



New Hanover County Schools
Reach, Equip, Achieve

**NEW HANOVER COUNTY SCHOOLS
FACILITY PLANNING & CONSTRUCTION**

**GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR
PARTICIPATION IN NEW HANOVER COUNTY SCHOOLS 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 New Hanover County Schools construction projects in the amount of \$100,000 or more. The legislation provides that New Hanover County Schools shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value 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 New Hanover County Schools, 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 contractors 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 New Hanover County Schools and all public subdivisions and local governmental units.
5. **Owner** – New Hanover County Schools, through the Agency/Institution named in the contract.

6. **Designer** – Any person, firm, partnership, or corporation, which has contracted with New Hanover County Schools 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 there of 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 New Hanover County Schools 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 New Hanover County Schools 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 North Carolina trade and professional organizations to improve the ability of minority businesses to compete in New Hanover County 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. **New Hanover County Schools**

New Hanover County Schools will be responsible for 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. 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 pre-bid conference, if scheduled.
- c. Attend the scheduled pre-bid conference.
- d. 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.
- e. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
- f. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- g. Review, jointly with the designer, all requirements of G.S. 143-128.2 (c) and G.S. 143-128.2 (f) – (i.e. bidder's 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.
- h. 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. New Hanover County Schools reserves the right to reject any or all bids and to waive informalities.
- i. Evaluate documentation to determine good faith effort has been achieved for minority business utilization prior to recommendation of award to State Construction Office.
- j. Review prime contractor's pay applications for compliance with minority business utilization commitments prior to payment.
- k. Make documentation showing evidence of implementation of Owner's responsibilities available for review by State Construction Office and HUB Office, upon request.
- l. Reviewing of minority business requirements at Pre-construction conference.
- m. Monitoring of contractor's compliance with minority business requirements in the contract documents during construction.
- n. Provide statistical data and required reports to the HUB office.
- o. Resolve any protest and disputes arising after implementation of the plan, in conjunction with the HUB office.

3. Designer

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

- 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.

- 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. bidder’s 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 New Hanover County Schools and HUB Office, upon request.

4. 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 pre-bid 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 payments(s), “MBE Documentation for Contract Payment” – (Appendix E), for designer’s review.
- j. During the construction of the project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner 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.

5. Minority Business Responsibilities

While minority businesses are not required to become certified in order to participate in the New Hanover County Schools 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 New Hanover Schools, 6410 Carolina Beach Road, Wilmington, NC 28412 (910) 254-4313.

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 New Hanover County Schools construction program.

MINORITY BUSINESS CONTRACT PROVISIONS (CONSTRUCTION)

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, of 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.

AFFIDAVIT A

LISTING OF GOOD FAITH EFFORTS

County of _____

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 – (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.

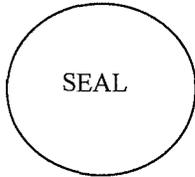
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure 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 _____

AFFIDAVIT B

INTENT TO PERFORM CONTRACT WITH OWN FORCES

County of _____

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____
_____ contract.
(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

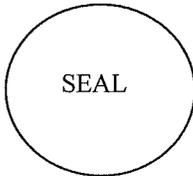
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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 _____

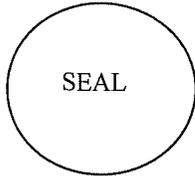
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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 _____

AFFIDAVIT D

GOOD FAITH EFFORTS

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of: _____
(Name 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.

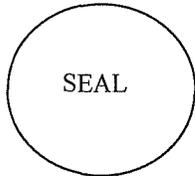
I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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 _____

MINIMUM COMPLIANCE REQUIREMENTS:

All written statements, affidavits or intentions made by the Bidder shall become 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 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 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.

APPENDIX E

MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Payment Amount	Owner Use Only

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

Date: _____ Approved/Certified By: _____

Name

Title

Signature

****THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT****