

State of North Carolina



Compliance Review Report Wake Technical Community College October 2010

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INTRODUCTION

Background

The Office for Historically Underutilized Businesses was created April 20, 1999, by Executive Order 150. The office was established to work towards increasing the amount of goods and services acquired by state agencies and public entities from businesses owned and controlled by Historically Underutilized Businesses (HUB) firms; to eliminate barriers that reduce the participation of HUB firms in the marketplace and in state government procurement and contracting; encourage purchasing officers and capital project coordinators within the state agencies, departments, universities and community colleges to identify and utilize HUB vendors, contractors and service providers; to educate HUB firms on “How To Do Business” with the State of North Carolina; and to provide resources for HUB firms.

On December 6, 2001, the General Assembly enacted Senate Bill 914 which made major changes to laws governing public construction in the State of North Carolina. The bill signed by Governor Michael F. Easley on December 19, 2001, became effective January 1, 2002. In general, Senate Bill 914 afforded flexibility in the public construction bidding process, and provides for significant new requirements for promoting the use of minority contractors, as well as documenting and reporting good faith efforts to that end.

Specifically, Senate Bill 914, Section 3.6 (N.C.G.S. §143-128.3 Minority Business Participation Administration-Appendix II) requires Public Entities to report minority business participation data on construction projects to the Department of Administration. Public Entities use the HUBSCO Construction Reporting System to report construction related information and minority business participation. Information from this system is used by both the State Construction Office and the HUB Office. The HUB Office uses information generated from the HUBSCO system to compile quarterly and annual reports requested or required by the Governor’s Office and/or General Assembly. Additionally, data from the HUBSCO system is used by the HUB Office when conducting compliance reviews.

Objectives, Scope and Methodology

The objectives of the Compliance Review were to:

- 1) Determine whether Wake Technical Community College (Wake Tech) complied with the minority business enterprise requirements for formally and informally bid building contracts for selected projects.
- 2) Evaluate and determine whether the records provided for this compliance review support the efforts made by Wake Tech to recruit minority business contract participation.
- 3) Determine what measures Wake Tech takes to ensure that general contractors, prime contractors and Construction Management firms are utilizing and implementing Good Faith Efforts.
- 4) Assist Wake Tech's HUBSCO System Administrator and HUBSCO system users with accurately entering data in the HUBSCO Construction Reporting System.
- 5) Make recommendations, where deemed necessary or appropriate to Wake Tech on ways to increase its outreach and utilization of HUB firms and ensure that its bidders are also making a Good Faith Effort to do the same.

The scope of the compliance review included:

- 1) Wake Tech state funded/appropriated formal and informal construction projects from January 2002 to October 2010.
- 2) Reviewing construction project files provided by Wake Tech's HUBSCO Administrator and Facility Engineering Officer, as well as construction data entered in the HUBSCO system.

The methodology used was Stratified Random Sampling, which is a sampling technique that uses proportional allocations to ensure that an accurate representative sample is used. The sampling error is smaller when using Stratified Random Sampling than when using Simple Random Sampling or Systematic Sampling. As a result of the Stratified Random Sampling method for this compliance review:

- Twenty Eight (28) sample projects were selected for the compliance review of which 13 were formal projects and 15 were informal projects.
- Of the various construction methods such as Single Prime, Separate prime, Dual Bidding, Construction Manager-at-Risk (CM-at-Risk), Other; the sample was representative of Single Prime, Separate Prime and Other.
- The sample projects included project types such as new construction, additions, and renovations.

SUMMARY

Governing Statutes:

Formal and Informal Bidding Procedures - N.C.G.S. §143-129 and §143-131 (Appendices IV & V).

Minority Business Enterprise Participation and Administration - N.C.G.S. §143-128.2 and §143-128.3 (Appendices I & II).

Definitions:

Historically Underutilized Business: - As defined by N.C.G.S. §143-128.4 (Appendix III), a minority business is one where an ownership of at least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) given below. And whose management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section. As used in this Chapter, the term "minority business" means a historically underutilized business.

To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

- (1) Black – A person having origins in any of the black racial groups of Africa.*
- (2) Hispanic – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.*
- (3) Asian American – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.*
- (4) American Indian – A person having origins in any of the original Indian peoples of North America.*
- (5) Female.*
- (6) Disabled – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.*
- (7) Disadvantaged – A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.*

Purpose

Pursuant to the governing statutes and to the definitions stated above, a Compliance Review was conducted at Wake Technical Community College (Wake Tech) on September 29, 2010, for evaluation of adherence. In addition to documenting the compliance criteria met by Wake Tech, this report also seeks to identify areas of non-compliance so that appropriate corrective action(s) can be taken.

Tools and Techniques

HUBSCO Construction Reporting System:

HUBSCO is a web-based application developed by the Office for Historically Underutilized Businesses (HUB) and the State Construction Office (SCO) that assists Public Entities with reporting construction contract information and minority business participation for formal and informal projects.

Stratified Random Sampling:

The Stratified Random Sampling Method was one of the sampling techniques adopted for the selection of sample projects in order to compensate for the major shortcoming of simple random sampling (i.e. the disproportionate selection of similar units). As a result of this sampling method, twenty eight (28) sample projects were selected for the compliance review. Stratified Random Sampling is helpful in arranging the population (construction projects) into relatively similar strata, categories or layers such as Public School System, Community Colleges, State Universities, State Agencies, and all other agencies (Airport Authorities, Counties, Municipalities, Hospital Associations, Public Housing Authorities, Non-State Agencies, Water and Sewer Authorities and Public Schools).

After the population is divided into non-overlapping groups as described above, each group is segregated into non-overlapping sub groups of formal and informal projects. Each sub group of formal and informal projects is sorted by overall project value (cost) in descending order.

Independent random samples are selected proportionately from each stratum. A proportional sample requires that the sample then be allocated in proportion to the size of each stratum. Thus, larger strata would require larger samples, and smaller strata would require

smaller samples. For example, if 85 % of the construction projects are informal projects reported by Wake Tech, about 85 % of the sample would have to be drawn from that stratum.

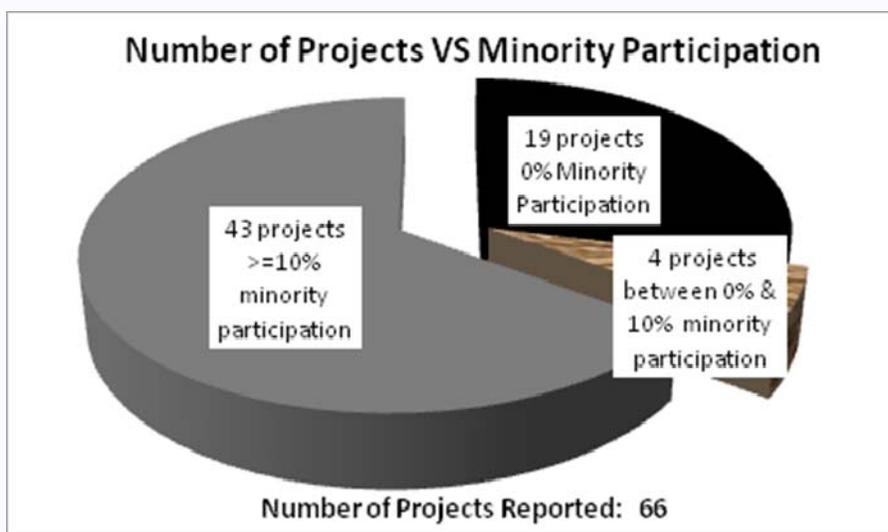
Thus, stratified random sampling with proportional allocation is used to ensure an accurate representative sample. Each sample is representative of various construction methods such as single prime, separate prime, dual bidding, Construction Manager-at-Risk (CM-at-Risk); and project types such as new construction and repair/renovation. The sampling error is smaller when using stratified random sampling than when using simple random sampling or systematic sampling.

Results

Wake Tech provided all documentation necessary for the Compliance Review as per N.C.G.S. §143-128.2 (Appendix I) for Minority Business Participation goals and N.C.G.S. §143-128.3 (Appendix II) for Minority Business Participation Administration. Wake Tech submitted sixty six (66) formal and informal construction bidding projects to the Department of Administration using the HUBSCO Reporting System from January 2002 to October 2010.

Of the sixty six (66) projects submitted in HUBSCO, thirteen (13) were Formal projects and fifty three (53) were Informal projects. As shown in the chart below, of the sixty-six (66) projects, forty-three (43) or 65% were reported with 10% or higher minority business participation and twenty-three (23) or 35% did not meet the verifiable 10% goal; however demonstrated that the Good Faith Efforts were made.

Of the twenty-three (23) projects that did not meet the 10% verifiable goal, nineteen (19) or 83% were reported to have zero percent (0%) minority business participation and four (4) or 17% had between 0% and 10% minority business participation.



The total project dollar amount for sixty six (66) projects was \$66,976,690 with minority business participation reported at \$8,471,871 or thirteen percent (13%).

Formal Projects:

During the period of January 2002 and October 2010, Wake Tech reported thirteen (13) completed formal projects in the HUBSCO system.

Of the thirteen (13) formal projects, eight (8) or sixty-two percent (62%) met the minority business participation goal of 10% or higher.

