

ATTACHMENT A

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

1. The successful contractor/service provider shall comply with CFR 49 Part 23 and 26 and Chapter 42 of the Milwaukee County Ordinances, which requires Good Faith Efforts (GFE) to achieve participation of certified Disadvantaged Business Enterprise (DBE*) firms on all USDOT and Milwaukee County funded contracts with a DBE goal. In accordance with this Milwaukee County policy and USDOT requirements, the contractor/service provider shall ensure that DBEs have an opportunity to participate in this contract.

During Solicitation Process

2. The Milwaukee County Office of Community Business Development Partners (CBDP) will make the determination that a contractor/service provider has made a good faith effort (GFE) to achieve the established DBE participation goal by doing either of the following:
 - a. Show evidence that it has met the DBE participation goal by submitting a complete *Commitment to Subcontract with DBE Firms (DBD-014 form)* with their proposal; or
 - b. Documents that it made good faith efforts to meet the DBE participation goal, even though it did not succeed in achieving it. In this case, the contractor/service provider must submit the *Certificate of Good Faith Efforts (DBD-001 form)* and all relevant documentation with their proposal.
3. Contractors/service providers should note that for the purpose of determining compliance with DBE requirements, only DBEs that have been certified by the State of Wisconsin Unified Certification Program (UCP) prior to the proposal due date may be listed on the *Commitment to Subcontract with DBE Firms* form and counted towards the DBE requirements. If you need assistance related to certified DBE firms, contact CBDP at (414) 278-4747.
4. The efforts employed by the contractor/service provider should be those that one could reasonably expect to be taken if the contractor/service provider were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE participation contract goal. (49 CFR §26.53 and Appendix A to 49 CFR Part 26, which provides guidance regarding GFE).
5. In the event CBDP determines that the contractor/service provider has failed to meet the GFE requirements, the contractor/service provider is entitled to appeal this determination.

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

The provisions of 49 CFR §26.53(d) apply to such an appeal. A request for administrative reconsideration must be sent within three (3) calendar days of receiving written notice of the failure to meet the GFE requirement. The request should be sent to:

CBDP Office
City Campus, Room 830
2711 West Wells Street
Milwaukee, WI 53208

6. Contractor/service provider must submit with its proposal, the *Subcontractor/Subconsultant/Supplier Information Sheet (DBD-002 form)* and a complete *Commitment to Subcontract with DBE Firms (DBD-014 form)*. In the event the contractor/service provider is not able to meet the DBE goal, a complete *Certificate of Good Faith Efforts (DBD-001 form)* and all relevant documentation must be submitted with the proposal in addition to the aforementioned forms.
7. When evaluating a contractor/service provider's proposed DBE commitment (**DBD-014 form**), Milwaukee County reserves the right to request any documentation from both the contractor/service provider and the listed DBE subcontractors. If the information requested is not submitted by the contractor within the time specified for such submission, Milwaukee County may determine the contractor/service provider to be non-responsive and thereby remove them from further consideration for contract award.

Following Contract Award

8. The contractor/service provider shall prepare and submit accurate and timely forms and reports on DBE utilization after contract award. These shall include, but not be limited to *DBE Utilization Reports (DBD-016 form)*, and other forms as directed. Failure to submit forms and reports as prescribed herein, may result in delay of payments, or other sanctions deemed appropriate by the County, including those listed under Section (9), below.
9. When evaluating the performance of this contract after contract execution, Milwaukee County reserves the right to conduct compliance reviews and request, both from the contractor/service provider and DBE subcontractor(s), documentation that would indicate level of compliance. If the contractor/service provider is not in compliance with the specifications, the County will notify the contractor/service provider in writing of the corrective action that will bring the contractor/service provider into compliance. If the contractor/service provider fails or refuses to take corrective action as directed, Milwaukee County may take one or more of the actions listed below:
 - a. Terminate or cancel the contract, in whole or in part.
 - b. Remove the contractor/service provider from the list of qualified consultant/service providers and refuse to accept future proposals for a period not to exceed three (3) years.
 - c. Impose other appropriate sanctions, including withholding any retainage or other contract payments due which are sufficient to cover the unmet portion of the DBE contract commitment, where the failure to meet the DBE contract commitment is the

