

**ORANGE COUNTY
BOARD OF EDUCATION**

AGENDA ITEM ABSTRACT

Meeting Date: February 25, 2013

AGENDA ITEM No. 13-02-(2)-08

ACTION ITEM: (Y/N) Y

SUBJECT: Board Policy Subcommittee Recommendations – 2nd Reading Approvals

INFO. CONTACT: Dr. Marcie Holland/Patrick Rhodes **PHONE:** 919-732-8126

ATTACHMENTS:

1. Attorney Malone's email regarding policies 8700 and 8705 and revisions since First Reading Approval
2. Policy # 3300: School Calendar and Time for Learning (Revised)
3. Policy # 7130: Licensure (Revised)
4. Policy # 7240: Drug Free Workplace (Revised)
5. Policy # 7245: Drug and Alcohol Testing of Commercial Motor Vehicle Operators (New)
6. Policy # 7771: Recruiting: Athletics (New)
7. Policy # 8700: Purchasing Requirements for Equipment, Materials and Supplies (Revised)
8. Policy # 8702: Participation By Small, Minority, Physically Handicapped And Women Contractors (New)
9. Policy # 8703: Organization of the Purchasing Function (New)
10. Policy # 8705: Contract Administration (Revised)
11. Policy # 9000: Planning For Facility Needs (Revised)
12. Policy # 9100: Bidding for Construction Work (New)
13. Policy # 9125: Minority Business Enterprise Participation in Construction Contracts (New)
14. Policy # 9125-R: Regulations and Procedures for Implementing Minority Business Enterprise Participation in Construction Contracts Policy (New)

PURPOSE: The purpose of this agenda item is for the board to approve new and revised policies on 2nd Reading Approval.

BACKGROUND: The Board Policy Subcommittee met on January 11, 2013, and February 1, 2013. Upon recommendation of subcommittee members Donna Coffey, Brenda Stephens, Debbie Piscitelli, administration and legal counsel, new and revised policies were approved by the full board on February 11, 2013. These policies are being brought back for 2nd Reading Approval:

- Policy # 3300: School Calendar and Time for Learning (Revised)
- Policy # 7130: Licensure (Revised)
- Policy # 7240: Drug Free Workplace (Revised)
- Policy # 7245: Drug and Alcohol Testing of Commercial Motor Vehicle Operators (New)
- Policy # 7771: Recruiting: Athletics (New)
- Policy # 8700: Purchasing Requirements for Equipment, Materials and Supplies (Revised)
- Policy # 8702: Participation By Small, Minority, Physically Handicapped And Women Contractors (New)
- Policy # 8703: Organization of the Purchasing Function (New)
- Policy # 8705: Contract Administration (Revised)
- Policy # 9000: Planning For Facility Needs (Revised)
- Policy # 9100: Bidding for Construction Work (New)
- Policy # 9125: Minority Business Enterprise Participation in Construction Contracts (New)
- Policy # 9125-R: Regulations and Procedures for Implementing Minority Business Enterprise Participation in Construction Contracts Policy (New)

FINANCIAL IMPACT: There is no financial impact associated with this agenda item.

RECOMMENDATION: The Superintendent recommends the Board of Education approved the revised and new policies listed above for 2nd Reading Approval.



Marcie Holland <marcie.holland@orange.k12.nc.us>

Orange County Board of Education - Policies

1 message

Rod Malone <RMalone@tharringtonsmith.com>

Thu, Feb 21, 2013 at 7:35 AM

To: "Pam.Jones@orange.k12.nc.us" <Pam.Jones@orange.k12.nc.us>, Donna Brinkley <donna.brinkley@orange.k12.nc.us>, Marcie Holland <marcie.holland@orange.k12.nc.us>, Patrick Rhodes <patrick.rhodes@orange.k12.nc.us>
Cc: Jonathan Blumberg <JBlumberg@tharringtonsmith.com>

Please find attached the proposed revisions to policies 8700 and 8705 that Jonathan discussed with the Board at the last meeting. I am incorporating my changes into the changes approved by the Board at first reading so all of the changes are noted in the attached. I hope this is helpful.

In policy 8705, we added the word "service" in several locations to clarify that this policy only governs service contracts (not purchases), and we deleted some language that might suggest the policy covers purchases. We also added a sentence just before the section governing principals further clarifying that purchase contracts are covered by policy 8700.

