

## **GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN STATE CONSTRUCTION CONTRACTS**

In accordance with G.S. 143-128.2 (effective January 1, 2002) these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on State construction projects in the amount of \$300,000 or more. The legislation provides that the State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each project for which a contract or contracts are awarded. These requirements are published to accomplish that end.

### **SECTION A: INTENT**

It is the intent of these guidelines that the State of North Carolina, as awarding authority for construction projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper and reasonable to achieve the statutory goal of ten percent (10%) for participation by minority businesses in each construction project as mandated by GS 143-128.2. Nothing in these guidelines 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.

### **SECTION B: DEFINITIONS**

1. Minority - 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, the Pacific Islands;
  - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
  - e. Female
2. Minority Business - means a business:
  - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, 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.
3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637. "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities". "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged".
4. Public Entity - means State and all public subdivisions and local governmental units.
5. Owner - The State of North Carolina, through the Agency/Institution named in the contract.
6. Designer – Any person, firm, partnership, or corporation, which has contracted with the State of North Carolina to perform architectural or engineering, work.
7. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

8. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
9. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the State of North Carolina to perform construction work or repair.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

## **SECTION C: RESPONSIBILITIES**

1. Office for Historically Underutilized Businesses, Department of Administration (hereinafter referred to as HUB Office).

The HUB Office has established a program, which allows interested persons or businesses qualifying as a minority business under G.S. 143-128.2, to obtain certification in the State of North Carolina procurement system. The information provided by the minority businesses will be used by the HUB Office to:

- a. Identify those areas of work for which there are minority businesses, as requested.
- b. Make available to interested parties a list of prospective minority business contractors and subcontractors.
- c. Assist in the determination of technical assistance needed by minority business contractors.

In addition to being responsible for the certification/verification of minority businesses that want to participate in the State construction program, the HUB Office will:

- (1) Maintain a current list of minority businesses. The list shall include the areas of work in which each minority business is interested.
- (2) Inform minority businesses on how to identify and obtain contracting and subcontracting opportunities through the State Construction Office and other public entities.
- (3) Inform minority businesses of the contracting and subcontracting process for public construction building projects.
- (4) Work with the North Carolina trade and professional organizations to improve the ability of minority businesses to compete in the State construction projects.
- (5) The HUB Office also oversees the minority business program by:
  - a. Monitoring compliance with the program requirements.
  - b. Assisting in the implementation of training and technical assistance programs.
  - c. Identifying and implementing outreach efforts to increase the utilization of minority businesses.
  - d. Reporting the results of minority business utilization to the Secretary of the Department of Administration, the Governor, and the General Assembly.

2. State Construction Office

The State Construction Office will be responsible for the following:

- a. Furnish to the HUB Office a minimum of twenty-one days prior to the bid opening the following:
  - (1) Project description and location;
  - (2) Locations where bidding documents may be reviewed;
  - (3) Name of a representative of the owner who can be contacted during the advertising period to advise who the prospective bidders are;
  - (4) Date, time and location of the bid opening.
  - (5) Date, time and location of prebid conference, if scheduled.
- b. Attending scheduled prebid conference, if necessary, to clarify requirements of the general statutes regarding minority-business participation, including the bidders' responsibilities.

- c. Reviewing the apparent low bidders' statutory compliance with the requirements listed in the proposal, that must be complied with, if the bid is to be considered as responsive, prior to award of contracts. The State reserves the right to reject any or all bids and to waive informalities.
- d. Reviewing of minority business requirements at Preconstruction conference.
- e. Monitoring of contractors' compliance with minority business requirements in the contract documents during construction.
- f. Provide statistical data and required reports to the HUB Office.
- g. Resolve any protest and disputes arising after implementation of the plan, in conjunction with the HUB Office.

### 3. Owner

Before awarding a contract, owner shall do the following:

- a. 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 non-minority businesses.
- b. Attend the scheduled prebid conference.
- c. 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 for 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:
  - 1. A description of the work for which the bid is being solicited.
  - 2. The date, time, and location where bids are to be submitted.
  - 3. The name of the individual within the owner's organization who will be available to answer questions about the project.
  - 4. Where bid documents may be reviewed.
  - 5. Any special requirements that may exist.
- d. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
- e. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- f. Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award to the State Construction Office.
- g. Evaluate documentation to determine good faith effort has been achieved for minority business utilization prior to recommendation of award to State Construction Office.
- h. Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
- i. Make documentation showing evidence of implementation of Owner's responsibilities available for review by State Construction Office and HUB Office, upon request

### 4. Designer

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

- a. Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.
- b. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
- c. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- d. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with

corresponding total dollar value of the bid and affidavit listing Good Faith Efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.