- result of a finding by CBDP of less than adequate good faith efforts on the part of the contractor/service provider.
- d. If the contractor/service provider has completed its contract, and the DBE contract commitment was not met due to an absence of good faith on the part of the contractor/service provider as determined under 49 CFR Part 26, the parties agree that the proper measure of damages for such non-compliance shall be the dollar amount of the unmet portion of the DBE contract commitment. The County may in such case retain any unpaid contract amounts and retainage otherwise due the contractor/service provider, up to the amount of the unmet DBE contract commitment. If insufficient funds remain in the contract account to compensate the County up to that amount, Milwaukee County may bring suit to recover damages up to the amount of the unmet commitment, including interest at the rate of 12% annually, plus the County's costs, expenses and actual attorney's fees incurred in the collection action.
10. **DBE Contract Goal:** Contractor/service provider shall utilize DBE firms to a minimum of the specified DBE contract goal. The DBE participation goal relative to contract award shall be based upon the approved *Commitment to Subcontract with DBE Firms (DBD-014 form)*. Contractors/service providers receiving additional work on the contract, e.g., change orders, addendums, etc., shall be expected to increase DBE participation proportionally.
11. Contractor/service provider shall be credited for expenditures to DBE firms toward the requirements, if all of the identified scope of work has a commercially useful function in the actual work of the contract and is performed directly by the listed certified DBE firm. CBDP, through the application of 49 CFR §26.55(c) will be responsible for the determination and evaluation of whether or not the firm is performing a commercially useful function on this project.
12. Contractor/service provider is required to notify CBDP if their DBE subcontractors will further subcontract out work on this project. Credit will be given based on actual participation by DBE firms.
13. Listing a DBE on the *Commitment to Subcontract with DBE Firms* form shall constitute a written representation and commitment that the contractor/service provider has communicated and negotiated directly with the DBE firm(s) listed, and that it will use the listed firm(s). If awarded the contract, the contractor/service provider will enter into a subcontract agreement with the DBE firm(s) listed on the Commitment to Subcontract with DBE Firms form for the work and price set forth thereon. This agreement must be submitted to CBDP within seven (7) days from the *Notice to Proceed*.
14. Contractor/service provider must maintain DBE participation and performance logs. If the DBE firm(s) cannot perform, or if the contractor/service provider has a problem in meeting the DBE goal, or any other problem relative to the DBE goal requirement, the contractor shall immediately contact CBDP at (414) 278-5248. If needed, contractor must submit a written request for substitution, including the reason for the request and the log. Approval must be obtained prior to making substitutions. Any difference in the cost occasioned by such substitution shall be borne by the contractor.

15. DBE Utilization Reports/Payment Request After Contract Award. A *DBE Utilization Report (DBD-016 form)* must be submitted with each payment request by the contractor/service provider after contract award. This report must cover the period from the start of the project to the end of the period covered by the payment request being submitted or the period since the last payment request. The report must be submitted even if no DBE activity took place during the period being reported. The County Project Manager/Administrator will reject payment requests that are not in compliance with this section.
16. Final Payment Verification. The contractor/service provider must submit the *DBE Payment Certification (DBD-018 form)* and the final *DBE Utilization Report* along with their Final Payment Request. The County Project Manager/Administrator will not process the Final Payment Request if these reports are not submitted.
17. Milwaukee County reserves the right to waive any of these specifications when it is in the best interest of the County and with the concurrence of CBDP.



