

# Wisconsin Unified Certification Program Master Agreement

## Wisconsin UCP Certifying Partners

# 2013



### Wisconsin UCP Certifying Partners:

- City of Madison
- Dane County
- Milwaukee County
- Wisconsin Department of Transportation

#### REVISION DATES:

INITIAL DRAFT:	28 February 2002
INITIAL USDOT SUBMISSION:	5 March 2003
1 <sup>ST</sup> REVISED DRAFT:	8 March 2013
INTERIM REVISION:	1 August 2013
LAST REVISED:	31 January 2014

## TABLE OF CONTENTS

<b>PREAMBLE</b>	<b>2</b>
<b>1. AUTHORITY AND PURPOSE</b>	<b>2</b>
<b>2. DELEGATION OF CERTIFICATION AUTHORITY</b>	<b>2</b>
<b>3. UNIFIED CERTIFICATION PROGRAM PARTICIPANTS</b>	<b>3</b>
<b>4. DEFINITIONS</b>	<b>3</b>
<b>5. CERTIFYING AUTHORITY INDEPENDENCE</b>	<b>4</b>
<b>6. COMMITTEE</b>	<b>4</b>
<b>7. CERTIFICATION AUTHORITY</b>	<b>6</b>
<b>8. ADMISSION OF NEW CERTIFYING AUTHORITIES</b>	<b>8</b>
<b>9. PEER REVIEW</b>	<b>8</b>
<b>10. COMMUNICATION</b>	<b>8</b>
<b>11. CERTIFICATIONS, AMENDMENTS AND MAINTENANCE</b>	<b>9</b>
<b>12. DBE DIRECTORY</b>	<b>10</b>
<b>13. DENIAL OF INITIAL REQUEST FOR CERTIFICATION</b>	<b>10</b>
<b>14. REMOVAL OF CERTIFICATION</b>	<b>10</b>
<b>15. WAITING PERIOD FOLLOWING DENIAL OF CERTIFICATION</b>	<b>12</b>
<b>16. OUT-OF-STATE FIRMS</b>	<b>12</b>
<b>17. RECIPROCITY WITH ENTITIES OUTSIDE OF THIS STATE</b>	<b>12</b>
<b>18. FEES AND COSTS</b>	<b>12</b>
<b>19. THIRD PARTY RIGHTS</b>	<b>12</b>
<b>20. IMMUNITY</b>	<b>13</b>
<b>21. TERMINATION OF AGREEMENT</b>	<b>13</b>
<b>22. SEVERABILITY</b>	<b>13</b>
<b>23. SIGNATURES</b>	<b>14</b>
<b>ATTACHMENTS:</b>	
<i>NON-CERTIFYING PARTICIPANTS TO THE WISCONSIN UCP</i>	<b>18</b>
<i>THE NORMAN MATRIX: WISCONSIN UCP CERTIFICATION APPLICATION REVIEW AUTHORITY</i>	<b>19</b>
<i>STAFFING AND RESOURCING OF DBE FUNCTION OF EACH CERTIFYING AUTHORITY</i>	<b>20</b>
<b>STATE &amp; LOCAL STATUTES INCLUDING REFERENCE TO THE DBE PROGRAM AND UCP</b>	
<i>WISCONSIN ADMINISTRATIVE CODE 84.072</i>	<b>24</b>
<i>WISCONSIN ADMINISTRATIVE CODE 84.076</i>	<b>27</b>
<i>MILWAUKEE COUNTY CODE OF GENERAL ORDINANCES CHAPTER 42</i>	<b>29</b>

## **Preamble**

This agreement, between the Wisconsin recipients of U.S. Department of Transportation (“USDOT”) financial assistance expended through the programs of its operating administrations, defines the creation of the Wisconsin Unified Certification Program and the rights and obligations of the recipients under that program. Details concerning implementation processes and procedures will be developed and set forth in a separate implementation and operating agreement following USDOT approval of the Wisconsin Unified Certification Program.

### **Section 1: Authority and Purpose.**

In accordance with 49 CFR 26.81, every recipient of federal aid from USDOT in this state must participate in a Unified Certification Program (“UCP”). Currently, there are only four entities within Wisconsin that grant certification for purposes of 49 CFR Parts 23 and 26. These entities are the City of Madison, the Counties of Dane and Milwaukee, and the Wisconsin Department of Transportation. The certifying authorities and the recipients listed in Attachment 1 desire to enter into this agreement to ensure compliance with 49 CFR 26, subparts D and E and 49 CFR Part 23 Subpart C, and to set forth their respective performance responsibilities and financial obligations. Each certifying authority and signatory below agrees to accept only certifications granted under this agreement for purposes of 49 CFR Parts 23 and 26. This agreement is consistent with the certification standards and procedures set forth in 49 CFR Parts 23 and 26.

### **Section 2: Delegation of Certification Authority.**

The four certifying authorities have agreed to create a committee comprised of one representative from each of their respective agencies to oversee the operation of the UCP. WisDOT hereby authorizes the certifying authorities to grant certifications under this agreement. WisDOT shall reaffirm this authorization in writing to the Committee, unless the Secretary of USDOT directs the Secretary of WisDOT to dissolve this agreement, or unless the UCP is dissolved as otherwise provided in this agreement.

### **Section 3: Unified Certification Program participants.**

CERTIFYING PARTICIPANTS: The following are recipients of USDOT financial assistance expended through the programs of FAA, FHWA or FTA, that will grant certifications under the UCP:

- A. Wisconsin Department of Transportation.
- B. City of Madison, Wisconsin.
- C. County of Dane, Wisconsin.
- D. County of Milwaukee, Wisconsin.

### **Section 4: Definitions**

Words used in this agreement have their meanings given in 49 CFR 26.5, unless given a different meaning by this section.

In this agreement:

- a) “Agreement” means this document.

- b) “Application” means an application submitted for certification under this agreement as a Disadvantaged Business Enterprise under 49 CFR 26 and/or as an Airport Concession Disadvantaged Business Enterprise under 49 CFR Part 23.
- c) “Certification” means certification of a firm as a Disadvantaged Business Enterprise under 49 CFR Part 26 and/or as an Airport Concession Disadvantaged Business Enterprise under 49 CFR Part 23.
- d) “Certifying authority” means a recipient that grants certification under this agreement. As of the date this agreement is executed, the following recipients are certifying authorities:
  - a. Wisconsin Department of Transportation.
  - b. City of Madison, Wisconsin.
  - c. County of Dane, Wisconsin.
  - d. County of Milwaukee, Wisconsin.
- e) “CFR” means the Code of Federal Regulations.
- f) “Committee” means the Wisconsin Unified Certification Program Committee established under section 6 of this agreement.
- g) “DBE” means disadvantaged business enterprise, and also includes airport concession disadvantaged business enterprise.
- h) “FAA” means the Federal Aviation Administration.
- i) “FHWA” means the Federal Highway Administration.
- j) “FTA” means the Federal Transit Administration.
- k) “Recipient” means any entity, public or private, to which USDOT financial assistance is expended, whether directly or through another, through the programs of FAA, FHWA or FTA, or who has applied for such assistance.
- l) “UCP” means the Wisconsin Unified Certification Program approved by USDOT.
- m) “USDOT” means the United States Department of Transportation.
- n) “WisDOT” means the Wisconsin Department of Transportation.

## **Section 5: Certifying Authority Independence**

Each certifying authority will continue to administer its own DBE Program, but shall use the forms, guidelines, and procedures in its certification process in compliance with 49 CFR parts 23 and 26. The certifying authorities will make all certification determinations on behalf of the UCP. The certifying authorities will ensure that applicants are afforded “one-stop shopping” under the guiding principle that certification granted by any one certifying authority constitutes certification by all. Certification decisions by the UCP shall be binding on all USDOT recipients within the State of Wisconsin.

## **Section 6: Committee**

### **(1) CREATION:**

The Wisconsin Unified Certification Program Committee is hereby created to implement and administer the Wisconsin Unified Certification Program.

### **(2) MEMBERS:**

Each certifying authority shall appoint its DBE Program Liaison Officer designated under 49 CFR 26.25 and 49 CFR Part 23.23, or his or her designee, to serve on the committee. Only recipients that are certifying authorities may appoint a member to the Committee.

**(3) CHAIRPERSON:**

A committee member serving as chairperson shall head the Committee. The chairperson shall serve a term not to exceed one year. No certifying authority may have its committee member serve a second term as chairperson until each certifying authority has had its committee member serve as chairperson, or has declined to serve as chairperson.

**(4) MEETINGS:**

a) The Committee shall meet at least once every 60 days. The 60-day period begins to run at the conclusion of each meeting. Each certifying authority in the following order shall choose the time and location of each meeting:

1. WisDOT.
2. City of Madison.
3. County of Dane.
4. County of Milwaukee.

Any certifying authority not listed in this section shall choose the time and location of the meeting based on the order in which they became certifying authorities.

b) If a certifying authority does not convene a meeting within the 60-day period for which it is responsible, the right to convene the next meeting shall pass to the next certifying authority.

**(5) MEANS OF ACTING:**

a. A majority of the membership of the Committee constitutes a quorum to conduct business; except as specifically provided elsewhere in this agreement, a majority of a quorum may act in any matter within the jurisdiction of the Committee. In the event of a tie vote the question shall fail.

b. Only the unanimous agreement of all Committee members may amend this agreement.

**(6) REQUIRED ACTIONS.** The Committee shall do all of the following:

- a) Seek to ensure that the Wisconsin UCP complies with all aspects of 49 CFR Parts 23 and 26 as applicable.
- b) Monitor and review on an annual basis the certification practices and procedures used by each certifying authority to ensure compliance with 49 CFR Parts 23 and 26 as applicable.
- c) Agree that WisDOT will make available a system for processing and tracking certification applications and will host the official UCP directory.
- d) Prescribe the North American Industry Classification System (NAICS) as the required system for certifying authorities to use when assigning DBE-certified work areas.
- e) Maintain a uniform minimum waiting period in accordance with 49 CFR Part 26.86(c).
- f) Prescribe certification-related forms, guidelines and procedures to be used by all certifying authorities. Each certifying authority shall procure at its own cost any forms prescribed under this agreement. Each certifying authority shall use the form(s), guideline(s) and procedure(s) as agreed upon by the Committee.

- g) Require all certifying authorities to cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations and implement directives of USDOT and its operating administrations related to certification.
- h) Ensure that the UCP established under this agreement has sufficient resources and expertise to carry out the requirements of 49 CFR Parts 23 and 26 through unified actions and support.
- i) Establish criteria for the admission of new certifying authorities to the UCP.
- j) Ensure continued efficient operation of the UCP, including the following actions: monitoring the regulatory environment, maintaining awareness and striving for timely compliance with regulatory changes; monitoring continuity of the certification process; resolving disputes between and among the certifying authorities; ensuring that certification determinations are made within 90 days after receiving a complete application from the applicant as required by 49 CFR Parts 23 and/or 26, or within the time period prescribed by the controlling federal law; ensuring the integrity of the certification, application review and certification appeal processes; and providing centralized communication with USDOT.
- k) Each certifying authority within this UCP maintains training records for its certifying staff and will strive to record or document best practices. The Committee will establish processes for initiating and coordinating education and training among certifying authorities, recipients, firms and the public.

**(7) *TERMINATION OF MEMBERSHIP:***

Any committee member shall cease to be a member if the recipient that the committee member represents ceases to be a certifying authority, or loses USDOT approval of its program under 49 CFR Parts 23 and 26.

**Section 7: Certification Authority**

**(1) *MANDATORY SERVICE:***

A certifying authority must process all applications received from a firm that has its principal place of business within the certifying authority's geographic service area or forwarded to it under sub. (4), barring any conflict of interest.

**(2) *ONE-STOP SHOP PRINCIPLE:***

A firm may submit an application for certification to any certifying authority. The certifying authority that receives the application will review the application, or depending on considerations of location, resources and expertise, will forward the application to another certifying authority as provided in sub. (4). In either event, the certifying authority involved at any step of the process will ensure that the applicant firm receives a formal, dated acknowledgment of its application both at the point of receipt or at any point where an application is forwarded from one certifying authority to another. Once certification is granted, every recipient statewide will honor that certification.

**(3) PERMISSIVE SERVICE:**

A certifying authority may process an application received from a firm having its principal place of business located anywhere in this state, or may forward the application to another certifying authority as provided in sub. (4). Notwithstanding the geographic service areas, a certifying authority may grant certification to firms wishing to perform work on projects assisted by the FAA, FHWA, or FTA as specified.

**(4) SERVICE AREAS DEFINED:**

The geographic service areas and transportation modal areas for each certifying authority are described below and outlined in Attachment 2, “The Norman Matrix: Illustration of Certification Service Areas under Wisconsin UCP.”

- a) Dane County shall provide certification-related services to firms located in Dane County, and shall process only applications submitted by firms interested in working on projects assisted by the FAA, except that Dane County shall process applications from airport concessionaires located anywhere in this state. For airport concessionaires located outside Dane County, WisDOT shall conduct on-site visits for Dane County.
- b) WisDOT shall provide certification-related services to firms located anywhere in this state, except that WisDOT may forward to the appropriate certifying authority any application submitted by a firm whose principal place of business is located in the mandatory service area of another certifying authority, subject to sub. (4). WisDOT shall process applications submitted by firms interested in working on projects assisted by the FAA, FHWA or FTA, except that WisDOT will forward applications for certification for airport concessionaires to the appropriate certifying authority.
- c) The City of Madison shall provide certification-related services to firms located in Dane County, and shall process only applications submitted by firms interested in working on projects assisted by the FTA.
- d) The County of Milwaukee shall provide certification-related services to firms located in the following six county areas: Milwaukee, Waukesha, Ozaukee, Racine, Kenosha and Washington. The County of Milwaukee shall process applications submitted by firms interested in working on projects assisted by the FAA, FHWA, or FTA. The County of Milwaukee shall process applications for airport concessionaires located anywhere in this state. For airport concessionaires located outside the six county service area, WisDOT shall conduct on-site visits for Milwaukee County.

**(5) REFERRALS:**

If a certifying authority elects not to process an application submitted from outside its mode or geographic service area, the certifying authority shall forward the application in a timely manner to another certifying authority that will process the application. Dane County and Milwaukee County may forward applications from airport concessionaires to one another with the consent of the other. A referral of an applicant does not alter the requirements of 49 CFR Parts 23 and 26 regarding the time allowed to render certification decisions.

### **Section 8: Admission of new Certifying Authorities**

The Committee at any time may admit a new certifying authority that commits to staffing a certification unit capable of meeting the guidance of this agreement, and complying with the requirements of 49 CFR Parts 23 and/or 26. Upon admission, the agency, city, village, town or county shall execute this agreement and shall designate a committee member.

### **Section 9: Peer Review**

If any recipient in this state believes that a certifying authority is not complying with the requirements of 49 CFR Parts 23 and 26, with guidance provided by USDOT, FAA, FHWA, FTA, the Committee, or not complying with any part of this agreement, that recipient may file a written complaint to the Committee chairperson. The Committee chairperson shall provide a copy of the complaint to the committee member of the certifying authority named in the complaint. The Committee shall investigate the complaint, and shall provide the certifying authority an opportunity to present its position and any evidence. If after investigation, the Committee determines that a certifying authority is not in compliance with 49 CFR Parts 23 and 26, with guidance provided by USDOT, FAA, FHWA, FTA, the Committee, or with any part of this agreement, the Committee may take any of the following actions:

1. Issue a formal, written determination of the issues and findings concerning that authority's certification procedures or practices, together with recommendations of the change(s) necessary to achieve compliance.
2. Require oversight and concurrence of the certifying authority's certification procedures and/or determinations for a specified period. This section 9 (2) applies only if action taken under section 9 (1) has proven inadequate to conform a certifying authority's actions to 49 CFR Parts 23 and 26, to guidance provided by USDOT, FAA, FHWA, FTA, the Committee, or to any part of this agreement.
3. Revoke a certifying authority's right to grant certification under the UCP. This revocation applies only if actions taken under section 9 (1) and (2) have proven inadequate to conform a certifying authority's actions to 49 CFR Parts 23 and 26, to guidance provided by USDOT, FAA, FHWA, FTA, the Committee, or to any part of this agreement.

