

Moore County's

Minority Business/Historically Underutilized Business Participation Outreach Plan and Guidelines

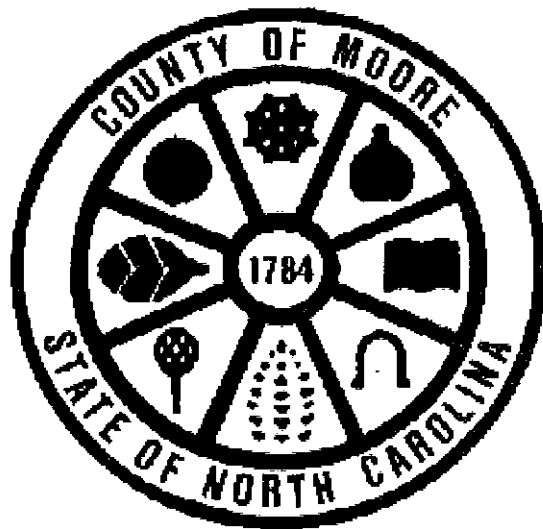


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OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN MOORE COUNTY BUILDING CONTRACTS

G.S. 143-128.2 requires that 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. A verifiable percentage goal is also required for building projects costing \$300,000 or more when no state funds are involved. The Outreach Plan shall also be applicable to the selection process of architectural, engineering and construction manager at risk services.

Moore County has a current verifiable goal of ten percent (10%) for minority participation for public building projects. The overall goal will be reviewed annually or as soon as relevant data is available.

SECTION A. INTENT

The intent of these guidelines is that Moore County, as awarding authority for building projects, and the contractors and subcontractors performing the building 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 building project as mandated by G.S.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 Business Participation/Historically Underutilized Business - G.S. 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.)

2. **Disability** - defined in G.S. 168A-3 (G.S. 168-1 doesn't have its own definition—it refers back to the definition in G.S. 168A-3) is: “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a

physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

3. **Socially disadvantaged individual** - defined in 15 U.S.C. § 637 is someone who has “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.”
4. **Economically disadvantaged individual** - defined in 15 U.S.C. § 637 is a socially disadvantaged person (see above) “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.”
5. **Public Entity** - State and all public subdivisions and local government units.
6. **Owner** - Moore County.
7. **Designer** - Any person, firm, partnership, or corporation, which has contracted with Moore County to perform architectural or engineering work.
8. **Bidder** - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
9. **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.
10. **Contractor** - Any person, firm, partnership, corporation, association, or joint venture which has contracted with Moore County to perform construction work or repair.
11. **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 the subcontract.

SECTION C. MINORITY OUTREACH PLAN AND GUIDELINES

Owner

Moore County will employ the following strategies to encourage participation from HUBs.

1. Work with minority-focused and small business groups that support HUB inclusion in the solicitation of bids. These groups include the Sandhills Community College Small Business Center and Sandhills SCORE.
2. Place emphasis on the importance of soliciting certified HUB firms for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from HUB firms.
3. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.

4. Assess the effectiveness of the HUB Program, and identify opportunities to enhance it, by evaluating HUB participation and compliance and reviewing the good faith efforts provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified HUB firms and small businesses that have expressed an interest in Moore County projects. Identify these opportunities and contact interested businesses no later than ten (10) days prior to the bid opening and provide a list of prime contractors who plan to participate in the project.
6. Build new business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their HUB outreach programs is working and to share “best practices” and ideas to improve programs.
7. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Moore County’s outreach plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to HUB firms, majority contractors and small businesses, and provide information to the general public about the HUB program and continue outreach efforts to the business community.
9. Enhance the County’s web page by including Moore County's Minority Business Participation Outreach Plan and Guidelines, listing good faith efforts, and creating links to HUB resources and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than ten (10) days prior to the bid opening and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Maintain or continue to maintain a database specifically for HUB firms and majority contractors to ensure those firms wishing to do business with Moore County have access to up-to-date information.
12. Advertise upcoming bid opportunities in minority-focused media.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

Designer

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

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.