MILWAUKEE COUNTY

COMMUNITY BUSINESS DEVELOPMENT PARTNERS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

1. All bidders/proposers shall comply with CFR 49, Parts 23 and 26, and Chapter 42 of the Milwaukee County Ordinances, which require all bidders/proposers to show Good Faith Efforts (GFE) toward achieving the assigned Disadvantaged Business Enterprise (DBE*) goal on all Milwaukee County contracts with a DBE goal. In accordance with Milwaukee County policies and USDOT requirements, the contractor/consultant shall ensure that DBEs have an opportunity to participate on this contract.
2. **DBE Contract Goal:** Contractor/consultant shall utilize DBE firms to a minimum of ___% of the total contract amount, or document the good faith efforts made to meet that goal, on this contract. The DBE participation goal relative to contract award shall be based upon the approved **Commitment to Contract with DBE (DBE-14)** form. Contractors/Consultants receiving additional work on the contract, e.g., change orders, addendums, etc., shall be expected to increase DBE participation proportionally.

DURING SOLICITATION PROCESS

3. The Milwaukee County Department of Community Business Development Partners (CBDP) will make the determination as to whether a contractor/consultant has made a good faith effort to achieve the assigned DBE participation goal by doing either of the following:
 - a. Evidencing that it has met the DBE participation goal by submitting with its bid/proposal a signed and notarized **Commitment to Contract with DBE (DBE-14)** form documenting sufficient DBE participation; or
 - b. Documenting the good faith efforts made to meet the DBE participation goal, even though it did not succeed in achieving the goal. In this case, the contractor/consultant shall submit the **Certificate of Good Faith Efforts (DBE-01)** and all relevant documentation, which will include a signed and notarized **Commitment to Contract with DBE (DBE-14)** form documenting the DBE participation achieved toward satisfying the goal, with its bid/proposal. CBDP is prohibited, under 49 CFR, Part 26, from ignoring *bona fide* good faith efforts when making determinations on requests for waiver of the DBE goal requirement, in whole or part. Good faith effort determinations shall be made by CBDP based upon contractor/consultant showing of good faith efforts on a contract-by-contract basis.
4. Contractor/Consultant shall submit with its bid/proposal, the completed **Subcontractor/Subconsultant/Supplier Information Sheet (DBE-02)** and signed and notarized **Commitment to Contract with DBE (DBE-14)** forms. In the event the contractor/consultant is not successful in meeting the DBE goal, a complete **Certificate of Good Faith Efforts (DBE-01)** and all relevant documentation shall be submitted with the bid/proposal in addition to the aforementioned forms.
5. The efforts employed by the contractor/consultant should be those that one could reasonably expect to be taken if the contractor/consultant were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE participation contract goal. (49 CFR, §26.53, and Appendix A to 49 CFR, Part 26, provide guidance regarding GFE).
6. In the event CBDP determines that the contractor/consultant has failed to meet the GFE requirements, the contractor/consultant is entitled to appeal this determination. The provisions of 49 CFR, §26.53(d), apply to such an appeal. A request for administrative reconsideration must be sent within three (3) days of receiving written notice of the failure to meet the GFE requirement. The request should be sent to:

Milwaukee County – City Campus
 CBDP, Room 830
 2711 West Wells Street
 Milwaukee, WI 53208