### **Section 10: Communication.**

1. All requests to inspect, copy or receive copies of records are subject to 49 CFR Part 26.109. Notwithstanding subparagraph (1), no person may disclose to any person information that relates to an applicant's net worth, statement of experience, or a firm's financial statement, including the gross receipts of a bidder, or that relates to any documentation submitted in support of those statements, if the information was obtained for purposes of complying with 49 CFR Parts 23 and/or 26, except as authorized under 49 CFR 26.67.
2. Each certifying authority shall securely maintain all applications for certification and all records concerning certification at its own place of business and at its own expense.
3. Each certifying authority shall keep the following contact information current at all times and shall correct the contact information whenever necessary by providing written notice to the chairperson



of the Committee. Persons may use the following contact information for communication concerning the UCP:

- a) City of Madison, Department of Civil Rights, Affirmative Action Division,  
City County Building, Room 523,  
210 Martin Luther King, Jr. Blvd., Madison, WI 53703,  
Phone: (608) 266-4910, Fax (608) 266-6514.
- b) County of Milwaukee, Community Business Development Partners Department,  
Milwaukee County - City Campus,  
2711 W. Wells St., Room 830, Milwaukee, WI 53208,  
Phone: (414) 278-4747, Fax: (414) 223-1958.
- c) Dane County, Office of Equal Opportunity,  
City-County Bldg. Room 421,  
210 Martin Luther King, Jr. Blvd., Madison, WI 53703,  
Phone: (608) 266-5623, fax: (608) 266-2643.
- d) Wisconsin Department of Transportation,  
Office of Business Opportunity & Equity Compliance,  
4802 Sheboygan Avenue Room 451, P.O. Box 7965, Madison, WI 53707-7965,  
Phone: (608) 266-6961, fax: (608) 267-3641.

4. USDOT will be notified immediately if the UCP is dissolved.

**Section 11:** Certification Maintenance

This section refers to a firm's initial certification, NAICS code expansion or removal of NAICS codes and certified work area descriptions, and changes to a firm's ownership.

- (1) A Certifying authority may transfer the file of a currently-certified DBE firm seeking a request for expansion of its certification to become an airport concessionaire to the most appropriate authority identified in Attachment 2, *the Norman Matrix*. All certification determinations shall conform to 49 CFR Parts 23 and 26, USDOT guidance provided by FAA, FHWA and/or FTA.
- (2) The certifying authority that grants initial certification shall process all requests for expansion of certification, review all material changes to the firm, and ensure continued eligibility of, the certification of that firm.
- (3) Transfer of DBE Applications among UCP Partners is permissible under the following circumstances.
  - (a) The DBE applicant firm must request the transfer in writing to support the transfer of confidential information.
  - (b) The request must state the reason for transfer request.
  - (c) The transfer request must be addressed to both of the certifying authorities affected by the transfer, i.e., the sending certifying authority and receiving certifying authority.
  - (d) Both certifying agencies? must agree to the transfer. Currently recognized reasons to approve an application transfer may include:

- Better alignment of the DBE firm's approved NAICS code(s) with the certifying authority's contracting opportunities; or
- Apparent conflict of interest.

### **Section 12: DBE Directory**

This committee shall ensure to the greatest extent possible the maintenance of a unified DBE directory for all firms certified under this agreement, consistent with 49 CFR sections 23.31, 26.31 and 26.81 (g). Currently, WisDOT is the custodian of the UCP directory.

### **Section 13: Denial of initial requests for certification.**

When a certifying authority has cause to deny the initial request for certification it shall issue a notice of intent to deny certification and shall afford the applicant an opportunity to appeal to USDOT. The notice of intent to deny shall state the reasons for the proposed denial, the address where the firm should send any appeal and a description of the appeals process.

### **Section 14: Removal of certification.**

#### ***(1) THIRD-PARTY CHALLENGES AND UCP MEMBER -INITIATED PROCEEDINGS***

This provision offers a way for interested parties to inform the Wisconsin UCP of their suspicions related to a DBE's certification, including, but not limited to business ownership, transfer of control to or from a non-qualified individual, or personal net worth, and gross receipts that have exceeded the requirements.

Any complainant may file a written complaint with any certifying authority alleging that a firm granted certification is ineligible for the certification. The certifying authority receiving the complaint will review the UCP Directory to identify and forward the complaint to the appropriate certifying authority for an initial written response.

A certifying authority shall accept and acknowledge in writing any written complaint that is signed and that is sufficiently specific to identify the alleged reasons for removal of certification. Upon receiving such a complaint, the certifying authority shall forward the complaint to the Committee via email in a timely manner.

The certifying authority may request additional documentation from the complainant. The certifying authority will conduct an investigation. Upon completing its investigation, the certifying authority shall present its findings and recommendations to the Committee. Following the presentation of evidence, the Committee members shall deliberate to accept or reject the findings and recommendations in accordance with Section 6 (5) of this agreement, and shall issue a written determination to the certifying authority whose responsibility it will be to notify the complainant. Upon receiving a substantiated complaint to remove certification, the UCP shall conduct a hearing in the manner provided under 49 CFR 26.87. The identity of a complainant shall be kept confidential at all times, unless the complainant waives that confidentiality.

**(2) INFORMAL HEARINGS.**

- a. Upon receiving a request for an informal hearing from a certifying authority, the UCP Committee Chair shall schedule an informal hearing on the matter, and shall provide written notice of the hearing to the appellant and to the certifying authority whose determination resulted in the request for an informal hearing. The UCP Committee Chair shall also notify the other certifying authorities of the appeal, and of the time and place for the informal hearing.
- b. The UCP Committee Chair shall appoint a panel to deliberate at the conclusion of the hearing and to vote. The Committee chair shall serve as chairperson of the panel. For hearings concerning removal of eligibility under 49 CFR 23.39 and/or 26.87, if the UCP Committee Chair participated in the activities of the Committee or has personal knowledge of any relevant facts, the WisDOT General Counsel will serve as the default to appoint the panel and its chairperson. The Chair shall ensure that a representative of the certifying authorities whose determination is not being heard serves on each panel convened for a hearing and does vote. The panel shall consist of an odd number of individuals, each of whom must be qualified under 49 CFR 26.87.
- c. The requirements of 49 CFR Section 26.87 (d) and (e) to conduct the informal hearings shall be followed. The certifying authority whose determination is appealed shall present the reasons for the proposed decertification, but may not participate in the deliberations after the hearing. The appellant firm will be given the opportunity to appear in person to state the reasons that he or she believes the firm remains eligible for certification. Absent a compelling reason and barring a conflict of interest, the panel shall consider all information presented as part of the record, and may consider new information provided at the hearing. The grounds for a decision to decertify shall be consistent with 49 CFR 26.87 (f).
- d. Each panel member must vote and the decision of a majority of votes cast constitutes the decision of the panel.

**(3) CONCESSIONAIRES**

An informal hearing concerning an airport concessionaire shall include a certifying authority knowledgeable and experienced with 49 CFR Part 23 subpart C regarding airport concessionaires.

**(4) FINAL DETERMINATIONS**

The UCP Committee shall, in writing, notify the certifying authority whose determination was heard of any determination made following a hearing, including the vote count. Upon receiving the notice, the notified certifying authority shall send the firm a final administrative decision that states the UCP determination.

**(5) STATUS OF FIRM PENDING A HEARING DETERMINATION.**

A firm retains its certification during the pendency of any proceeding to remove its certification.

**(6) OTHER HEARING PROCEDURES ARE PROHIBITED**

No certifying authority may conduct a removal of certification hearing described in 49 CFR 26.87 except as provided in this section.

**Section 15: Waiting period following denial or removal of certification**

No certifying authority may process an application submitted by a firm that has been previously denied certification or decertified by a certifying authority that is a party to this UCP agreement until six months after the notice of the determination or the period of time established by the Committee.

**Section 16: Out-of-State firms**

A certifying authority that reviews an application from a firm whose principal place of business is located outside this state shall require the firm to obtain certification under 49 CFR Parts 23 and/or 26 from the UCP located in the state in which the firm maintains its principal place of business before the certifying authority considers the application.

**Section 17: Reciprocity with entities outside this state**

No certifying authority may enter into an agreement with a UCP in another state or region if the effect of that agreement binds other certifying authorities or recipients in this state, unless the Committee unanimously approves the agreement.