In policy 8700, we added language in the third paragraph to limit the superintendent's authority to purchases that are within the budget for the current fiscal year. This language will also limit the superintendent's authority to enter into multi-year purchase contracts. This language was added to eliminate any confusion. We also added the language to Section B.2. that Jonathan discussed with the Board regarding the solicitation of two informal quotes. I have also added language to Section C to clarify the Board's expectations regarding purchases costing less than \$30,000.

If you have any questions regarding either of the attached policies, please do not hesitate to contact me.

Rod Malone

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SCHOOL CALENDAR AND TIME FOR LEARNING

Date Reviewed/Approved: 11/21/2011 Policy Number: 3300

Rescinds Policy Number:

Issued: 04/21/2008

The board believes that time is a variable in the educational process and that children may need different amounts of instructional time in order to fulfill the educational goals and objectives of the board. The board also recognizes that the school day and school year should be planned in such a manner as to facilitate student learning and to permit an accurate assessment of student achievement in scheduled testing periods.

A. INSTRUCTIONAL TIME

Interruptions of instructional time and time off task must be kept to a minimum. The principal is responsible for ensuring that instructional time is maintained and protected in the school schedule. Each teacher is responsible for ensuring optimal use of instructional time in his or her classes. School personnel are encouraged to seek creative means of reducing transitional time and scheduling non-instructional activities. A proposal for alternative scheduling of classes or other such strategies may be a part of a school improvement plan.

B. SCHOOL DAY

The length of the school day may vary from school to school if approved by the board of education. The "instructional" day includes only those hours a student is assigned to a teacher for the primary purpose of instruction. Breaks in the instructional day for changing classes, homeroom, lunch, pep rallies and similar non-instructional activities are not part of the instructional day and may not be counted towards the minimum instructional hours requirement established in Section D, below.

C. OPENING AND CLOSING DATES

Except for year-round schools or schools operating under a modified calendar, the opening date for students will be no earlier than the Monday closest to August 26, and the closing date for students will be no later than the Friday closest to June 11.

The school board may offer supplemental or additional educational programs or activities outside the adopted school calendar.

Upon a showing of good cause, as defined by G.S. 115C-84.2(d), the board will seek a waiver of the opening date from the State Board of Education.

The board will revise the closing date only if necessary to comply with the minimum requirements for instructional days or instructional time.

D. SCHOOL CALENDAR

The school calendar in all schools will be for 215 days and will provide for a minimum of 185 days or 1025 hours of instruction covering at least nine months. A school "month" is defined as 20 days of instruction. If school is closed early or opened late due to inclement weather, the day and the number of instructional hours originally scheduled may count towards the required minimum number of instructional days or hours. As funding permits, the board may pursue increasing the number of instructional hours or days, at least for those students who need more time to learn the curriculum.

The board may initiate or review recommendations from the superintendent or a school improvement team for modifying the traditional school calendar to a year-round calendar. The superintendent and individual schools are encouraged to obtain input from teachers and other personnel as well as from the community in developing proposals for modifying the school calendar. A year-round school may be included as a part of a school improvement plan.

Any calendar adopted by the board will be consistent with the following requirements.

1. The calendar will consist of 215 days and shall meet state requirements for the minimum instructional days and/or the minimum instructional hours.
2. At least ten of the days on the calendar will be designated as annual vacation leave days.
3. The calendar will include the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees, including Veteran's Day if it falls on a weekday.
4. School will not be scheduled on Sundays.
5. The total number of workdays for teachers employed for a 10-month term will not exceed 195 days.
6. The calendar will designate "instructional" days, when students must be present.
7. The remaining days will be scheduled by the board, in consultation with school principals, as "flexible" days, for use as teacher workdays, additional instructional days or other lawful purposes. Before scheduling these "flexible" days, each principal shall work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled.
8. Of the "flexible" days described in subsection D.7, the board will designate at least two days as protected days on which teachers may take accumulated vacation leave. All other "flexible" days may be designated as days on which teachers may take accumulated leave, but the board will give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on any of these days. A teacher may elect to waive this notice requirement for one or more of these days.
9. The board may, due to school closings because of inclement weather or other reasons, use any of the "flexible" days designated in subsection D.7 above as make-up days for those instructional days that were missed. If necessary, these make-up days may be scheduled after the last day of student attendance. If either of the two protected days described in subsection D.8 above are scheduled as a make-up day, teachers may take accumulated vacation leave on the make-up day and will not be required to work.

