

# 2013 OUTLOOK & DBE PROGRAM UPDATE

*Presented by:*

*Milwaukee County*

*Community Business Development Partners  
Department (CBDP)*



**2013 Outlook &  
DBE Program Updates**

# GOAL

***The goal of this presentation is to provide the outlook and updates to Milwaukee County's Disadvantaged Business Enterprise\* (DBE) Program***

***\* Unless otherwise noted, the term DBE is applicable to both the Disadvantaged Business Enterprise (DBE) and the Airport Concession Disadvantaged Business Enterprise (ACDBE) Programs' requirements.***



**2013 Outlook &  
DBE Program Updates**

# OBJECTIVES

- **Overview** USDOT and County **regulations** governing our DBE Program
- **Communicate** USDOT **updates and their effects** on our DBE Program
- **Provide** a high level **overview of Program direction and new initiatives**



# **GOVERNING REGULATIONS**

## **Our DBE Program is in place to:**

- To ensure nondiscrimination in the award and administration of opportunities for Milwaukee County contracts as a result of receiving USDOT financial assistance;
- To create a level playing field on which DBEs can compete fairly for contracts governed by Milwaukee County;
- To ensure Milwaukee County's DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Parts 23 and 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in Milwaukee County opportunities for contracts;
- To provide appropriate flexibility in establishing and providing opportunities for DBEs; and
- To assist the development of firms that can compete successfully in the marketplace outside Milwaukee County's DBE Programs



# GOVERNING REGULATIONS

## **Our DBE Program is governed by County Ordinance**

Chapters 32, 42 and 56 of the Milwaukee County Code of General Ordinances detail the responsibilities on all DBE program functions and procedures including, but not limited to:

- Reviewing contract solicitations prior to advertisement to determine opportunities for DBEs to participate
- Assigning DBE participation goals on a contract-by-contract basis, where appropriate
- Monitoring DBE participation, payments and other aspects of compliance during the contract
- Recommending annual percentage requirements for DBE participation
- Recommending policies which encourage DBE participation



# UPDATES & THEIR EFFECTS

- **Improvements in the administration of the DBE Program require that we:**
  - Increase accountability for meeting overall goals
  - Modify and update certification requirements
  - Adjust personal net worth (PNW) for inflation
  - Expedite interstate certification
  - Add provisions to foster small business participation
  - Improve post-award oversight



# UPDATES & THEIR EFFECTS

## Termination of DBE Firms

- No substitutions/terminations of DBE sub without receipt of prior written consent from CBDP
- Requests for substitution/termination require good cause
- DBE must be notified at time of request for substitution/termination
- DBE must be allowed time to redress issues cited in notification



# UPDATES & THEIR EFFECTS

## **Good Cause – 49 CFR 26.53(f)(3)**

- DBE sub fails/refuses:
  - to execute contract
  - perform work consistent with normal industry standards
  - to meet reasonable bond requirements
- DBE sub ineligible:
  - to work on public works projects
  - to receive DBE credit for the type of work
- DBE firm unable to complete work
- DBE sub not a responsible contractor
- DBE sub voluntarily withdraws from the project
- Other documented good cause



# UPDATES & THEIR EFFECTS

Good cause does not exist:

- If the failure/refusal of DBE sub to perform work results from bad faith or discriminatory action of prime
- If prime seeks to terminate DBE to self-perform the DBE's portion of work, or to substitute another DBE or non-DBE, before, or after, contract award



# UPDATES & THEIR EFFECTS

## PNW Cap Increase

~~\$750K~~ -- \$1.32M

## Interstate Certification

State is to accept DBE certification from other states unless there is “good cause” not to accept it

## No Limit to Number of NAICS

Firm must demonstrate it can do the work and owner must demonstrate control



# UPDATES & THEIR EFFECTS

- WI UCP deny, reject or decertify must make an entry in USDOT Civil Rights' Ineligibility Determination Online Database
- WI UCP must check USDOT Civil Rights Website at least monthly



# UPDATES & THEIR EFFECTS

## REMINDER:

- Firms remain certified until, and unless removed, through 26.87 procedures



# UPDATES & THEIR EFFECTS

## **Monitoring and enforcement mechanism:**

- Must include a written certification that sponsor reviewed contracting records and monitored work sites
- May be conducted in conjunction with monitoring of contract performance for other purposes, i.e., labor compliance



# UPDATES & THEIR EFFECTS

**DBE Program must include element to facilitate competition by small business concerns:**

- Take all reasonable steps to eliminate obstacles to participation
- Must actively implement program elements to foster small business participation
- **Doing so is a requirement of good faith implementation of DBE program**
- These program elements must be race-neutral measures



# UPDATES & THEIR EFFECTS

**Element submitted to, and approved, by USDOT, and includes:**

- Establishing race-neutral small business set-aside for prime contracts under a stated amount
- On prime contracts with no DBE contract goals, require prime to provide subcontracting opportunities of a size that small businesses can reasonably perform
- For race-neutral portion of goal, ensuring that a reasonable number of prime contracts are of a size that small businesses can reasonably perform



# 2013 Outlook

- **More hands-on with contracts**
- **Implementing web-based compliance and notification system**
- **Engaging in more outreach activity and development opportunities**