The remaining five (5) projects or thirty-eight (38%) reported minority business participation of less than 10%

The total project dollar amount reported for these thirteen (13) formal projects was \$63,805,736 with minority business participation reported at \$7,720,308 or twelve percent (12%)

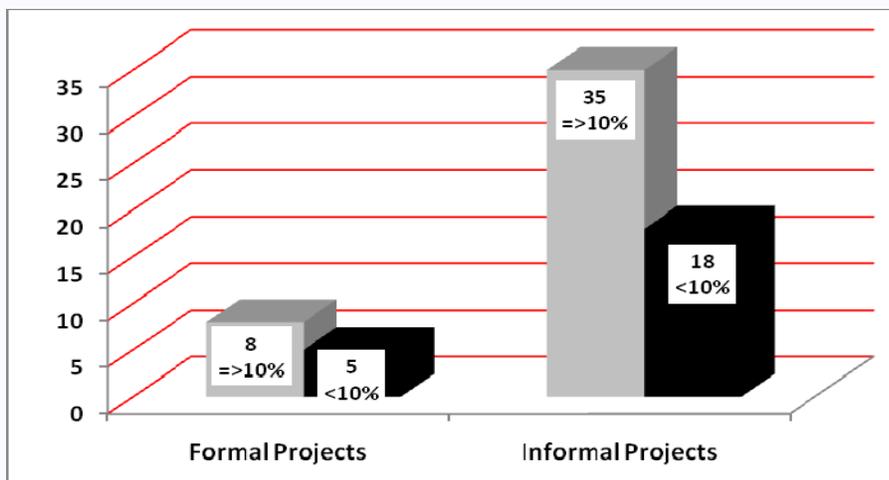
Informal Projects:

During the same period of time, Wake Tech reported fifty-three (53) completed informal projects in the HUBSCO system. Thirty-five (35) or sixty-six percent (66%) of the informal projects met the minority business participation goal of 10% or higher.

The remaining eighteen (18) projects or thirty-four percent (34%) reported minority business participation of less than 10%.

The total project amount of the fifty-three (53) informal projects was \$3,170,954 with minority business participation reported at \$751,563 or twenty-four (24%).

Minority Participation of Formal and Informal projects



Sample Projects:

Twenty-eight (28) sample projects were selected for the Compliance Review consisting of thirteen (13) formal projects and fifteen (15) informal projects. All formal projects selected for the Compliance Review are listed in Table 1 of this section. The informal projects randomly selected are listed in Table 2.

Formal Projects:

Of the thirteen (13) formal projects, twelve (12) were Single Prime, and the remaining one (1) was a Separate Prime project.

Seven (7) of the thirteen projects were new construction and the remaining six (6) were repair and renovation projects.

One (1) of the thirteen projects was greater than \$10 million dollars, six (6) projects between \$2 million and \$10 million dollars, two (2) projects between \$1 million and \$2 million dollars, and the remaining four (4) projects were less than \$1 million dollars.

Eight (8) formal projects, which were bid and awarded as Single Prime and Separate Prime contracts, the minority business participation was equal to or greater than 10%. For the remaining five (5) formal projects minority business participation was less than 10%.

The total construction project amount for these formal projects was \$58,378,563 of which \$7,221,621 or 12.4% was reported for minority business participation.

Of the thirteen (13) formal projects:

- Two (2) projects were completed in FY 2002-03
- Two (2) projects were completed in FY 2003-04
- Two (2) projects were completed in FY 2004-05
- One (1) project was completed in FY 2005-06
- One (1) project was completed in FY 2006-07
- One (1) project was completed in FY 2007-08
- Two (2) projects were completed in FY 2008-09
- Two (2) projects were completed in FY 2009-10

Table 1

Formal Projects Randomly Sampled for Compliance Review

No.	Project #	Project Name	Construction Method
1	924	WTCC Bookstore	Single Prime
2	1261	Automotive & Heavy equipment Technology	Separate Prime
3	909	Technology Building	Single Prime
4	910	Health Science Building	Single Prime
5	1321	Allied Health	Single Prime
6	1296	Holding Hall Renovation	Single Prime
7	1291	Engineering Technology Annex Renovation	Single Prime
8	1295	Pucher/LeMay Renovation & Additions	Single Prime
9	1497	Public Safety Training Center-Phase 1	Single Prime
10	1262	Northern Wake Campus Infrastructure-Early Grading-Phase 1	Single Prime
11	1262	Northern Wake Campus Infrastructure-Campus Grading-Phase 2	Single Prime
12	1289	NE Campus Buildings	Single Prime
13	1669-2	Public Safety Training Center Roof Replacement	Single Prime

Informal Projects:

Fourteen (14) of the fifteen (15) projects were Single Prime and the remaining one (1) was “Other” project. Thirteen (13) of these projects were repair/renovation types, and two (2) project were new constructions.