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



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7. Listing a DBE on the **Commitment to Contract with DBE (DBE-14)** form shall constitute a written representation and commitment that the contractor/consultant has communicated and negotiated directly with the DBE firm(s) listed, and that it will use the listed firm(s). If awarded the contract, the contractor/consultant will enter into a contract agreement with the DBE firm(s) listed on the **Commitment to Contract with DBE (DBE-14)** form for the work and price set forth thereon. This agreement must be submitted to CBDP within seven (7) days from receipt of the **Notice to Proceed**.
8. Contractors/Consultants should note that for the purpose of determining compliance with the DBE requirements of this contract, only DBEs certified by the State of Wisconsin Unified Certification Program (UCP) prior to the bid/proposal submission deadline will be counted towards the satisfaction of the assigned DBE goal. If a bidder/proposer wishes to utilize a DBE firm certified in another state for credit on this contract, the bidder/proposer shall include a copy of DBE certification from the home state along with its good faith efforts documentation upon submission of bid/proposal as a matter of responsiveness. If you need clarification or assistance related to certified DBE firms, contact CBDP at (414) 278-4747.
9. When evaluating a contractor/consultant's proposed DBE commitment, Milwaukee County reserves the right to request any documentation from both the contractor/consultant and any listed DBE firms. If the information requested is not submitted by the contractor/consultant within the time specified for such submission, Milwaukee County may determine the contractor/consultant to be non-responsive and thereby remove them from further consideration for contract award.

FOLLOWING CONTRACT AWARD

10. The contractor/consultant shall prepare and submit accurate and timely forms and reports on DBE utilization after contract award. These shall include, but not be limited to **DBE Utilization Report (DBE-16)** forms, and other forms as directed. Failure to submit forms and reports with requests for payment will result in denial of payment, or other sanctions deemed appropriate by the County, including those listed under Section (9), below.
11. When evaluating the performance of this contract after execution, Milwaukee County reserves the right to conduct compliance reviews and request, both from the contractor/consultant and the DBE firm(s), documentation necessary to verify actual level of DBE participation. If the contractor/consultant is not in compliance with these specifications, CBDP will notify the contractor/consultant in writing of the corrective action that will bring the contractor/consultant into compliance. If the contractor/consultant fails or refuses to take corrective action as directed, Milwaukee County may take one or more of the actions listed below:
 - a. Terminate or cancel the contract, in whole or in part;
 - b. Remove the contractor/consultant from the list of qualified contractors/consultants and refuse to accept future bids/proposals for a period not to exceed three (3) years;
 - c. Impose other appropriate sanctions, including withholding any retainage or other contract payments due which are sufficient to cover the unmet portion of the DBE contract commitment, where the failure to meet the DBE contract commitment is the result of a finding by CBDP of less than adequate good faith efforts on the part of the contractor/consultant; and/or
 - d. If the contractor/consultant has completed its contract, and the DBE contract commitment was not met due to an absence of good faith on the part of the contractor/consultant as determined under 49 CFR, Part 26, the parties agree that the proper measure of damages for such non-compliance shall be the dollar amount of the unmet portion of the DBE contract commitment. The County may in such case retain any unpaid contract amounts and retainage otherwise due the contractor/consultant, up to the amount of the unmet DBE contract commitment. If insufficient funds remain in the contract account to compensate the County up to that amount, Milwaukee County may bring suit to recover damages up to the amount of the unmet



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commitment, including interest at the rate of 12% annually, plus the County's costs, expenses and actual attorney's fees incurred in the collection action.

12. Contractor/Consultant shall be credited for expenditures to DBE firms toward the requirements, if the entire identified scope of work has a commercially useful function in the actual work of the contract and is performed directly by the listed DBE firm. CBDP, through the application of 49 CFR, §26.55(c), will be responsible for the determination and evaluation of whether or not the firm is performing a commercially useful function on this project.
13. Contractor/consultant is required to notify CBDP if its DBE contractor(s) will further subcontract out work on this project. Work will be credited based on actual participation by DBE firms.
14. Contractor/Consultant must maintain DBE participation and performance logs. If the DBE firm(s) cannot perform, or if the contractor/consultant has a problem in meeting the DBE goal, or any other problem relative to the DBE goal requirement, the contractor/consultant shall immediately contact CBDP at (414) 278-5248. If needed, contractor/consultant must submit a written request for substitution, including the reason for the request and the log, to its DBE contractor and forward a copy to CBDP. Approval must be obtained from CBDP prior to making substitutions. Any difference in the cost occasioned by such substitution shall be borne by the contractor/consultant.
15. **Requests For Payment:** A ***DBE Utilization Report (DBE-16)*** form shall be submitted with each payment request by the contractor/consultant after contract award. This report must cover the period covered by the request for payment being submitted. This report must be submitted even if no DBE activity took place during the period being reported. The County Project Manager/Administrator will reject requests for payment that are not in compliance with this section.
16. **Final Payment Verification.** The contractor/consultant shall submit the ***Contract Close-Out DBE Payment Certification (DBE-18)*** and the final ***DBE Utilization Report (DBE-16)*** along with its final request for payment. The County Project Manager/Administrator will not process the final request for payment if these required reports are not included.
17. Milwaukee County reserves the right to waive any of these specifications when it is in the best interest of the County and with the concurrence of CBDP.