10. If the school calendar requires students to attend on Memorial Day, each principal shall ensure that the significance of Memorial Day is recognized in the school on that day. If students are not scheduled to attend school on Memorial Day, recognition of the significance of Memorial Day will be provided at another time as part of the citizenship curriculum (see policy 3530, Citizenship and Character Education).

11. If the school calendar requires students to attend school on September 17, which is Constitution and Citizenship Day, each principal shall ensure that the signing of the United States Constitution is commemorated in the school on that day. If students are not required to attend school on September 17, the principal shall ensure that Constitution and Citizenship Day is commemorated during the preceding or following week (see policy 3530, Citizenship and Character Education).

Legal References: 36 U.S.C. 106(d); G.S. 115C-12(33), -36, -47, -84.2, -105.21(b)(2), -238.31, -288; State Board of Education Policy GCS-G-001; N.C. Employment Benefits and Policy Manual (most current version), North Carolina Department of Public Instruction

Cross References: Goals and Objectives of the Educational Program (policy 3000), School Improvement Plan (policy 3430), Citizenship and Character Education (policy 3530)

Adopted:

LICENSURE

Date Reviewed/Approved: 11/02/2009 Policy Number: 7130

Rescinds Policy Number:

Issued: 08/02/1999, 06/21/2004, 11/05/2007

The policy of the Board is to employ professional personnel who hold or are eligible to hold a clear license in the employment areas.

A. BEGINNING TEACHER SUPPORT

The superintendent or his or her designee will develop a plan and a comprehensive program for beginning teacher support. The plan must be approved by the board and kept on file for review. The Superintendent or his or her designee must submit an annual report on the Beginning Teacher Support Program to the Department of Public Instruction (DPI) by October 1 of each year. The school system will also participate in implementing a regionally-based annual peer review and support system.

B. LICENSE RENEWAL

Licensure renewal is the responsibility of the individual, not of the school district. Any employee allowing a license to expire must have it reinstated prior to the beginning of the next school year. An expired license is a basis for dismissal.

The school district may offer courses, workshops and independent study activities to help school personnel meet license renewal requirements. Any renewal activity offered will be consistent with SBE policy. In addition, the superintendent or his or her designee will develop a procedure to determine the appropriateness of any credit offered in advance of renewal activities.

C. EQUITABLE DISTRIBUTION OF HIGHLY QUALIFIED TEACHERS

The superintendent shall assure that the school system will adhere to any applicable rules and laws regarding the equitable distribution of highly qualified teachers.

Legal References: No Child Left Behind Act, 20 U.S.C. 6301 *et seq.*; 34 C.F.R. 200.55-57, 200.61; 20 U.S.C. 6319; 20 U.S.C. 7801(11); G.S. 115C-296, -333, -325(e)(1)(m); State Board of Education Policies TCP-A-000, -001, -004, -016, -018 and -021

Rescinds Policy Number:

Issued: 01/07/2002

It is the policy of the Orange County Board of Education that all employees have a drug and alcohol free workplace. Therefore, the Board prohibits all employees from possessing, using, manufacturing, dispensing, selling, distributing or being under the influence of illegal drugs and from the use, sale, distribution or possession of drug paraphernalia. All employees are prohibited from unlawfully possessing, using, manufacturing, dispensing, selling, distributing, or being under the influence of alcohol.

A. This policy shall govern each employee before, during and after school hours, while on any property owned, leased or used by the Board, and at any time during which an individual employee is meeting the responsibilities of his/her job. It is presumed that the violation of a law involving unlawful drugs has an adverse effect on an educator's job performance.

B. The Board further prohibits the possession, sale, distribution, or use of alcohol or its counterfeit by its employees while on duty, and in the case of an employee who operates a vehicle or repairs or operates equipment, from driving at any time while under the influence of alcohol or other drugs.

C. It is a condition of employment that each individual employee shall comply with this policy and shall notify his/her supervisor in writing of his/her conviction (or plea of guilty or nolo contendere) of any criminal drug statute within five days of any such conviction or plea. Similarly any employee whose duty it is to drive a vehicle or repair equipment or vehicles shall comply with this policy and shall notify his/her supervisor of any conviction (or plea) of any criminal drug statute or any motor vehicle violation involving the use of alcohol or controlled substances at any time and shall notify his/her supervisor of any pending charges for those offenses within five days of being charged.