3. Maintain documentation of any contacts, correspondence, or conversations with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) – (i.e. bidders’ proposal for identification of the minority businesses that will be utilized with corresponding 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 an award.
5. During the construction phase of the project, review documentation for contract payment to HUBs (e.g. state form “Appendix E: HUB Documentation for Contract Payment”) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

Prime Contractor(s) Construction Manager 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:

1. Attend the scheduled pre-bid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. During the bidding process, comply with the owner's requirements listed in the proposal for minority participation.
4. 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) or Intent to Perform Contract With Own Workforce affidavit.
5. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First Tier Subcontractor responsibilities available for review by Moore County upon request.
6. Provide one of the following upon being named the apparent low bidder: (1) 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. This affidavit shall give rise to a presumption that the bidder has made the required good faith effort; or (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken 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. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
7. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
8. Submit with each monthly pay requests(s) and final payment(s), “HUB Documentation for Contract Payment” for designer’s review.
9. If at any time during the construction of a project, it becomes necessary to replace a minority business subcontractor, immediately advise the owner 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.
10. Make a good faith effort to solicit sub-bids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

Minority Business Responsibilities

Moore County does not certify minority businesses. Moore County requires certification for minority businesses. Pursuant to G.S.143-128.4 (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. Any business which desires to participate as an HUB will be required to complete and submit for certification, documents required by the agencies listed below. Only those firms holding current certification through at least one of the following agencies will be considered eligible for inclusion in meeting the HUB participation percentage goals:

North Carolina Administration Department Historically Underutilized Business (HUB) certification.

North Carolina Department of Transportation Disadvantaged Business Enterprise (DBE)

North Carolina Department of Transportation Minority Business Enterprise (MBE)

North Carolina Department of Transportation Women Business Enterprise (WBE) Business certification

Small Business Administration 8(a) certification.

Other governmental agencies on a case-by-case basis.

A copy of these guidelines will be issued with each bid package for Moore County building construction projects. These guidelines shall apply to all contractors regardless of ownership.

Other Responsibilities

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

SECTION D. MINIMUM COMPLIANCE REQUIREMENTS

All written statements, affidavits or intentions made by the Bidder shall become a part of the agreement between the Contractor and Moore County for the performance of the contract. Failure to comply with any of these statements, affidavits or with the minority business guidelines shall constitute a breach of the contract. A finding by Moore County 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 Moore County whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, Moore County will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points. Failure to file a required affidavit or documentation demonstrating that the Contractor made the required good faith effort is grounds for rejection of the bid. 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. (10 points)

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. (10 points)
3. Breaking down or combining elements of work in economically feasible units to facilitate minority participation. (15 points)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in bid documents that provide assistance in recruitment of minority businesses. (10 points)
5. Attending any pre-bid meetings scheduled by the public owner. (10 points)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
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. (25 points)
9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public building construction or repair project when possible. (20 points)
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. (20 points)

SECTION E. DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. 143-128(f1), all disputes involving contractors on a building construction or repair project with Moore County shall be resolved pursuant to the County of Moore Rules for Implementing Mediated Settlement Conferences in the Building Projects (Exhibit K is attached hereto and made part thereof).

SECTION F.

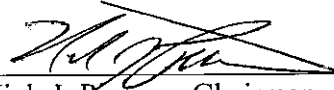
In addition to these guidelines, there will be issued with each building bid package provisions for providing minority business participation in the Moore County projects.

SECTION G. INFORMAL BIDDING STATUTE

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,

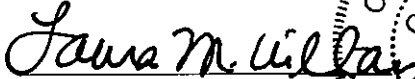
including the type of project, total dollar value of the project, dollar value of minority business participation on each project, and documentation of efforts to recruit minority participation shall be reported to the Department of Administration, Office for Historically Underutilized Business, upon the completion of the project.

APPROVED AND EFFECTIVE, this the 20 day of September, 2011.



Nick J. Picerno, Chairman
Moore County Board of Commissioners

ATTESTED:



Laura M. Williams
Clerk to the Board