Disadvantaged Business Enterprise (DBE) Bid/Proposal Submission Requirements Checklist

- **Submit with your Bid/Proposal** the Subcontractor/Subconsultant/Supplier Information Sheet (DBD-002 form), and the Commitment to Subcontract with DBE Firms (DBD-014 form); or, if the goal is not attained, a Certificate of Good Faith Efforts (DBD-001 form) and all relevant documentation for Good Faith Effort determination.
- DBE utilization credited towards satisfying the desired level of DBE participation on this project is calculated using the following criteria, and is further described in 49 CFR §26.55:
 - One hundred percent (100%) of expenditures to DBE firms if all of the identified scope of work has a **commercially useful function in the actual work of the contract** and is performed directly by the listed certified DBE firm. A DBE firm cannot subcontract work to non-DBE firms and must perform the work with its own forces to be considered as performing a commercially useful function. CBDP will determine whether or not the firm is performing a commercially useful function.
 - One hundred (100%) percent for **all work performed by the DBE subcontractor with its own forces**. If a DBE further subcontracts a portion of its work to another firm, the value of the subcontracted work will only be credited if performed by another DBE firm. The prime contractor will be given credit for the cost of materials and supplies obtained by the DBE for their work on the contract. The prime contractor will also be given credit for the cost of leasing equipment, provided the DBE subcontractor does not lease the equipment from the prime contractor or its affiliates.
 - One hundred percent (100%) of the **expenditures to DBE manufacturers**. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises goods from raw materials, or substantially alters the materials or supplies obtained by the contractor.
 - Sixty percent (60%) of the **expenditures for materials or supplies purchased from a certified DBE regular dealer**, i.e., business that sells from available inventory or stock on-hand. Brokers are not regular dealers.
 - One hundred percent (100%) for the **fees or commissions charged for assistance in the procurement of materials and supplies, i.e., brokered deals**. A prime contractor shall also be credited with one hundred (100%) percent for **fees or transportation charges for the delivery of materials or supplies by a DBE to a job site**, provided that the County determines that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies will not be credited.
 - DBE credit will be given based on actual payments to DBEs for their services on this project.
- In calculating the bid, **prime contractors must demonstrate that they have secured actual costs from DBEs for subcontracting work in anticipation of bid award.**
- **Listing a DBE on the Commitment to Subcontract with DBE Firms form shall constitute a written representation and commitment that the prime contractor has communicated and negotiated directly with the DBE firm(s) listed, and that it will use the listed firm(s).** If awarded the contract, the prime contractor will enter into a subcontract agreement with the DBE firm(s) listed on the Commitment to Subcontract with DBE Firms form for the work and price set forth thereon. This agreement must be submitted to CBDP within seven (7) days from receipt of the Notice to Proceed.
- **Only DBEs that are certified, i.e., listed on the Wisconsin Uniform Certification Program Directory, prior to the bid opening will be counted towards satisfying the desired level of DBE participation on this project.** WI UCP Directory = www.county.milwaukee.gov/cbdp – click on “Certified Vendor List” on the left side of the page, click on “WisDOT Unified Certification Program Directory of Certified DBEs” link. **For further assistance please use the contact information listed below.**