D. Violation of this policy shall subject an employee to immediate disciplinary action including, but not limited to, termination of employment with the Orange County Schools, or the requirement that the employee participate satisfactorily in a drug and alcohol assistance or rehabilitation program approved for such purposes by the administration or suspension, with or without pay, or conditional continuation of employment or any combination of the enumerated actions.

E. The proper use of a drug authorized by valid medical prescription from a legally authorized health care provider, or over-the-counter medication that could alter the employee's ability to perform the duties and responsibilities of his/her position, shall not be a violation of this policy. Prescription drugs are to be taken by no one other than the person for whom the drug was prescribed. However, the employee must notify his/her immediate supervisor in the event of use of any prescription drug, which may or could affect his/her ability to perform the duties expected of the employee.

F. The school system will implement a drug testing program for employees who operate a vehicle which requires a CDL, as outlined in Policy 7245.

Any employee of the Board may be required to submit to a drug or alcohol test when a supervisor or other management employee has reasonable suspicion to believe that the employee is using alcohol or illegal drugs or is abusing prescription drugs in the workplace. Refusal to consent to such testing shall be cause for disciplinary action up to and including dismissal.

Reasonable suspicion justifying such testing may be based on, among other things:

1. Observation of drug use or possession and/or the physical symptom(s) of being under the influence of a drug or alcohol;
2. A pattern of abnormal conduct or erratic behavior consistent with abuse of drugs or alcohol;
3. Arrest or conviction for a drug- or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation;
4. Information provided either by reliable and credible sources or independently corroborated; or
5. Evidence that the employee has tampered with a previous drug or alcohol test.

H. A copy of this policy shall be distributed to all employees

Legal References: G.S. 115C-325, Drug-Free Workplace Act of 1988 U.S.C. Section 701, et.seq.

**DRUG AND ALCOHOL
TESTING OF
COMMERCIAL MOTOR
VEHICLE OPERATORS**

Date Reviewed/Approved:

Policy Number: 7245

Rescinds Policy Number:

Issued:

The purpose of this policy is to help ensure safe operation of school vehicles and to comply with federal law and regulations by establishing a comprehensive program of drug and alcohol testing for any person who operates a commercial motor vehicle and who is employed by or volunteers for the Orange County Board of Education.

Applicability

Persons subject to this policy include any driver who operates a commercial motor vehicle in the course of duties for the Orange County Board of Education, including anyone who regularly or intermittently drives a school bus, activity bus, or other vehicle designed to transport sixteen or more people, including the driver. For purposes of this policy and its accompanying regulations, the term "driver" includes, but is not limited to, school bus drivers, activity bus drivers, substitute school or activity bus drivers, and school system delivery truck drivers employed by the Orange County Board of Education, and any volunteers or independent contractors who operate a commercial motor vehicle on behalf of the Orange County Board of Education.

Prohibited Acts

Drivers shall not be impaired by alcohol or drugs while on duty or while operating any motor vehicle or while performing any safety-sensitive function. Drivers shall inform their supervisors of any therapeutic drug use. In all cases, a driver will be considered impaired and in violation of the policy when testing reveals the presence of any alcohol or drugs. Further, no driver will be permitted to perform or to continue to perform safety sensitive functions if evidence exists of alcohol consumption or if the employer knows the driver has consumed any alcohol or used a controlled substance. Drivers shall not commit any act prohibited by federal law, by the federal regulations contained in the Controlled Substance and Alcohol Use and Testing (49 C.F.R. part 382), by this policy and its regulations, or by the board's Drug-Free Workplace Environment Policy. Further, anyone who supervises commercial motor vehicle operators shall be responsible for enforcing and complying with the foregoing provisions.

Testing

The administration shall carry out pre-employment testing for drugs, and post-accident, random, reasonable suspicion, return-to-duty and follow-up testing for drugs and alcohol as required by 49 C.F.R. part 382 for all drivers. Drivers shall undergo pre-employment drug testing prior to the first time the driver performs safety-sensitive functions for the board. All other employees whose duties change during the course of their employment to include the driving of commercial motor vehicles shall be subject to a pre-driving drug testing and shall undergo any other testing required by 49 C.F.R. part 382 prior to being assigned driving duties. Volunteer drivers who are not employees will be initially tested prior to operating a school or activity bus and tested on a random basis thereafter. Refusal of any test required pursuant to this policy or 49 C.F.R. part 382 shall be cause for dismissal or removal.

