

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

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, Construction Manager-at-Risk, and alternative contracting methods on Henderson County building construction projects in the amount of \$300,000 or more. The Outreach Plan shall also be applicable to the selection process of architectural, engineering and Construction Manager-at-Risk services.

Henderson County's current goal for minority participation for public building construction is five percent (5%) (established by action of the Board of Commissioners on November 20, 1996). The overall goal will be reviewed annually or as soon as relevant data is available.

SECTION I: INTENT

The intent of these guidelines is that Henderson County, 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 five percent (5%) for participation by minority businesses in each construction 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 II: 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, or 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 government units.
 5. Owner – Henderson County.
 6. Designer – Any person, firm, partnership, or corporation, which has contracted with Henderson County 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 Henderson County 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 the contract.

SECTION III: RESPONSIBILITIES OF PARTIES

A. OWNER RESPONSIBILITIES: MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN

1. Work with minority-focused and small business groups that support MBE and small business inclusion in the solicitation of bids. These groups include the CVCC Small Business Development Center and the Small Business Technology Center.

2. Place more emphasis on the importance of soliciting certified MBE firms and small businesses 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 MBE firms.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business and Outreach Plan and provide information on G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the MBE Program, and identify opportunities to enhance it, by evaluating MBE 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 MBE firms and small businesses that have expressed an interest in Henderson County projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors planning to participate in the project.
6. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how their Outreach Program and MBE program is working and sharing “best practices” and ideas to improve the program.
7. Participate in education opportunities throughout the community as they become available and offer training sessions to share the County’s Outreach Plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors and small businesses, and provide information to the general public about the MBE Program, and continue outreach efforts to the business community.
9. Enhance the County’s web page by including the Outreach Plan and Guidelines, listing good faith efforts, and creating links to MBE 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 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with Henderson 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.

B. DESIGNER RESPONSIBILITIES

Under the single-prime bidding, separate prime bidding, dual bidding, Construction Manager-at-Risk, or alternative contracting method, the designer must do all of the following:

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 and 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 "MBE Documentation for Contract Payment" form with monthly pay applications to the owner and forward copies to Henderson County.

C. PRIME CONTRACTOR(S). CONSTRUCTION MANGER AT RISK. AND FIRST TIER SUBCONTRACTOR

Under the single prime bidding, the separate-prime bidding dual bidding, Construction Manager-at-Risk and alternative contracting methods, contractor(s) must do all of the following:

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. 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 must include all of the following:
 - a. A description of the work for which the sub-bid is being solicited.
 - b. The date, time and location where sub-bids are to be submitted.
 - c. The name of the individual within the company who will be available to answer questions about the project.
 - d. Where bid documents may be reviewed.
 - e. Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

4. During the bidding process, comply with the contractor(s) requirements listed in the proposal for minority participation.
5. 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.
6. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First Tier Subcontractor responsibilities available for review by Henderson County upon request.
7. Provide one of the following upon being named the apparent low bidder.
 - 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. This affidavit shall give rise to a presumption that the bidder has made required good faith effort; or
 - b. 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.

8. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
9. Submit with each monthly pay request(s) and final payment(s), "MBE Documentation for Contract Payment" for designer's review.
10. 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.
11. Make a good faith effort to solicit sub-bids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

D. MINORITY BUSINESS RESPONSIBILITIES

Henderson County does not certify minority, disadvantaged or woman-owned businesses. Any business which desires to participate as an MBE 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 MBE participation percentage goals:

1. North Carolina Administration Department Historically Underutilized Business (HUB) certification.
2. North Carolina Department of Transportation Minority/Disadvantage/Woman owned Business certification.
3. Small Business Administration 8(a) certification.
4. Other governmental agencies on a case-by-case basis.

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

SECTION IV: MINIMUM COMPLIANCE REQUIREMENTS

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

In determining whether a contractor has made a Good Faith Efforts, Henderson County will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. Contractors are required to earn at least 50 points. 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.

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. *Value = 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. *Value = 10 Points*

3. Breaking down or combining elements of work in economically feasible units to facilitate minority participation. *Value = 15 Points*
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and those included in the bid documents to provide assistance in recruitment of minority businesses. *Value = 10 Points*
5. Attending any pre-bid meetings scheduled by the public owner. *Value = 10 Points*
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. *Value = 20 Points*
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. *Value = 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. *Value = 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. *Value = 20 Points*
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. *Value = 20 Points*

Approved this the 16 day of October, 2002
HENDERSON COUNTY BOARD OF COMMISSIONERS