**Section 18: Fees and costs**

- (1) Each certifying authority may charge an applicant only the reasonable fee established for processing an application for certification, expansions, or 5-Year Updates.
- (2) Each certifying authority shall bear its own costs incurred acting under this agreement.
- (3) Certifying authorities may enter into cooperative agreements to provide in-kind services to one another to enhance the actions taken under this agreement.

**Section 19: Third party rights.**

No provision in this agreement is intended to create any right or expectation in any third party, including subcontractors, enforceable at law or in equity or any other proceeding against any signatory to this agreement, its officers, board, subsidizers, employees, agents or assignees.

**Section 20: Immunity**

Because the certifying authorities are, and remain separate political subdivisions, public agencies, airports or transit authorities, each shall be immune from and not assume liability for the actions taken by any other legal entity, including the certifying authorities. In the event that any lawsuit or claim names a certifying authority as a party, the certifying authority shall be responsible for any suits or claims brought by third parties or resulting from a determination that it rendered or an action that it took. Should any claim or suit require the assistance or resources of the Wisconsin UCP, the Wisconsin UCP, acting through the certifying authorities, whenever practicable, may provide assistance in the preparation

for the suit or claim. The certifying authorities do not assume liabilities other than those expressly stated in this agreement. Nothing in this provision shall be interpreted to waive sovereign immunity.

**Section 21: Termination of agreement**

This agreement terminates on the date on which federal law does not require, as a condition of using federal funds, this state to maintain such agreements for the participation of disadvantaged businesses in projects using federal funds.

**Section 22: Severability**

The provisions of this agreement are severable. If any provision of this agreement is invalid, or if the application to any person, authority or circumstance is invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**Section 23: Signatures.**

IN WITNESS WHEREOF, the certifying authorities have executed the revisions to this Agreement, which take effect on the last date signed below.

\_\_\_\_\_ Dated: \_\_\_\_\_

*City of Madison*

\_\_\_\_\_ Dated: \_\_\_\_\_

County of Milwaukee

\_\_\_\_\_ Dated: \_\_\_\_\_

County of Dane

\_\_\_\_\_ Dated: \_\_\_\_\_

Wisconsin Department of Transportation

As agent for Austin Straubel Airport, Green Bay; Central Wisconsin Airport, Mosinee; Chippewa Valley Regional Airport, Eau Claire; La Crosse Municipal Airport, La Crosse; Outagamie County Regional Airport, Appleton; and Rhinelander-Oneida County Regional Airport, Rhinelander (the non-certifying participant airports in Wisconsin), and under authority of sections 114.31, 114.32, 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_

Wisconsin Department of Transportation

As agent for the cities of Appleton, Beloit, Eau Claire, Green Bay, Janesville, Kenosha, La Crosse, Oshkosh, Racine, Sheboygan, Superior, Waukesha, Wausau, and for the county of Waukesha, Wisconsin, and under authority of sections 84.01 (2) and (15), 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_

Wisconsin Department of Transportation

**Section 23: Signatures.**

IN WITNESS WHEREOF, the certifying authorities have executed the revisions to this Agreement, which take effect on the last date signed below.

\_\_\_\_\_ Dated: \_\_\_\_\_  
City of Madison

\_\_\_\_\_ Dated: \_\_\_\_\_  
**County of Dane**

\_\_\_\_\_ Dated: \_\_\_\_\_  
County of Milwaukee

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation

As agent for Austin Straubel Airport, Green Bay; Central Wisconsin Airport, Mosinee; Chippewa Valley Regional Airport, Eau Claire; La Crosse Municipal Airport, La Crosse; Outagamie County Regional Airport, Appleton; and Rhinelander-Oneida County Regional Airport, Rhinelander (the non-certifying participant airports in Wisconsin), and under authority of sections 114.31, 114.32, 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation

As agent for the cities of Appleton, Beloit, Eau Claire, Green Bay, Janesville, Kenosha, La Crosse, Oshkosh, Racine, Sheboygan, Superior, Waukesha, Wausau, and for the county of Waukesha, Wisconsin, and under authority of sections 84.01 (2) and (15), 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation

**Section 23: Signatures.**

IN WITNESS WHEREOF, the certifying authorities have executed the revisions to this Agreement, which take effect on the last date signed below.

\_\_\_\_\_ Dated: \_\_\_\_\_  
City of Madison

\_\_\_\_\_ Dated: \_\_\_\_\_  
County of Dane

\_\_\_\_\_ Dated: \_\_\_\_\_  
*County of Milwaukee*

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation

As agent for Austin Straubel Airport, Green Bay; Central Wisconsin Airport, Mosinee; Chippewa Valley Regional Airport, Eau Claire; La Crosse Municipal Airport, La Crosse; Outagamie County Regional Airport, Appleton; and Rhinelander-Oneida County Regional Airport, Rhinelander (the non-certifying participant airports in Wisconsin), and under authority of sections 114.31, 114.32, 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation

As agent for the cities of Appleton, Beloit, Eau Claire, Green Bay, Janesville, Kenosha, La Crosse, Oshkosh, Racine, Sheboygan, Superior, Waukesha, Wausau, and for the county of Waukesha, Wisconsin, and under authority of sections 84.01 (2) and (15), 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation



**Section 23: Signatures.**

IN WITNESS WHEREOF, the certifying authorities have executed the revisions to this Agreement, which take effect on the last date signed below.

\_\_\_\_\_ Dated: \_\_\_\_\_  
City of Madison

\_\_\_\_\_ Dated: \_\_\_\_\_  
County of Milwaukee

\_\_\_\_\_ Dated: \_\_\_\_\_  
County of Dane

\_\_\_\_\_ Dated: \_\_\_\_\_  
***Wisconsin Department of Transportation***

As agent for Austin Straubel Airport, Green Bay; Central Wisconsin Airport, Mosinee; Chippewa Valley Regional Airport, Eau Claire; La Crosse Municipal Airport, La Crosse; Outagamie County Regional Airport, Appleton; and Rhinelander-Oneida County Regional Airport, Rhinelander (the non-certifying participant airports in Wisconsin), and under authority of sections 114.31, 114.32, 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation

As agent for the cities of Appleton, Beloit, Eau Claire, Green Bay, Janesville, Kenosha, La Crosse, Oshkosh, Racine, Sheboygan, Superior, Waukesha, Wausau, and for the county of Waukesha, Wisconsin, and under authority of sections 84.01 (2) and (15), 84.011, 84.015, 84.072, 20.395 (9) (qx) and 25.40 (2) (a) of the Wisconsin Statutes, executed this 28th day of February 2002.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Wisconsin Department of Transportation

Attachment 1: Non-certifying Participants to the Wisconsin UCP

The following non-certifying recipients in Wisconsin that receive USDOT financial assistance through the programs of FAA, FHWA and/or FTA agree to accept certifications approved by the UCP established by this agreement:

- (a) Austin Straubel Airport, Green Bay, Wisconsin.
- (b) Central Wisconsin Airport, Mosinee, Wisconsin.
- (c) Chippewa Valley Regional Airport, Eau Claire, Wisconsin.
- (d) La Crosse Municipal Airport, La Crosse, Wisconsin.
- (e) Outagamie County Regional Airport, Appleton, Wisconsin.
- (f) Rhinelander-Oneida County Regional Airport, Rhinelander, Wisconsin.
- (g) City of Appleton, Wisconsin.
- (h) City of Beloit, Wisconsin.
- (i) City of Eau Claire, Wisconsin.
- (j) City of Green Bay, Wisconsin.
- (k) City of Janesville, Wisconsin.
- (l) City of Kenosha, Wisconsin.
- (m) City of La Crosse, Wisconsin.
- (n) City of Oshkosh, Wisconsin.
- (o) City of Racine, Wisconsin.
- (p) City of Sheboygan, Wisconsin.
- (q) City of Superior, Wisconsin.
- (r) City of Waukesha, Wisconsin.
- (s) City of Wausau, Wisconsin.
- (t) County of Waukesha, Wisconsin.

