the ~~controller~~ comptroller in writing whenever a professional services contract is initiated. Department administrators are to inform the ~~controller~~ comptroller of such contracts in a standardized format on a form to be developed by the department of ~~administration~~ administrative services.

(a) *Content.* Such reports shall be prepared in four (4) parts and include the following information:

(1) Department name and number.

(2) Date approved by county board and file number.

(3) Dollar amount of contract.

(4) Account description and account number charged.

(5) Name of professional services vendor under contract.

(6) Length of time of contract.

(7) Purpose of contract.

(8) Selection of qualified ~~DBE firm~~ Target Enterprise.

(b) *Distribution:*

Original copy to ~~controller~~ comptroller.

One (1) copy retained by department administrator.

(8) *Comptroller responsibility.*

(a) The comptroller shall, on a monthly basis, summarize the reports received from department administrators concerning professional services contracts and send one (1) copy to the committee on finance, personnel and audit and one (1) copy to the county executive and one (1) copy to CBDP.

(b) The comptroller shall deny payment for any payment request for professional services submitted by a contractor to an administrator if all conditions of this chapter have not been met. The comptroller shall report such denials and the reason for denial to the committee on finance, personnel and audit along with the monthly report. In such cases, the administrator may appeal the decision to the committee on finance, personnel and audit.

(9) *Administrator responsibility.* It is the responsibility of the administrator, prior to permitting a professional services contractor to perform any work for the county, to comply with all sections of this chapter. Furthermore, no work shall be performed by any professional services contractor unless or until a written contract has been executed and signed by all appropriate officials.

(10) *Corporation counsel authority.*

(a) Any contrary provision of these ordinances notwithstanding, the corporation counsel may enter into a professional services contract to obtain the professional services without regard to the requirements of this section with respect to requests for proposals and prior county board approval, without regard to the goals and procedures established under chapter 42 of these ordinances and without regard to any other ordinance or resolution which would operate to constrain the corporation counsel's ability to enter into a professional services contract if the corporation counsel determines, in the exercise of the corporation counsel's professional judgment, (i) that such professional services are necessary to assist Milwaukee County to prepare for or prosecute litigation arising out of the enhanced pension benefits which became effective January 1, 2001 in order to assist the likelihood of success of the litigation, and (ii) that the interests of Milwaukee County require timely action and flexibility which preclude the delay inherent in the procedures prescribed in this section and in chapter 42 of these ordinances.

(b) The corporation counsel shall make every reasonable effort to comply with all the requirements of this section, chapter 42, and any other ordinance or resolution affecting professional service contracts to the extent that the circumstances of the litigation and protection of the interests of Milwaukee County permit.

(c) The corporation counsel shall provide a confidential report in a timely manner to the committee on judiciary, safety and general services with respect to any contract entered into under the authority of this subsection.