Pre-employment Inquiry

All applicants who would be subject to this policy if employed shall consent in writing to the release of any information gathered pursuant to 49 C.F.R. part 382 by any of the applicant's previous employers.

Before employing any applicant covered by this policy or 49 C.F.R. part 382, the administration shall obtain, pursuant to the applicant's written consent, all records maintained by the applicant's previous employer(s) of prohibited acts by the applicant that have taken place in the two years prior to the inquiry date.

Training and Education

Each driver and supervisory employee, including principals and assistant principals, shall be provided with educational materials that inform them of drug testing procedures, prohibited acts, consequences, and other aspects of 49 C.F.R. part 382, this policy and any attached regulations. The information also shall identify a school system employee who will be responsible for providing information on substance abuse. Each employee shall sign a statement certifying receipt of these materials.

Each supervisor responsible for overseeing the performance of drivers, including principals and assistant principals, shall undergo at least one hour of training concerning alcohol misuse and an additional hour of training concerning drug use.

Referrals

Each driver who commits acts prohibited by 49 C.F.R. part 382 shall be provided with information concerning resources available for evaluating and resolving drug or alcohol misuse. This information shall include names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

Penalties

Employees found in violation of this policy and the attached regulations, or 49 C.F.R. part 382, will be subject to disciplinary action up to and including dismissal.

Procedures

The superintendent shall enact appropriate regulations and procedures to ensure compliance with the collection and testing procedures outlined in the Federal Highway Administration's "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 C.F.R. part 40), and to ensure compliance with 49 C.F.R. part 382, including, but not limited to, testing, reporting, record retention, training, and confidentiality requirements. The regulations and procedures shall also include any reporting requirements required by law.

LEGAL REF: 49 U.S.C. § 31306; 49 C.F.R. parts 40 and 382; G.S. 20-37.19

*Rescinds Policy Number:**Issued:*

No employee shall recruit a student to transfer to or attend another school for athletic purposes. Recruiting includes any direct or indirect communication or means that suggest that a student should transfer to or attend another school to participate in athletics. Employees who violate this policy will be subject to disciplinary actions up to and including termination of employment.

The following examples of actions that are prohibited by all employees:

1. Providing or otherwise arranging transportation for a prospective student-athlete or member of his/her family to visit a school or to meet with anyone associated with a school.
 2. Requesting, encouraging, or otherwise influencing any third party to solicit or encourage the enrollment or transfer of a prospective student-athlete in a school for athletic purposes. For example, no employee may request booster club members, students, parents, alumni from a school, or anyone else to discuss the merits of the school's athletic program with a prospective student-athlete or member of his/her family.
 3. Giving any presentation in any format (e.g. speech, slide, film, tape, etc.) to a prospective student-athlete or member of his/her family.
 4. Using non-school athletic teams as a vehicle to solicit or encourage a prospective student-athlete or a member of his or her family to enroll the student-athlete at a particular school.
- A. In the event a student at a middle school or other high school or the student's parent contacts a coach of a high school team regarding the student attending the school with which the coach is affiliated, the coach must immediately refer the student or parents to the athletic director/principal.
- B. Once a student receives official notification of his/her school assignment for the upcoming year, it is not considered a violation by a coach or other employee associated with a school to provide information about their athletic program to a student assigned to attend that school.

PURCHASING REQUIREMENTS *Date Approved: 11/17/2004*
FOR EQUIPMENT, MATERIALS
AND SUPPLIES

Policy Number: 8700

Rescinds Policy Number: DJE

Issued: 2/28/1979

All purchases of apparatus, supplies, materials and equipment will be made in accordance with all applicable laws and regulations, including Chapter 143 Article 8 of the North Carolina General Statutes, Board policy and school system purchasing procedures. All employees involved in purchasing must be familiar with these requirements.

The Superintendent shall ensure that written specifications for desired products are descriptive and clear and incorporate the quality requirements and service needs of the school system. There is no minimum number of bids, proposals or quotes required for the purchase of apparatus, supplies, materials and equipment (whether formally or informally bid); however, the Board encourages the Superintendent to obtain at least two bids, proposals or quotes when feasible.

Except as otherwise required by law or specified by the Board, the Board delegates to the Superintendent the authority to award contracts for the purchase of apparatus, supplies, materials and equipment in any amount as long as the purchase is within the adopted budget of the Board. Any purchases or contracts involving expenditures that are not within the adopted budget of the Board must be approved by the Board. The Finance Officer and any additional staff deemed appropriate by the Superintendent shall review submissions of bids, proposals or quotes to determine if they are responsive to the system's specifications and make recommendations to the Superintendent. The Superintendent may award the contract based upon such recommendations or make a recommendation to the Board for award of the contract by the Board.