One (1) of the fifteen (15) projects was greater than \$400,000 dollars, two (2) projects between \$200,000 and \$300,000 dollars, four (4) projects between \$100,000 and \$200,000 dollars, and the remaining eight (8) projects were less than \$100,000 dollars. The total construction dollar amount of all fifteen (15) of these informal projects was \$1,569,101; of which, \$291,225 or 18.6% was reported for minority business participation.

Five (5) of the fifteen informal projects or thirty three percent (33%) were awarded to minority single prime contractors; hence the minority business participation for those projects was 100%. Eight (8) of fifteen (15) or fifty-three percent (53%) of projects’ minority business participation was equal to or greater than 10%. Forty-seven percent (47%) of the projects, which were the seven (7) remaining projects, had minority participation of less than ten percent (10%).

Of the fifteen (15) projects:

- Two (2) projects were completed in FY 2003-04
- Two (2) projects were completed in FY 2004-05
- Two (2) projects were completed in FY 2005-06
- Three (3) projects were completed in FY 2006-07
- One (1) project was completed in FY 2007-08
- Two (2) projects were completed in FY 2008-09
- Three (3) projects were completed in FY 2009-10

Table 2

Informal Projects Randomly Sampled for Compliance Review

No.	Project #	Project Name	Construction Method
1	2006-7	Sheetrock Repair SSC Mechanical Room	Single Prime
2	2009-10	Allied Health Building Window Caulking	Other
3	2006-3	Canopy Demolition – H. S. Camp us	Single Prime
4	2005-100	Painting- 100 Sunnybrook Road	Single Prime
5	2005-DEG	Radiology Lab Renovation	Single Prime
6	2008-2	Lighting Retrofit	Single Prime
7	1419	Holston Lane Parking Lot	Single Prime
8	2010-1	Student Services Bldg-Entrance Door Replacement	Single Prime
9	924	ADA Doors	Single Prime
10	2010-2	POPAT, ROTC & Challenge Course – Main Campus	Single Prime
11	1291	Engineering Technology Annex Building Re-Roof	Single Prime
12	1290	TE Re-Roof & Renovation	Single Prime
13	1507	Holding Hall Print Shop Renovation	Single Prime
14	1664	Roof Replacement at the Library Education Building	Single Prime
15	1559	Technical Education Office Renovation	Single Prime

FINDINGS

The HUB Office performed a compliance review of Wake Technical Community College's Facility Operations to determine whether it complied with the minority business enterprise requirements for formally and informally bid building contracts. Based on sample projects selected for the review, Wake Tech complied with the minority business provisions and reporting requirements with the exception of one instance as cited in this section.

Finding #1: Incorrect project data entries in the HUBSCO Construction Reporting System.

Six of the thirteen (13) formal projects or (46%) and four of the fifteen (15) informal projects or (27%) that were finalized and submitted in the HUBSCO system contained incorrect project data. During the Compliance Review, the Compliance Specialist identified these errors and informed Wake Tech's HUBSCO system administrator who promptly corrected and re-submitted the projects. The listing of corrected and re-submitted projects is given below:

No	Project #	Project Name	Reasons for Correction
<u>Formal</u>			
1	1321	Allied Health Auditorium Renovation	Change Ownership Category of Capital City Decorators
2	1291	Engineering Technology Annex Renovation	Change final contract value of designer and original contract value of Triple R Electric, Inc.
3	1261	Automotive & Heavy Equipment Technology	Change Construction Method used and correct the spelling of Shepherd
4	1289	N E campus Building	Add two more minority subcontractors with their payment information
5	1296	Holding hall renovation	Remove consultants with \$0 payments and change bidder compliance to Yes
6	1295	Pucher/LeMay renovation and additions	Correct the final contract values of A&M Electrical, Master Clean and Batista Grading
<u>Informal</u>			
1	924	ADA Doors	Remove subcontractor with no payment information
2	2008-2	Lighting Retrofit	Change final construction value
3	2010-2	POPAT, ROTC and Challenge Course – Main Campus	Add RDU paving and remove David Rogers
4	2006-7	Sheetrock repair SSC Mechanical Room	Change construction method used

Overall, Wake Tech demonstrated evidence of compliance for the thirteen (13) formal projects reviewed for this Compliance Review by:

- Providing an HUB/MWBE overview at the scheduled pre-bid with potential bidders
- Notifying minority businesses of bid opportunities and including the description of work, date, time, location and contact person at least 10 days prior to the bid opening
- Utilizing newspaper media to inform potential minority businesses of projects and contract opportunities
- Ensuring that during the bidding process, prime contractors complied with the Contractor Requirements listed in the proposal(s) for HUB/MWBE participation
- Having their designers review the required Good Faith Efforts' affidavits or documentation described in N.C.G.S. 143-128.2(c) and N.C.G.S. 143-128.2 (f) prior to the recommendation contract award of the bidders or apparent low bidder/prime contractor
- Reviewing and evaluating, as the Owner, the apparent low prime bidders' documentation to determine if they advertised and used print media to inform potential minority businesses of bid opportunities
- Reviewing and evaluating, as the Owner, the apparent low bidders' documentation, to determine whether Good Faith Efforts were achieved for minority business utilization prior to recommendation of contract award
- Ensuring that prime contractors identified on their bid documents the HUB/MWBE firms that were to be utilized on the project, corresponding total dollar value of the HUB/MWBE firm's bid and the affidavit listing Good Faith Efforts as required by N.C.G.S. 143-128.2(c) and 143-128.2(f). [See Appendix VII]
- Ensuring that prime contractors submitted with each monthly payment request and final payment the "MBE Documentation for Contract Payment" form,
- Reviewing prime contractor's pay applications with the designer and/or Wake Tech project managers to determine compliance with minority business utilization commitments prior to approval of payment
- Making documentation available to the HUB Office's Compliance Specialist as evidence of implementation of their HUB/MWBE policies and/or responsibilities

RECOMMENDATIONS

Wake Tech should be commended for the proactive initiatives it has implemented over the past several years to promote HUB/MBWE utilization. To encourage HUB/MBWE participation, they contracted with M/WBE consultant, Ken Weeden & Associates, to facilitate outreach sessions for several of their larger projects: \$23 million Health Sciences 2 Building and Parking Deck and their \$8 million North Campus Parking Deck. They also developed a HUB Institute Program in 2005 to provide construction and business related training for HUB firms. The training was intended to prepare HUB firms to bid on the North Campus Building project. Wake Tech should continue its efforts to encourage and support the utilization of HUB firms.

The following recommendations are offered to assist Wake Tech in continuing its success in its HUB/MWBE efforts and initiatives:

Recommendation 1: Of the 28 sample projects reviewed for this compliance report, forty-six percent (46%) of them had incorrect data entries in the HUBSCO system. Therefore, the HUB Office recommends that Wake Technical Community Colleges' HUBSCO System Administrator perform the tasks below for the remaining thirty-eight (38) Formal and Informal projects in the HUBSCO system to determine whether there are any corrections to be made.

- a. Review the project documentation for the thirty-eight (38) Formal and Informal projects and compare the entries made in the HUBSCO system.
- b. If there are any corrections or updates to be done, fax or email a completed HUBSCO Service Request form to HUB Office. Once the HUB Office provides access to the specific project(s) in the HUBSCO system; make any necessary corrections.
- c. Finalize and re-submit the updated project.

Recommendation 2: Wake Tech adopt an HUB/MWBE policy that supports the North Carolina Community College Systems' (NCCCS) *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* as outlined in the NCCCS' Construction Manual (rev. August 2007). The policy should encourage participation of HUB/MWBE firms in Wake Tech's contracting and procurement processes.

Recommendation 3: Wake Tech formally establish an HUB/MWBE Program in Facility Operations. Designate an individual as the HUB/MWBE Liaison/Coordinator, so that interested HUB/MWBE firms will have a point of contact regarding contract opportunities.

Recommendation 4: Wake Tech develop a web presence that informs the general public and interested HUB/MWBE firms about “How to do business with Wake Tech”, who the HUB Liaison or contact person is, and how to identify contract opportunities and bids.

Recommendation 5: Wake Tech schedule regular training and orientation sessions on its HUB/MWBE program and policies for new staff members, project managers and key management members. Conduct regular training or refresher courses for end users and system administrators of the HUBSCO Construction Reporting System to avoid errors in entering contract information and finalizing project.

APPENDICES

APPENDIX I:

Minority Business Participation Goals [N.C. General Statute § 143--128.2]

Website Link: http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.2.html

§ 143-128.2. Minority business participation goals.

(a) The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each State building project, including building projects done by a private entity on a facility to be leased or purchased by the State. A local government unit or other public or private entity that receives State appropriations for a building project or other State grant funds for a building project, including a building project done by a private entity on a facility to be leased or purchased by the local government unit, where the project cost is one hundred thousand dollars (\$100,000) or more, shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of the work; provided, however, a local government unit may apply a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit had and continues to have a sufficiently strong basis in evidence to justify the use of that goal. On State building projects and building projects subject to the State goal requirement, the Secretary shall identify the appropriate percentage goal, based on adequate data, for each category of minority business as defined in G.S. 143-128.2(g)(1) based on the specific contract type.

Except as otherwise provided for in this subsection, each city, county, or other local public entity shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects.

Each entity required to have verifiable percentage goals under this subsection shall make a good faith effort to recruit minority participation in accordance with this section or G.S. 143-131 (b), as applicable.

(b) A public entity shall establish, prior to solicitation of bids, the good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects. Public entities shall make good faith efforts as set forth in subsection (e) of this section. Public entities shall require contractors to make good faith efforts pursuant to subsection (f) of this section. Each first-tier subcontractor on a construction management at "risk" project shall comply with the requirements applicable to contractors under this subsection.

(c) Each bidder, which shall mean first-tier subcontractor for construction manager at risk projects for purposes of this subsection, on a project bid under any of the methods authorized under G.S. 143-128 (a1) shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (f) of this section and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager

an affidavit to that effect in lieu of the affidavit otherwise required under this subsection. The apparent lowest responsible, responsive bidder shall also file the following:

- (1) Within the time specified in the bid documents, either:

- a. An affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. An affidavit under this sub-subdivision shall give rise to a presumption that the bidder has made the required good faith or effort; or
 - b. Documentation of its good faith effort to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.
- (2) Within 30 days after award of the contract, a list of all identified subcontractors that the contractor will use on the project.

Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

(d) No subcontractor who is identified and listed pursuant to subsection (c) of this section may be replaced with a different subcontractor except:

- (1) If the subcontractor's bid is later determined by the contractor or construction manager at risk to be non-responsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or
- (2) With the approval of the public entity for good cause.

Good faith efforts as set forth in G.S. 143-131(b) shall apply to the selection of a substitute subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the public entity of its good faith efforts pursuant to G.S. 143-131(b).

(e) Before awarding a contract, a public entity shall do the following:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
- (2) Attend the scheduled pre-bid conference.
- (3) At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - a. A description of the work for which the bid is being solicited.
 - b. The date, time, and location where bids are to be submitted.
 - c. The name of the individual within the public entity who will be available to answer questions about the project.
 - d. Where bid documents may be reviewed.
 - e. Any special requirements that may exist.
- (4) Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

(f) A public entity shall require bidders to undertake the following good faith efforts to the extent required by the Secretary on projects subject to this section. The Secretary shall adopt rules establishing points to be awarded for taking each effort and the minimum number of points

required, depending on project size, cost, type, and other factors considered relevant by the Secretary. In establishing the point system, the Secretary may not require a contractor to earn more than fifty (50) points, and the Secretary must assign each of the efforts listed in subdivisions (1) through (10) of this subsection at least 10 points. The public entity may require that additional good faith efforts be taken, as indicated in its bid specifications. Good faith efforts include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
 - (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
 - (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
 - (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
 - (5) Attending any pre-bid meetings scheduled by the public owner.
 - (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
 - (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
 - (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
 - (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
 - (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.
- (g) As used in this section:
- (1) The term "minority business" means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

- (2) The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
- a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - e. Female.
- (3) The term "socially and economically disadvantaged individual" means the same as defined in 15 U.S.C. 637.

(h) The State, counties, municipalities, and all other public bodies shall award public building contracts, including those awarded under G.S. 143-128.1, 143-129, and 143-131, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

(i) Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created pursuant to this section shall be maintained by the public entity for a period of not less than three years from the date of the completion of the building project.

(j) Except as provided in subsections (a), (g), (h) and (i) of this section, this section shall only apply to building projects costing three hundred thousand dollars (\$300,000) or more. This section shall not apply to the purchase and erection of prefabricated or re-locatable buildings or portions thereof, except that portion of the work which must be performed at the construction site. (2001-496, s. 3.1.)

APPENDIX II:

Minority Business Participation Administration [N.C. General Statute § 143--128.3]

Website Link: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.3.html

§ 143-128.3. Minority business participation administration.

(a) All public entities subject to G.S. 143-128.2 shall report to the Department of Administration, Office of Historically Underutilized Business, the following with respect to each building project:

- (1) The verifiable percentage goal.
- (2) The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or rules used to recruit minority business participation, and good faith documentation accepted by the public entity from the successful bidder.
- (3) The utilization of minority businesses under the various construction methods under G.S. 143-128(a1).

The reports shall be in the format and contain the data prescribed by the Secretary of Administration. The University of North Carolina and the State Board of Community Colleges shall report quarterly and all other public entities shall report semiannually. The Secretary of the Department of Administration shall make reports every six months to the Joint Legislative Committee on Governmental Operations on information reported pursuant to this subsection.

(b) A public entity that has been notified by the Secretary of its failure to comply with G.S. 143-128.2 on a project shall develop a plan of compliance that addresses the deficiencies identified by the Secretary. The corrective plan shall apply to the current project or to subsequent projects under G.S. 143-128, as appropriate, provided that the plan must be implemented, at a minimum, on the current project to the extent feasible. If the public entity, after notification from the Secretary, fails to file a corrective plan, or if the public entity does not implement the corrective plan in accordance with its terms, the Secretary shall require one or both of the following:

- (1) That the public entity consult with the Department of Administration, Office of Historically Underutilized Businesses on the development of a new corrective plan, subject to the approval of the Department and the Attorney General. The public entity may designate a representative to appear on its behalf, provided that the representative has managerial responsibility for the construction project.
- (2) That the public entity not bid another contract under G.S. 143-128 without prior review by the Department and the Attorney General of a good faith compliance plan developed pursuant to subdivision (1) of this subsection. The public entity shall be subject to the review and approval of its good faith compliance plan under this subdivision with respect to any projects bid

pursuant to G.S. 143-128 during a period of time determined by the Secretary, not to exceed one year.