DBE TRUCKING COMPANIES MUST USE THEIR OWN TRUCKS (OWNED/LEASED) FOR DBE CREDIT APPROVAL



COMMUNITY BUSINESS DEVELOPMENT PARTNERS MILWAUKEE COUNTY

COMMITMENT TO CONTRACT WITH DBE

ADDITIONAL INFORMATION/REQUIREMENTS:

1. This form is to be completed by the bidder/proposer (Bidder/Proposer Commitment section) and the intended DBE contractor (DBE Affirmation section) for inclusion in the bid/proposal submission.
2. The Directory of Certified DBE firms eligible for credit toward the satisfaction of this project's DBE goal will be found at the following link, and can be searched by Name and/or NAICS code.
<https://app.mylcm.com/wisdot/Reports/WisDotUCPDirectory.aspx>
3. **ALLOWANCES:** During the course of this project you will be using portions of the allowance, which was initially deducted from your contract when you figured out your DBE requirement. As the allowance is used on the project, it is to be added back into the total contract price. An exception would be if the allowance being used is such that the DBE(s) cannot handle any portion of the work, the total contract amount should remain the same. In this case, it is necessary for the prime contractor/consultant to contact CDBP immediately by phone and provide the dollar amount involved and the reasoning for DBEs not being utilized. In addition, a follow-up letter documenting the information is required.
4. **CHANGE ORDERS:** Any prime contractor/consultant receiving additional work on the contract, e.g., change orders, addendums, etc., is required to increase the amount of DBE participation proportionally. Any time you receive additional work of any type, the prime contractor/consultant is required to contact CDBP.
5. **WRITTEN CONTRACTS WITH DBEs:** CDBP requires that prime contractors/consultants enter into contract, directly or through subcontractors, with the DBE(s) specifying the work to be completed and the dollar amount as indicated in this form. Agreements must be submitted to CDBP within 7 days of receipt of the Notice To Proceed. ***By executing the above affidavit, your company is certifying, under oath, that you have had contact with the named DBE firm(s), that the DBE firm(s) will be hired, and that the DBE firm(s) will participate to the extent indicated in performance of the contract. VIOLATION OF THE TERMS OF THIS AFFIDAVIT IS GROUNDS FOR TERMINATION OF YOUR CONTRACT.***
6. **SUBSTITUTIONS, DBEs FURTHER SUBCONTRACTING WORK, TRUCKING FIRMS:** The prime contractor/consultant must submit written notification of desire for substitution to the DBE affected, and forward a copy to CDBP, specifying the reason for the request. Any DBE so notified has five (5) business days to provide written objection/acceptance to the prime making the notification. The "right to correct" must be afforded any DBE objecting to substitution/termination for less than good cause as determined by CDBP (Refer to 49 CFR §26.53). **Approval must be obtained from CDBP prior to making any substitutions.** DBE contractors are also required to notify and obtain approval from CDBP when further subcontracting out work on this project. In the case of DBE trucking firms, credit will be given for trucks leased from other DBE firms; however, if the DBE leases trucks from non-DBE firms, only the commission or fee will be counted for DBE crediting.
7. **REQUESTS FOR PAYMENT:** Contractor/Consultant must indicate on the Continuation Sheet the work being performed by DBEs by either a) placing the word "DBE" behind the work item or b) breaking out the work done by DBEs at the end of the report. Prime contractor/consultant shall notify DBEs of the date on which they must submit their invoices for payment.
8. **DBE UTILIZATION REPORTS:** A DBE Utilization Report (DBE-16) must be submitted with each request for payment for the period's activity, even if no activity takes place during the period being reported. **Payments will be withheld from all prime contractors/consultants not in compliance.**

If you have any questions or concerns related to Milwaukee County's DBE Program, please contact
Mark Phillips / mark.phillips@milwcnty.com / 414.278.5104

