

UNION COUNTY
MINORITY AND SMALL BUSINESS GUIDELINES AND
OUTREACH PLAN



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GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN UNION COUNTY 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 County building construction, erection, alteration, and repair projects (“building projects”) in the amount of \$300,000 or more and on County building projects involving State funding where the total project cost \$100,000 or more.

Union County has established a verifiable goal of 10% for participation by minority businesses in the aforementioned building project contracts. The overall goal will be reviewed annually or as soon as relevant data is available.

SECTION A: INTENT

It is the intent of these Guidelines that Union County, as awarding authority for building projects, and the contractors and subcontractors performing the building project contracts awarded, shall cooperate and in good faith do all things legal, proper and reasonable to achieve the goal of ten percent (10%) 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.

A copy of these Guidelines will be issued with each bid package for applicable Union County building projects. These Guidelines shall apply to all contractors on such projects, regardless of ownership.

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 Indian peoples of North America; or
 - e. Female

2. Minority Business - means a business that meets all of the following conditions:
 - a. At least fifty-one percent (51%) of the business 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. 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; and
 - c. The business is certified as a Historically Underutilized Business by the North Carolina Department of Administration Office for Historically Underutilized Business.

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 the State and all public subdivisions and local governmental units.

5. Owner - Union County.

6. Designer - Any person, firm, partnership, or corporation, which has contracted with the Owner 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 Owner to perform building construction, erection, alteration, or repair work.

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.

11. HUB Office – N.C. Department of Administration’s Office for Historically Underutilized Businesses.

SECTION C: RESPONSIBILITIES

1. Owner:

The Owner shall do the following:

- a. Implement the attached “Union County’s Minority and Small 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.
- b. Attend the scheduled prebid conference and explain the minority goals and objectives.
- c. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the Owner 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:
 - (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 public entity 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) prior to recommendation of award.
- g. Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
- h. Forward documentation showing evidence of implementation of Owner’s requirements to the State Construction Office and the HUB Office upon

request.

In addition, after a contract has been awarded the Owner shall:

- a. Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
- b. Submit the report to the HUB Office as required by G.S. 143-128.3(a).

2. Designer:

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:

- a. Attend the scheduled pre-bid 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 and provide documentation of this assistance for the Owner's records.
- c. Maintain documentation of any contacts, correspondence, or conversations with minority business firms made in an attempt to meet the goals and forward the documentation to the Owner.
- 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 an 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.
- f. Make documentation showing evidence of implementation of Designer's responsibilities available for review by the Owner and State officials upon request.

3. Prime Contractor(s), Construction Manager at Risk, and Its First-Tier Subcontractors:

The following requirements apply to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods, as well as to all contractors performing as contractors and first-tier subcontractors under construction manager at risk. For purposes of this subsection, the term "contractor(s)"

shall also include first-tier subcontractors under a construction manager at risk. The contractors shall:

- a. Attend the scheduled prebid conference and any prebid meetings scheduled by the Owner.
- 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 or due date for proposals, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of 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 within a 75 mile radius 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 these Guidelines and any contractor requirements listed in Union County's Minority and Small Business Participation Outreach Plan.
- e. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and submit affidavit listing Good Faith Efforts (Affidavit A) as required by G.S. §143-128.2(c) and G.S. §143-128.2(f). If the contractor will be performing all of the work with its own workforce, the contractor may submit Affidavit B, Intent to Perform Contract with Own Workforce," in lieu of Affidavit A. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
- f. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor responsibilities available for review by the Owner and State officials upon request.

- g. Provide one of the following to Owner upon being named the apparent low bidder:
 - (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; or
 - (2) if the percentage is not equal to the applicable goal, then an affidavit (Affidavit D) and 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, solicitation, 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.
- h. Within thirty (30) days after award of the contract, the apparent lowest responsible, responsive bidder shall file with Owner a list of all identified subcontractors that the contractor will use on the project.
- i. 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 the General Conditions of the Contract to facilitate payments to the subcontractors.
- j. Submit with each monthly pay request and final payment request the “MBE Documentation for Contract Payment” - (Appendix E), for Designer’s review.
- k. If it any time during the construction of a project, if 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.
- l. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

In addition, a construction manager at risk shall submit its plan for compliance with N.C. Gen. Stat. § 143-128.2 for approval by the County prior to soliciting bids for the project’s first-tier subcontractors.