A public entity aggrieved by the decision of the Secretary may file a contested case proceeding under Chapter 150B of the General Statutes.

(c) The Secretary shall study and recommend to the General Assembly and other State agencies ways to improve the effectiveness and efficiency of the State capital facilities development, minority business participation program and good faith efforts in utilizing minority businesses as set forth in G.S. 143-128.2, and other appropriate good faith efforts that may result in the increased utilization of minority businesses.

(d) The Secretary shall appoint an advisory board to develop recommendations to improve the recruitment and utilization of minority businesses. The Secretary, with the input of its advisory board, shall review the State's programs for promoting the recruitment and utilization of minority businesses involved in State capital projects and shall recommend to the General Assembly, the State Construction Office, The University of North Carolina, and the community colleges system changes in the terms and conditions of State laws, rules, and policies that will enhance opportunities for utilization of minority businesses on these projects. The Secretary shall provide guidance to these agencies on identifying types of projects likely to attract increased participation by minority businesses and breaking down or combining elements of work into economically feasible units to facilitate minority business participation.

(e) The Secretary shall adopt rules for State entities, The University of North Carolina, and community colleges and shall adopt guidelines for local government units to implement the provisions of G.S. 143-128.2.

(e1) Repealed by Session Laws 2007-392, s. 3, effective October 1, 2007.

(f) The Secretary shall provide the following information to the Attorney General:

- (1) Failure by a public entity to report data to the Secretary in accordance with this section.
- (2) Upon the request of the Attorney General, any data or other information collected under this section.
- (3) False statements knowingly provided in any affidavit or documentation under G.S. 143-128.2 to the State or other public entity. Public entities shall provide to the Secretary information concerning any false information knowingly provided to the public entity pursuant to G.S. 143-128.2.

(g) The Secretary shall report findings and recommendations as required under this section to the Joint Legislative Committee on Governmental Operations annually on or before June 1, beginning June 1, 2002. (2001-496, s. 3.6; 2005-270, s. 2; 2007-392, s. 3.)

APPENDIX III:

Minority Business Participation Administration [N.C. General Statute § 143--128.4]

Website Link: http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.4.html

§ 143-128.4. Historically underutilized business defined; statewide uniform certification.

(a) As used in this Chapter, the term "historically underutilized business" means a business that meets all of the following conditions:

- (1) At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section.
- (2) The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.

(a1) As used in this Chapter, the term "minority business" means a historically underutilized business.

(b) To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

- (1) Black. – A person having origins in any of the black racial groups of Africa.
- (2) Hispanic. – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.
- (3) Asian American. – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.
- (4) American Indian. – A person having origins in any of the original Indian peoples of North America.
- (5) Female.
- (6) Disabled. – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.
- (7) Disadvantaged. – A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

(c) In addition to the powers and duties provided in G.S. 143-49, the Secretary of Administration shall have the power, authority, and duty to:

- (1) Develop and administer a statewide uniform program for: (i) the certification of a historically underutilized business, as defined in this section, for use by State departments, agencies, and institutions, and political subdivisions of the State; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses.

- (2) Adopt rules and procedures for the statewide uniform certification of historically underutilized businesses.
- (3) Provide for the certification of all businesses designated as historically underutilized businesses to be used by State departments, agencies, and institutions, and political subdivisions of the State.

(d) The Secretary of Administration shall seek input from State departments, agencies, and institutions, political subdivisions of the State, and any other entity deemed appropriate to determine the qualifications and criteria for statewide uniform certification of historically underutilized businesses.

(e) Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. (2005-270, s. 3; 2007-392, s. 4; 2009-243, s. 3.)

APPENDIX IV:

Formal Bids

[N.C. General Statute § 143--129]

Website Link: http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.html

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars (\$500,000) without complying with the provisions of this section.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or re-advertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. – Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to re-advertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) Contract Execution and Security. – All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Use of Unemployment Relief Labor. – Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions. – The requirements of this Article do not apply to:

- (1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.
- (2) Cases of special emergency involving the health and safety of the people or their property.
- (3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.
- (4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.
- (5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.
- (6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this subdivision. These records are subject to public inspection.