Attachment 2: [The Norman Matrix](#)

		Location of Applicant Firm			
		Dane Co.	Six County Area	All Other Counties	Out-of-State
FHWA	Certification Application	WisDOT	Milwaukee Co., WisDOT	WisDOT	WisDOT
	On-Site	WisDOT	Milwaukee Co., WisDOT	WisDOT	Home State per CFR
FAA	Certification Application	Dane Co., WisDOT	Milwaukee Co., WisDOT	WisDOT	Dane Co., Milwaukee Co.
	On-Site	Dane Co., WisDOT	Milwaukee Co., WisDOT	WisDOT	Home State per CFR
FTA	Certification Application	City of Madison, WisDOT	Milwaukee Co., WisDOT	WisDOT	WisDOT
	On-Site	City of Madison, WisDOT	Milwaukee Co., WisDOT	WisDOT	Home State per CFR
Airport Concessionaires	Certification Application	Dane Co.	Milwaukee Co.	Dane Co., Milwaukee Co.	Dane Co., Milwaukee Co.
	On-Site	Dane Co.	Milwaukee Co.	WisDOT	Home State per CFR

**Purpose**

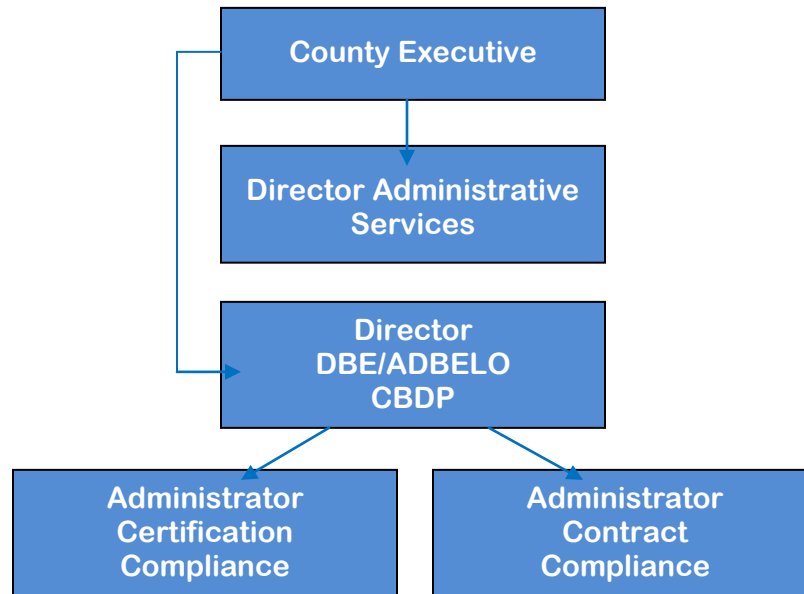
The Norman Matrix is designed to provide guidance to the UCP agencies regarding the most appropriate authority to review a particular DBE application. The Matrix is not meant to require that any authority process any particular DBE application. The Matrix is intended to help determine which authority is the best fit to process a particular application.

Attachment 3: Staffing of Wisconsin UCP Certification Partners

**City of Madison DBE Staffing Resources**

**County of Dane DBE Staffing Resources**

## County of Milwaukee (CBDP) DBE Staffing Resources



**CERTIFICATION**  
2 Business Analysts

**CONTRACT COMPLIANCE**  
1 Contract Coordinator  
1 Contract Compliance Coordinator (Professional Services)

### **Administrator Certification Compliance**

- Administer and manage small and disadvantaged business certification section; Develop and recommend procedures for State Unified Certification System Compliance under the supervision of the Director.
- Assist DBE/ADBELO in outreach and networking activities with DBE's and other business organizations.
- Develop training, processes, and forms to ensure compliance with both the State Unified Certification System and US DOT Federal Regulation 49 CFR 23
- Assist with federal audits; Supervise contract certification interviews, field visits and audits activities; Assign work to analysts
- Responsible for all 5/3 years recertification audit reviews, approve field audits and findings reports.
- Recommend sanctions for certification violations to the Director; Coordinate department publications and marketing activities.

### **Business Analysts**

- Review and analyze applications for certification and recertification from for-profit businesses to verify ownership, management and control to determine eligibility with federal regulations issued by Federal Guidelines.
- Maintain records and statistics of DBE firms.
- Develop communications with other certifying authorities in the State.
- Prepare Staff Reports with recommendations for approvals and denials of certification.

### **Administrator Contract Compliance**

- Responsible for setting DBE Goals on all contracts.
- Evaluate and /or approve recommend DBE participation on all contracts. Review and approve all DBE commitment forms.
- Conduct on site and contract compliance monitoring inspections where warranted.
- Oversee the participation of DBE's in prime and subcontracting opportunities on Airport contracts at Milwaukee County.

### **Contract Coordinator**

- Review DBE Utilization Reports submitted by primes to verify that they comply with agreed level of participation.
- Oversee the participation of DBE's in prime and subcontracting opportunities on construction services contracts at Milwaukee County.

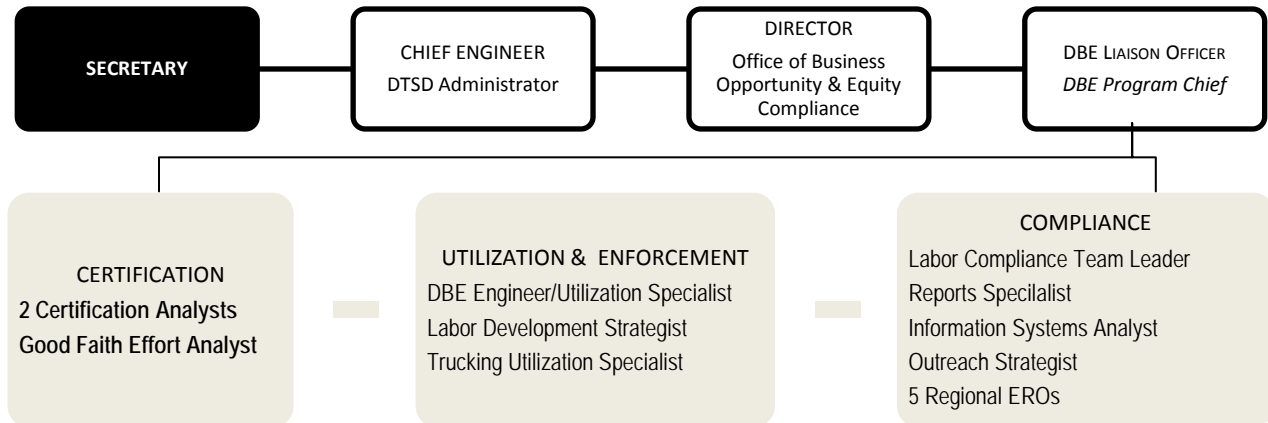
**Contract Coordinator Compliance (Professional Services)**

- Oversee the participation of DBE's in prime and subcontracting opportunities on professional services contracts at Milwaukee County.

**Desired informal hearing participants**

- A.* Ruby Brooks-Dent
- B.* Lamont Robinson

## WisDOT DBE Staffing Resources



### **DBE Senior Certification Analyst**

- Review and approve determinations of new and recertification applications and no-change affidavits from for-profit businesses who have been determined by an Analyst to be eligible with federal regulations issued by U.S. Department of Transportation.
- Communicate with businesses applying for certification and recertification.
- Represent WisDOT's interests in the development and implementation of policies and procedures required as a member of the Wisconsin Unified Certified Program (UCP)
- Perform financial analyses to determine aggregate business size for compliance with SBA guidelines and compute personal net worth for compliance with Federal regulations 49 CFR Parts 26.
- Prepare staff reports with recommendations for approvals and denials of certification.
- Conduct investigations of appeals and third-party challenges and report findings to Informal WIUCP Hearing Panel members.

### **DBE Certification Analyst**

- Review and analyze applications for certification and recertification from for-profit businesses to verify ownership, management and control to determine eligibility with federal regulations issued by the U.S. Department of Transportation.
- Maintain records and statistics on DBE firms.
- Develop communications with other certifying authorities in the State, DOT modal personnel at FHWA, and at the U.S. Department of Transportation Civil Rights Section.

### **DBE Program Analyst (Good Faith Efforts Specialist)**

- Manage compliance with good faith efforts per federal guidelines.
- Review DBE Participation forms submitted by primes to verify that DBE sub contractors identified can do the work specified.
- Verify that primes will subcontract required percentage of DBE participation.
- Waiving DBE goals when deemed appropriate on a contract-by-contract basis.
- Evaluate DBE Replacement requests

### **DBE Program Analyst (Federal Reporting Specialist)**

- Monitoring and tracking DBE participation on all federally assisted contracts.
- Filing appropriate reports with FHWA to report on DBE commitments and achievement.
- Assist in the compilation and maintenance of an on-line business directory using database and word processing software.