4. Minority Business Responsibilities

Union County does not certify minority businesses. Any business which desires to participate as a minority business under these Guidelines will be required to register and become certified as a historically underutilized business (“HUB”) by the North Carolina Department of Administration Office for Historically Underutilized Businesses (“HUB Office”). This system will replace all other HUB certification or registration programs currently (or formerly) used by public entities in North Carolina. Pursuant to G.S. 143-128.4(e), as of July 1, 2009, State agencies and local governments may count **only** those businesses that are certified as HUBs through the new statewide system to determine whether their participation goals have been met. In other words, a business that was registered as a HUB through a local government’s registration system but has not been certified as a HUB through the new statewide system will not count towards that local government’s participation goals.

Businesses seeking HUB certification need to go to:
<http://www.doa.state.nc.us/hub/prog-certification.htm>.

Minority HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

- a. Attending the scheduled prebid conference.
- b. Responding promptly whether or not they wish to submit a bid when contacted by the Owner or bidders.
- c. Attending training and contractor outreach sessions given by the Owner, contractors and state agencies, when feasible.
- d. Participating in Mentor/Protégé programs, training, or other business development programs offered by the Owner, contractors or state agencies.
- e. Negotiating in good faith with the Owner or contractors.

SECTION D: DISPUTE PROCEDURES

It is the policy of this State that disputes that involve 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 the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11).

MINORITY BUSINESS CONSTRUCTION CONTRACT PROVISIONS

APPLICATION:

The **Guidelines for Recruitment and Selection of Minority Businesses for Participation in Union County Construction Contracts** are hereby made a part of these contract documents.

MINORITY BUSINESS SUBCONTRACT GOALS:

The goal for participation by minority firms as subcontractors on this project has 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).

In addition, the lowest responsible, responsive bidder must do one of the following:

(1) 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

(2) If the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, is less than the applicable goal, provide Affidavit D as well as documentation of Good Faith Efforts.

OR

(3) Provide Affidavit B, which includes sufficient information for the Owner 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 Union 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 the contract. A finding by Union 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 Union County whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, Union County will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. Bidders are required to earn at least 50 points from the good faith efforts listed below for their bid to be considered responsive. Failure to file a required affidavit or documentation demonstrating that the bidder made the required good faith efforts 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. 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 into 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 included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- (5) Attending any prebid 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.

UNION COUNTY'S MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN

In addition to the good faith efforts set forth in the Guidelines for Recruitment and Selection of Minority Businesses for Participation in Union County Construction Contracts, Union County will also make the following good faith efforts in order to make it feasible for minority businesses to submit successful bids or proposals for contracts for building projects. Union County shall also make the following good faith efforts in the selection process for architectural, engineering, and construction manager at risk services.

1. Work with minority-focused and small business groups that support minority business and small business inclusion in the solicitation of bids. These groups include the Small Business Center Network (SBCN) (Anson & Union Counties), The Small Business and Technology Development Center (SBTDC), and The Union County Chamber of Commerce.
2. Place more emphasis on the importance of soliciting certified minority businesses 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 minority businesses.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business for Participation in Union County Construction Projects and this Outreach Plan (hereinafter referred to collectively as the "MBE Program") 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 minority business 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 minority businesses and small businesses that have expressed an interest in Union 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 plan 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 this 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 minority businesses, 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 MBE Program, listing good faith efforts, and creating links to minority business 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. Direct minority businesses to the Statewide historically underutilized business certification program in order to ensure those firms wishing to do business with Union County or any other public entity have access to up to date information.
12. Advertise upcoming bid opportunities in minority-focused media and on the county website at www.co.union.nc.us.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.
14. Document telephone calls, emails and correspondence with or on behalf of minority businesses and encourage interested eligible firms to become NCDOT certified.