- (7) Purchases of information technology through contracts established by the State Office of Information Technology Services as provided in G.S. 147-33.82(b) and G.S. 147-33.92(b).
 - (8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.
 - (9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.
 - (9a) Purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.
 - (10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.
 - (11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.
 - (12) **(Repealed effective July 1, 2011)** Build-to-suit capital leases with a private developer under G.S. 115C-532.
- (f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.
- (g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:
- (1) The United States of America or any federal agency;
 - (2) The State of North Carolina or any agency or political subdivision of the State; or
 - (3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political

subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) Transportation Authority Purchases. – Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.
- (5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public record until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1; 2006-232, s. 2; 2007-94, s. 1; 2007-322, s. 4; 2007-446, s. 6.)

APPENDIX V:

Informal Bids

[N.C. General Statute § 143--131]

Website Link: http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-131.html

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

(a) All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

(b) All public entities shall solicit minority participation in contracts for the erection, construction, alteration or repair of any building awarded pursuant to this section. The public entity shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in those contracts. Nothing in this section shall be construed to require formal advertisement of bids. All data, including the type of project, total dollar value of the project, dollar value of minority business participation on each project, and documentation of efforts to recruit minority participation shall be reported to the Department of Administration, Office for Historically Underutilized Business, upon the completion of the project. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593; 1981, c. 719, s. 1; 1987 (Reg. Sess., 1988), c. 1108, s. 6; 1997-174, s. 5; 2001-496, s. 5.1; 2005-227, s. 2.)

APPENDIX VI:

**Appendix E – MBE Documents for Contract Payment
[N.C. General Statute § 143--129]**

Website Link: <http://www.nc-sco.com/documents/forms/AppendE-1.doc>

APPENDIX E

MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

SCO Project ID: _____

Pay Application #: _____ Period: _____

The following is a list of payments made to Minority Business Enterprises on this project for the above-mentioned period.

MBE FIRM NAME	* TYPE OF MBE	AMOUNT PAID THIS MONTH (With This Pay App)	TOTAL PAYMENTS TO DATE	TOTAL AMOUNT COMMITTED

*Minority categories: Black (B), Hispanic (H), Asian American (AA), American Indian (AI), White Female (WF), Socially and Economically Disadvantaged (SED)

Approved/Certified By:

Name

Title

Date

Signature

SUBMIT WITH EACH PAY REQUEST - FINAL PAYMENT - FINAL REPORT

APPENDIX VIII:

Attach to Bid

State of North Carolina – Affidavit A

Listing of the Good Faith Effort

Affidavit of _____
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 1.0101)

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 - (10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 - (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 - (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 - (10 pts)** Attended prebid meetings scheduled by the public owner.
- 6 - (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 - (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 - (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 - (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS 143-128.2(d). Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20_____

Notary Public _____

My commission expires _____

APPENDIX IX:

Attach to Bid Only if Bidder Performs All Work With Own Workforces

State of North Carolina - Affidavit B

Intent to Perform Contract with Own Workforce

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the project

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20_____

Notary Public _____

My commission expires _____

APPENDIX X:

State of North Carolina – Affidavit C

Portion of the Work to be performed by Minority Firms

**** (NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL) ****

If the portion of the work to be executed by minority businesses as defined in GS143-128.2(g) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided, to the Owner, by the apparent lowest responsible, responsive bidder within 72 hours after notification of being the apparent low bidder.

Affidavit of _____ I do hereby certify
that on the _____
(Bidder Name)

(Project Name)

Project ID# _____ Amount of Bid \$ _____

I will expend a minimum of _____ % of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

APPENDIX XI:

State of North Carolina – Affidavit D

Good Faith Efforts

**** (NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL) ****

If the goal of 10% participation by minority business **is not** achieved, this affidavit shall be provided, to the Owner, by the apparent lowest responsible, responsive bidder within 72 hours after notification of being the apparent low bidder.

Affidavit of: _____

(Bidder)

I do certify the attached documentation as true and accurate representation of my good faith efforts.

(Attach additional sheets if required)

Name and Phone Number	*Minority Category	Work Description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions.

Examples of documentation include, but are not limited to, the following evidence:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or c joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20 _____

Notary Public _____

My commission expires _____

APPENDIX XII:

State of North Carolina - CERTIFICATION of Actual Work Performed by Minority Businesses

NOTE: THIS FORM IS TO BE SUBMITTED PRIOR TO FINAL PAYMENT BEING DUE THE CONTRACTOR

Affidavit of

_____ (Contractor Name)

_____ (Project Name)

Project ID# _____ Final Contract Amount \$ _____

I do hereby certify that _____% of the total dollar amount of the contract was performed with minority business. Such work was subcontracted to the firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

The undersigned hereby certifies that above information is correct to the best of his/her knowledge, information and belief.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of North Carolina, County of _____

Subscribed and sworn to before me this _____ day of _____ 20__

Notary Public _____

My commission expires _____