### **DBE Engineer Technical Advisor**

- Provides technical assistance to DBEs on interpreting bid specifications and other contract requirements.
- Responsible for DBE goal setting on all contracts.
- Evaluate and/or approve recommended DBE participation on all contracts.
- Review specifications and meet with Project Administrator to discuss appropriate DBE participation.
- Review and approve all DBE Commitment forms
- Conduct on site contract compliance monitoring inspections where warranted.
- Review DBE Utilization Reports submitted by primes to verify that they are complying with agreed level of participation.
- Review Applications for Payments submitted by primes to verify that they are identifying all commercially useful functions undertaken by DBEs and ACDBEs.
- Respond to and/or investigate prompt payment complaints from DBE firms
- Oversee the participation of DBEs in prime and subcontracting opportunities on construction and consultants services contracts at WisDOT.
- Assist the DBELO in outreach and networking activities with DBEs and other business organizations.

### **Regional Equal Rights Officers {EROs}**

The EROs play a critical role including the enforcement of FHWA 1273 requirements, conducting DBE applicant onsite reviews, assisting in contractor compliance reviews, conducting wage investigations, and coordinating with WisDOT Project Teams.



## Wisconsin Administrative Code 84.072

### 84.072 Unified disadvantaged business certification program.

#### 1. **DEFINITIONS:** In this section:

- (a) "Business" means a sole proprietorship, partnership, limited liability company, joint venture, or corporation that is operated for profit.
- (b) "Certifying authority" means the department or, if authorized under sub. (5m), a municipality or county.
- (c) "Disadvantaged business" means a business that is all of the following:
  - a. At least 51% owned by one or more disadvantaged individuals who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined in [8 USC 1101](#) (a) (20).
  - b. Controlled in its management and daily business operations by one or more of the disadvantaged individuals who own the business.
  - c. A small business concern within the meaning given in [49 CFR 26.5](#).
- (d) "Disadvantaged individual" means an individual found by a certifying authority to be socially and economically disadvantaged within the meaning given in [49 CFR 26.5](#).
- (e) "Municipality" means a city, village, or town.

#### 2. **CERTIFICATION.**

- (a) Any business may apply to a certifying authority for certification as a disadvantaged business. All applications shall be sworn and notarized. A certifying authority shall certify as a disadvantaged business any business that meets the requirements under [49 CFR 26](#), subpart D, for such certification. A certifying authority shall follow all certification procedures and standards provided in [49 CFR 26](#) and all certification determinations shall strictly conform with [49 CFR 26](#) and federal guidelines established under that section. A certifying authority shall complete review and issue a decision concerning an application within 90 days after receiving the completed application, except that a certifying authority may extend its review period to not more than 150 days if, within those 90 days, the certifying authority provides written notice to the applicant specifying the reasons for the extension. No person may certify a business as a disadvantaged business for purposes of [49 CFR 26](#), except as provided in this section. A certifying authority may charge and collect reasonable fees for reviewing an application submitted under this paragraph.
- (b)
  - 1) Except as provided in sub. (6), a certifying authority is not required to review an application submitted by a business that has its principal place of business in another state, unless the business is certified as a disadvantaged business under a unified certification program that strictly conforms to [49 CFR 26](#) and to which that other state is a party.
  - 2) If the department receives an application for a business that is certified as a disadvantaged business under a federally approved unified certification program pursuant to [49 CFR 26](#), the department may do any of the following:
    - a. Grant certification in reliance of the certification determination under the federally approved unified certification program.
    - b. Make an independent certification determination based on material submitted by the other certifying authority, supplemented by whatever additional information the department may request from the applicant.
    - c. Require the applicant to undergo the application process without regard to the other certification.
  - 3) If a certifying authority that is a municipality or county receives an application for a business that is certified as a disadvantaged business under a federally approved unified certification program

pursuant to [49 CFR 26](#), the certifying authority shall forward the application to the department for purposes of subd. [2](#).

- a. A certifying authority shall cooperate with any directive from the federal government under authority of [49 CFR 26](#) concerning certification under this section.
- b. Certification under this section is valid for 3 years, unless the department removes certification under sub. [\(4\)](#) or the certification is removed as provided in [49 CFR 26.87](#) or [26.89](#). A certifying authority may not require a business that is certified under this section to reapply during the 3-year period after its certification, unless the factual basis on which the certification is made materially changes.
- c. No certification of a business as a disadvantaged business for purposes of federal transportation assistance programs before September 1, 2001, is valid for contracts executed after February 28, 2002. Beginning on March 1, 2002, only a business certified under this section qualifies as a disadvantaged business enterprise for purposes of [49 CFR 26](#).

**(2m) CONFIDENTIALITY**

- (a) A certifying authority may not disclose to any person any information that relates to an individual's statement of net worth, a statement of experience, or a company's financial statement, including the gross receipts of a bidder, or to any documentation submitted in support of those statements, if the information was obtained for the purpose of complying with [49 CFR 26](#), as that section existed on October 1, 1999.
- (b) This subsection does not prohibit a certifying authority from disclosing information to any of the following persons:
  - 1) The person to whom the information relates.
  - 2) If the certifying authority is a municipality or county, to the department.
  - 3) If the certifying authority is the department, to a municipality or county authorized under sub. [\(5m\)](#).
  - 4) Any person who has the written consent of the person to whom the information relates to receive such information.
  - 5) Any person to whom [49 CFR 26](#), as that section existed on October 1, 1999, requires or specifically authorizes the certifying authority to disclose such information.
  - 6) The federal department of transportation, if the certifying authority discloses the information for the purposes of a certification appeal proceeding in which the disadvantaged status of the individual is in question.

**3. IMPLIED CONSENT.**

Any municipality, county, or other person, including the Wisconsin Aerospace Authority created under subch. [II of ch. 114](#), that accepts federal moneys from the appropriations under s. [20.395 \(1\) \(bx\)](#), [\(2\) \(ax\)](#), [\(dx\)](#), [\(fx\)](#), or [\(mx\)](#), or [\(3\) \(bx\)](#), [\(cx\)](#), or [\(ex\)](#), or accepts other federal moneys for highway, transit, airport, or spaceport purposes, after September 1, 2001, is considered to have given consent to the unified certification disadvantage business program administered under this section.

**4. REQUIREMENTS OF CERTIFIED BUSINESSES**

A business certified as a disadvantaged business shall, within 30 days after a change in the business's size, disadvantaged status, ownership, or control that could preclude its certification as a disadvantaged business under [49 CFR 26](#), notify the department of that change by sworn and notarized statement. A business certified as a disadvantaged business shall submit annually to the department a sworn, notarized statement attesting that there have been no changes to the business's size, disadvantaged status, ownership or control, or its gross receipts, that would preclude its certification as a disadvantaged business under [49 CFR 26](#). The notice shall include a statement that the business meets the size and gross receipts criteria for certification and shall

include documentary evidence supporting that statement. The department shall remove the certification of any disadvantaged business that fails to provide the statement within 13 months after certification under this section, or within 13 months after it last submitted to the department the information required under this subsection, whichever is later.

**5. DIRECTORY OF CERTIFIED BUSINESSES.**

The department shall maintain a list of all businesses certified as a disadvantaged business by a certifying authority or by a state that is a party to an agreement under sub. (6). The list shall include the business name, address, telephone number, and types of work that the business is certified to perform as a disadvantaged business. The department shall make the list and any updated information available to any person, at no charge, on the Internet and in printed format. The department shall update the list at least annually, but shall update the electronic list available on the Internet by including additions, deletions, or other changes to the list as soon as the department makes such an addition, deletion, or other change.

**(5m) CERTIFICATION BY A MUNICIPALITY OR COUNTY**

THE department may authorize any municipality or county to certify a business as a disadvantaged business. The authorization shall be in writing and shall require the municipality or county to conform strictly to the standards and processes provided in this section and rules promulgated under this section. The authorization shall be valid for one year. The authorization shall require the municipality or county to provide written notice to the department of any certification decision. The written notice shall include all of the information contained in the directory maintained under sub. (5). The authorization shall require the municipality or county to forward applications to the department under sub. (2)(b)3. Certification by a municipality or county is valid for 3 years, unless the department removes certification under sub. (4) or the certification is removed as provided in [49 CFR 26.87](#) or [26.89](#). No municipality or county authorized under this subsection may hear any appeals or complaints regarding certification decisions.