- e. During construction phase of the project, review “MBE Documentation for Contract Payment” – (Appendix E) for compliance with minority business utilization commitments. Submit Appendix E form with monthly pay applications to the owner and forward copies to the State Construction Office.
- f. Make documentation showing evidence of implementation of Designer’s responsibilities available for review by State Construction Office and HUB Office, upon request.

5. Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors

Under the single-prime bidding, the separate-prime bidding, construction manager at risk and alternative contracting methods, contractor(s) will:

- a. Attend the scheduled prebid conference.
- b. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
- c. At least ten (10) days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification will include the following:
  - (1) A description of the work for which the subbid is being solicited.
  - (2) The date, time and location where subbids are to be submitted.
  - (3) The name of the individual within the company who will be available to answer questions about the project.
  - (4) Where bid documents may be reviewed.
  - (5) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) minority businesses in the general locality of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.

- d. During the bidding process, comply with the contractor(s) requirements listed in the proposal for minority participation.
- e. Identify on the bid, the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
- f. Make documentation showing evidence of implementation of PM, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by State Construction Office and HUB Office, upon request.
- g. Upon being named the apparent low bidder, the Bidder shall provide one of the following: (1) an affidavit (Affidavit C) 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; (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
- h. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values. The schedule of values shall be provided as required in Article 31 of the General Conditions of the Contract to facilitate payments to the subcontractors.
- i. The contractor(s) shall submit with each monthly pay request(s) and final payment(s), “MBE Documentation for Contract Payment” – (Appendix E), for designer’s review.
- j. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner, State Construction Office, and the Director of the HUB Office in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.

- k. If during the construction of a project additional subcontracting opportunities become available, make a good faith effort to solicit subbids from minority businesses.
- l. It is the intent of these requirements apply to all contractors performing as prime contractor and first tier subcontractor under construction manager at risk on state projects.

6. Minority Business Responsibilities

While minority businesses are not required to become certified in order to participate in the State construction projects, it is recommended that they become certified and should take advantage of the appropriate technical assistance that is made available. In addition, minority businesses who are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

**SECTION 4: DISPUTE PROCEDURES**

It is the policy of this state that disputes that involves a person's rights, duties or privileges, should be settled through informal procedures. To that end, minority business disputes arising under these guidelines should be resolved as governed under G.S. 143-128(g).

**SECTION 5:** These guidelines shall apply upon promulgation on state construction projects. Copies of these guidelines may be obtained from the Department of Administration, State Construction Office, (physical address) 301 North Wilmington Street, Suite 450, NC Education Building, Raleigh, North Carolina, 27601-2827, (mail address) 1307 Mail Service Center, Raleigh, North Carolina, 27699-1307, phone (919) 807-4100, Website: [www.nc-sco.com](http://www.nc-sco.com)

**SECTION 6:** In addition to these guidelines, there will be issued with each construction bid package provisions for contractual compliance providing minority business participation in the state construction program.

## MINORITY BUSINESS CONTRACT PROVISIONS (CONSTRUCTION)

### APPLICATION:

The **Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts** are hereby made a part of these contract documents. These guidelines shall apply to all contractors regardless of ownership. Copies of these guidelines may be obtained from the Department of Administration, State Construction Office, (physical address) 301 North Wilmington Street, Suite 450, NC Education Building, Raleigh, North Carolina, 27601-2827, (mail address) 1307 Mail Service Center, Raleigh, North Carolina, 27699-1307, phone (919) 807-4100, Website: <http://www.nc-sco.com>

### MINORITY BUSINESS SUBCONTRACT GOALS:

The goals for participation by minority firms as subcontractors on this project have been set at 10%.

The bidder must identify on its bid, the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts **or** affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).

The lowest responsible, responsive bidder must provide Affidavit C, 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.

**OR**

Provide Affidavit D, that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, **with documentation of Good Faith Effort, if the percentage is not equal to the applicable goal.**

**OR**

Provide Affidavit B, which includes sufficient information for the State to determine that the bidder does not customarily subcontract work on this type project.

**The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.**

## **MINIMUM COMPLIANCE REQUIREMENTS:**

All written statements, affidavits or intentions made by the Bidder shall become a part of the agreement between the Contractor and the State for performance of this contract. Failure to comply with any of these statements, affidavits or intentions, or with the minority business Guidelines shall constitute a breach of the contract. A finding by the State that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the State whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, the State will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. 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 for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- (5) Attending any prebid 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.

**APPENDIX E**

**MBE DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

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	* INDICATE TYPE OF MBE	AMOUNT PAID THIS MONTH	TOTAL PAYMENTS TO DATE	TOTAL AMOUNT COMMITTED

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

Date: \_\_\_\_\_ Approved/Certified By: \_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Signature

***SUBMIT WITH EACH PAY REQUEST & FINAL PAYMENT***