**6. RECIPROCAL CERTIFICATION AGREEMENTS**

Notwithstanding, sub. (2)(a), the department may enter into a reciprocal agreement with any other state establishing a joint unified certification program that strictly conforms to [49 CFR 26](#). The agreement may authorize the other state to certify as a disadvantaged business any business that is based in this state, or may authorize the department to certify as a disadvantaged business any business based in that other state. 3

**7. CERTIFICATION APPEALS AND COMPLAINTS**

(a) Any business whose application for certification is denied, or is not reviewed within the time limits prescribed in sub. (2)(a), or whose certification is removed, may appeal that action as provided in [49 CFR 26.89](#) to the department.

(b) Any person may file with the department a signed, written complaint that a business that a certifying authority has certified under this section is not eligible for such certification. The department shall investigate complaints that it finds are supported by credible evidence. If, upon investigation, the department finds reasonable cause to believe that a business is not eligible for certification, the department shall notify the business of its findings in writing and shall proceed in the manner provided under [49 CFR 26.87](#).

**8. APPLICABILITY.**

This section does not apply if federal law does not require, as a condition of using federal funds, this state to establish goals for the participation of disadvantaged businesses or the employment of disadvantaged individuals in projects using federal funds.

## Wisconsin Administrative Code 84.076

### 84.076 Disadvantaged business demonstration and training program.

#### 1. **DEFINITIONS:** In this section:

- (a) "Disadvantaged individual" means a minority group member, a woman or any other individual found by the department to be socially and economically disadvantaged within the meaning given in [49 CFR 26.5](#), unless successfully challenged as provided in [49 CFR 26.89](#).
- (b) "Disadvantaged business" has the meaning given in s. [84.072 \(1\) \(b\)](#).
- (c) "Minority business" has the meaning given under s. [16.287 \(1\) \(e\) 1](#).
- (d) "Minority group member" has the meaning given under s. [16.287 \(1\) \(f\)](#).

#### 2. **ADMINISTRATION.**

- (a) The secretary shall administer a demonstration and training program for the purpose of developing the capability of disadvantaged businesses to participate in construction projects funded under s. [20.395 \(3\) \(bq\)](#), [\(bv\)](#), [\(bx\)](#), [\(cq\)](#), [\(cv\)](#), [\(cx\)](#), [\(eq\)](#), [\(ev\)](#) and [\(ex\)](#). From the amounts appropriated under those paragraphs, the secretary shall allocate \$4,000,000 each fiscal year for the awarding of contracts under this section. The secretary shall attempt to ensure that 75% of the amount so allocated each fiscal year is for the awarding of contracts under this section to minority businesses. The secretary may award 100% of the amount so allocated each fiscal year to one disadvantaged business.
- (b) The secretary shall establish requirements for programs of preapprenticeship training and management and technical assistance designed to develop the expertise of disadvantaged individuals and disadvantaged businesses in transportation construction.

#### 3. **BIDS, CONTRACTS.**

Section [84.06 \(2\)](#) applies to bids and contracts under this section, except that the secretary shall reject low bids that do not satisfy the requirements under sub. [\(4\)](#). Each bid submitted under this section shall include the agreement specified under sub. [\(4\)](#) and, as a condition, a goal that at least 25% of the total number of workers in all construction trades employed on the project will be disadvantaged individuals.

#### 4. **CONTRACTOR RESPONSIBILITIES.**

Each contractor shall agree to do one of the following in its bid submitted under sub. [\(3\)](#):

- (a)
  - 1) Assure that the contractor has developed a program of preapprenticeship training that satisfies the requirements established by the secretary under sub. [\(2\) \(b\)](#) and has experience in providing the training to disadvantaged individuals; and
  - 2) Assure that the contractor has developed and has experience in providing a program of management and technical assistance to disadvantaged business subcontractors. The management and technical assistance program shall satisfy the requirements established by the secretary under sub. [\(2\) \(b\)](#) and shall include all of the following:
    - a. On-site administrative support.
    - b. Assistance with managing scheduling, finances and property.
    - c. The provision of other management services necessary to assist disadvantaged businesses in developing construction capabilities and opportunities for participation in construction projects.
- (b) Obtain from a subcontractor that has experience in providing training to disadvantaged individuals a program of preapprenticeship training that satisfies the requirements established by the secretary under sub. [\(2\) \(b\)](#), and assure that the subcontractor has experience in providing a program of management and technical assistance to disadvantaged business contractors, and that the subcontractor's management and technical assistance program satisfies the requirements established by the secretary under sub. [\(2\) \(b\)](#) and includes all of the requirements of par. [\(a\) 2](#). A subcontractor under this paragraph need not be a

disadvantaged business, but if the subcontractor is not a disadvantaged business, it may not be included within the goal established under sub. (3).

**5. SUNSET**

This section does not apply after the later of the following:

- a. September 30, 1997.
- b. The date on which federal law does not require, as a condition of using federal funds, that this state establish goals for the participation of disadvantaged businesses or the employment of disadvantaged individuals in projects using federal funds.

**History:** [1987 a. 399](#); [1989 a. 31](#); [1991 a. 39](#); [1993 a. 112](#); [1995 a. 113](#); [1997 a. 27](#); [2001 a. 16](#); [2011 a. 32](#).

This section is unconstitutional as applied to goals for disadvantaged business subcontractor participation in exclusively state-funded projects, but constitutional as applied to federally-funded projects. *Milwaukee County Pavers Assoc. v. Fiedler*, [731 F. Supp. 1395](#) (1990).

**MILWAUKEE COUNTY CODE OF GENERAL ORDINANCE CHAPTER 42**

**Chapter 42: DISADVANTAGED BUSINESS ENTERPRISE AND AIRPORT CONCESSION DISADVANTAGED 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 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.

**42.02. Definitions.**

- (1) For all projects subject to this chapter funded with federal and county money and those funded only by county money, the following definitions shall apply;
  - (a) *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.
  - (b) *Commercially useful function.* A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, all facts and circumstances are considered including, but not limited to, the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
  - (c) *Concession* means one (1) or more of the types of for-profit businesses defined in [49](#) CFR Part 23, Section 23.3 under the definition listed in paragraphs (1) or (2) of this definition:
    - (1) A business, located on an airport that is engaged in the sale of consumer goods or services to the public under an agreement with Milwaukee County, another concessionaire, or the owner or lessee of a terminal, if other than Milwaukee County; or
    - (2) A business conducting one (1) or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport, as long as the activities take place on the airport: management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.
  - (d) *Concessionaire* means a firm that owns and controls a concession or a portion of a concession.
  - (e) *Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.
  - (f) *Disadvantaged business enterprise (DBE)* means a for-profit small business concern which is at least fifty-one (51) percent owned by one (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.
  - (g) *Good faith efforts* means efforts to achieve a DBE or ACDBE 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 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 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) *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.
- (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:
  - (1) Any individual who the county finds to be a socially and economically disadvantaged individual on a case-by-case basis.
  - (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.

#### **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 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").
- (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.
- (3) The director shall recommend to the county board other appropriate policies which encourage SBE, DBE and ACDBE participation in county contracting.
- (4) In consultation with the county's office of corporation counsel, the director shall revise and/or update the DBE utilization specifications language to ensure such language is included in county contracts.
- (5) The director shall establish SBE, DBE and ACDBE contract compliance monitoring 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.
- (8) The director shall ensure that department/division heads and contract administrators make available bid notices and requests for proposals to SBEs, DBEs and ACDBEs in a timely manner.
- (9) 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.
- (10) County contracts may not be awarded without the written approval of the CDBP director or designee who will ensure that the required SBE, DBE or ACDBE participation is included on all contracts.
- (11) All contract solicitations subject to this chapter will require the approval of the CDBP director or designee who will ensure that an appropriate DBE or ACDBE goal is assigned and/or consideration is given to participation by SBEs.
- (12) CDBP 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.

**42.05. Certification of DBEs and ACDBEs, and verification of SBEs.**

- (1) The certification of DBE and ACDBE, and verification of SBE firms shall be the responsibility of CDBP.
- (2) 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). Verification of SBE firms shall be governed by these same standards, minus any and all reference to race, gender and/or social disadvantage.
- (3) As a member of the Wisconsin Unified Certification Program (WIUCP), all certification and removal decisions by CDBP may be appealed to the WIUCP in accordance with [49](#) CFR Parts 23 and 26.
- (4) The CDBP 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 [49](#) CFR Parts 23 and 26.

**42.06. Professional and non-professional service contracting.**

All county department/division heads and contract administrators are required to provide written notification to CDBP as further described herein prior to soliciting for professional and non-professional services contracts as defined in sections [32.20](#)(2) and (17) and [56.30](#) of this Code. Annual percentage goals for DBE and ACDBE participation on professional and non-professional services contracts will be established as set forth by county ordinance.

- (1) Regardless of the dollar amount of the contract, all county department/division heads and contract administrators are required to notify CDBP in writing prior to publication of an RFP or an RFQ. The department/division head and contract administrator is required to submit a DBE participation recommendation form to CDBP for approval. 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 CDBP that provisions of this section have been met.
- (2) CDBP will establish, where feasible, a percentage, up to the total contract value, of prime contract and subcontract awards to be set aside for participation by SBEs during DBE participation recommendation review. A "set aside" is the reserving of a contract or a portion of a contract exclusively for participation by SBEs, regardless of the owner's race or gender.
- (3) CDBP requires contractors/consultants to submit DBE documentation with their original bid/proposal as a matter of responsiveness. CDBP shall provide department/division heads and contract administrators with the appropriate DBE specification language, required contract provisions, instructions, forms and procedures to be included with the bid/proposal solicitations. The department/division head or contract administrator shall forward all DBE submissions to CDBP. CDBP will review responses to assure submission of the required forms and documentation. CDBP shall make determinations as to bidder/proposer responsiveness to DBE requirements, and may reject and remove from further consideration all bids/proposals submitted without proper documentation.
- (4) The owner department shall require all prime contractors/consultants to submit a DBE or ACDBE utilization report with all payment requests. Copies of utilization reports and payment requests shall be forwarded to CDBP for review. Department/Division heads and contract administrators shall ensure that all final payment requests are accompanied with a signed affidavit verifying that the DBE and/or ACDBE requirement has been met, either at the prime or sub-contracted level.
- (5) Department/division heads and contract administrators shall comply with the provisions of this section to ensure utilization of DBE and ACDBE firms on county professional and non-professional service contracts. All department/division heads shall submit annually to CDBP a DBE/ACDBE utilization plan form by December 15 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 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 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.

**42.07. Construction contracting.**

- (1) The owner department shall consult with CDBP to determine an appropriate goal on all contracts.
- (2) The owner department shall submit an approved DBE participation recommendation form for each project. CDBP will establish, where feasible, a percentage, up to the total contract value, of prime contract and subcontract awards to be set aside for participation by SBEs during DBE participation recommendation review. A "set aside" is the reserving of a contract or a portion of a contract exclusively for participation by SBEs, regardless of the owner's race or gender.
- (3) CDBP 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.
- (4) CDBP requires contractors/consultants to submit DBE documentation with their original bid/proposal as a matter of responsiveness. CDBP shall provide department/division heads and contract administrators with the appropriate DBE specification language, required contract provisions, instructions, forms and procedures to be included with the bid/proposal solicitations. The department/division head or contract administrator shall forward all DBE submissions to CDBP. CDBP will review responses to assure submission of the required forms and documentation. CDBP 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.
- (5) The owner department shall require all prime contractors/consultants to submit a DBE or ACDBE utilization report with all payment requests. Copies of utilization reports and payment requests shall be forwarded to CDBP 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 DBE and/or ACDBE requirement has been met, either at the prime or subcontracted level.
- (7) The owner department 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 must submit the DBE/ACDBE utilization plan by December 15 of each year to CDBP 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) Compliance reviews and audits. The county and CDBP reserves the right to conduct compliance reviews and request, both from the prime contractor/consultant and subcontractors/subconsultants or concessionaires, documentation necessary to verify level of compliance. If the contractor/vendor is not in compliance with DBE and/or ACDBE contract requirements, CDBP will notify the contractor/vendor in writing of corrective action to be taken.
- (2) If the contractor/consultant fails or refuses to take corrective action within the time specified in the notice, the county at CDBP'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 CDBP when sanctions are made against a contractor/consultant.
- (3) The director of CDBP or designee shall have the authority to withhold contractor/consultant payments until DBE and/or ACDBE participation requirements have been met. If the contractor/consultant has completed its contract, and the goal was not met due to an 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 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) Pursuant to [49 CFR Part 26](#) it is county policy to ensure that all 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. 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 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.

#### 42.09. Appeals.

An aggrieved prime contractor/consultant may appeal findings of noncompliance in accordance with procedures established in [chapter 110](#) of this Code.

### LEGISLATIVE HISTORY

All sections effective upon passage and publication unless otherwise indicated.

[Ch. 42 Repealed and recreated](#) - Nov. 5, 1992, J. Proc. p. 1838—47, published Dec. 4, 1992; April 22, 1999, J. Proc. p. 546—55, published May 20, 1999; [Retitled](#) - May 21, 2009, J. Proc.; [Retitled](#) - March 15, 2012, J. Proc.

[42.01 Amended](#) - May 21, 2009, J. Proc.

[42.01\(Para. I\). Amended](#) - March 15, 2012, J. Proc.

[42.02 Amended](#) - Nov. 3, 2003, J. Proc.; May 21, 2009, J. Proc.

[42.02\(1\)\(a\). Amended](#) - March 15, 2012, J. Proc.

[42.02\(1\)\(b\). Amended](#) - Jan. 20, 1994, J. Proc. p. 525, published May 1, 1997; March 15, 2012, J. Proc.

[42.02\(1\)\(c\). Amended](#) - March 15, 2012, J. Proc.

[42.02\(1\)\(f\). Amended](#) - March 15, 2012, J. Proc.

[42.02\(1\)\(g\). Amended](#) - March 15, 2012, J. Proc.

[42.02\(1\)\(k\). Amended](#) - March 15, 2012, J. Proc.; March 21, 2013, J. Proc.

[42.02\(1\)\(l\). Created](#) - March 15, 2012, J. Proc.

[42.03 Amended](#) - Nov. 4, 2002, J. Proc.; Nov. 3, 2003, J. Proc.; May 21, 2009, J. Proc.; March 15, 2012, J. Proc.

[42.04 Amended](#) - Nov. 3, 2003, J. Proc.; May 21, 2009, J. Proc.; March 15, 2012, J. Proc.

[42.05 Created](#) - May 21, 2009, J. Proc.; [Amended](#) - March 15, 2012, J. Proc.

[42.05 Amended](#) - May 18, 2000, J. Proc. p. 694-700, published July 13, 2000; Nov. 3, 2003, J. Proc.; [Renumbered 42.06](#) - May 21, 2009, J. Proc.

[42.06 Renumbered from 42.05 and amended](#) - May 21, 2009, J. Proc.; [Amended](#) - March 15, 2012, J. Proc.

[42.06 \(Title\). Amended](#) - March 18, 2010, J. Proc.

[42.06 \(Intro. para.\). Amended](#) - March 18, 2010, J. Proc.

[42.06\(1\). Amended](#) - May 24, 2012, J. Proc.

[42.06\(5\)\(f\). Deleted](#) - March 15, 2012, J. Proc.

[42.06 Amended](#) - Nov. 3, 2003, J. Proc.; [Renumbered 42.08](#) - May 21, 2009, J. Proc.

[42.07 Amended](#) - Nov. 3, 2003, J. Proc.; [Renumbered 42.09](#) - May 21, 2009, J. Proc.

[42.07 Created](#) - May 21, 2009, J. Proc.; [Amended](#) - March 15, 2012, J. Proc.

[42.08 Renumbered from 42.06 and amended](#) - May 21, 2009, J. Proc.; [Amended](#) - March 15, 2012, J. Proc.

[42.09 Renumbered from 42.07 and amended](#) - May 21, 2009, J. Proc.

### HISTORY NOTE

([Ord. No. 09-6, §§ 1—11, 5-21-09](#) ; [Ord. No. 10-2, § 11, 3-18-10](#) ; [Ord. No. 12-10, §§ 3—6, 3-15-12](#) ; [Ord. No. 12-14, § 8, 5-24-12](#) ; [Ord. No. 13-10, § 1, 3-21-13](#) )