Apparatus, supplies, materials and equipment must be purchased in accordance with the following requirements.

A. FORMAL BIDS (EQUAL TO OR MORE THAN \$90,000)

The purchase of apparatus, supplies, materials or equipment for expenditures equal to or more than \$90,000 must be secured through the competitive bid process governed by G.S. 143-129. The Superintendent is authorized to determine the best method for formally bidding a product or, as appropriate, utilizing one of the exceptions to formal bidding as provided below in section E. The Finance Officer shall oversee the use of any purchasing method and ensure that all state requirements are met, including advertisement, sealed bids, maintaining records and public opening of bids. The Board authorizes the use of newspaper advertisement, electronic advertisement or both for formal bids; however, the Superintendent has the authority to determine which method will be used for an individual construction or repair project.

Awards will be made to the lowest responsible bidder(s) whose bid or proposal meets the requirements and criteria set forth by the school system, taking into consideration quality, performance and the time specified in the proposal for the performance of the contract. All contracts awarded must be in writing.

The Board permits the use of the following processes for contracts that require formal bidding.

1. Competitive Sealed Bids

A competitive sealed bid (or invitation to bid) may be used to request the cost of particular goods by providing detailed specifications in advance.

2. Reverse Auction

Pursuant to G.S. 143-129.9(a)(1), the school system may use reverse auctions as an alternative to sealed bid procedures. For purposes of this policy, "reverse auction" means a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment. The Superintendent shall determine whether reverse auctions are appropriate for a specific purchase or category of purchases. To conduct a reverse auction, the Superintendent may use a third party, may use the state's electronic procurement system or, if appropriate equipment is available, may conduct the auction using school system equipment.

3. Exceptions to Formal Bids

Any of the processes outlined below in section E may be used in lieu of formal bidding, so long as all requirements of state law are met.

B. INFORMAL BIDS (\$30,000 TO \$90,000)

The purchase of apparatus, supplies, materials or equipment for expenditures of at least \$30,000 but less than \$90,000 must be secured through the informal bidding process governed by G.S. 143-131. The Superintendent is authorized to determine the best method for securing informal bids on a product. The Finance Officer shall oversee the use of any purchasing method and ensure that all state requirements are met, including maintaining records of all bids submitted. Awards will be made to the lowest responsible, responsive bidder(s) whose bid or proposal meets the requirements and criteria set forth by the school system, taking into consideration quality, performance and the time specified in the proposal for the performance of the contract.

1. Competitive Sealed Bids

Informal bid requirements may be met by the use of sealed bids. The Superintendent may utilize the methods for formal competitive bids provided in section A or may determine other appropriate methods for soliciting sealed bids. The bid specifications must include the time, date and place for opening bids. No advertisement for bids is necessary (unless the formal bid process is used); however, the Superintendent may advertise for bids as he or she deems appropriate.

2. Quotations

Informal bid requirements may be met by the solicitation of quotes from prospective vendors. Quotations may be solicited and submitted via fax, e-mail or telephone. A record of all telephone quotes received shall be maintained in writing. Written quotations must be on the vendor's letterhead or an official quotation form and must include an authorized signature. *At least two quotes shall be solicited for purchases in the informal range.*

3. Reverse Auction

A reverse auction may be used to solicit informal bids, consistent with the process provided in section A.2.

4. Exceptions to Informal Bids

Any of the processes outlined below in section E may be used in lieu of informal bidding, so long as all requirements of state law are met.

C. PURCHASES FOR LESS THAN \$30,000

~~Purchases for apparatus, supplies, materials and equipment costing less than \$30,000 will be awarded pursuant to the standards provided in policy 8701, Local Purchasing Requirements for Equipment, Materials and Supplies.~~ **While informal bids are not required, purchases should be made under conditions that foster competition among potential vendors.** At least two quotes shall be solicited for purchases costing between \$5,000 and \$30,000. **Purchasing decisions should be made after considering price, quality, suitability for specified need, and timeliness of delivery and performance.**

D. ELECTRONIC BIDDING

Pursuant to G.S. 143-129.9(a)(2), the school system may receive bids electronically in addition to or instead of paper bids. If electronic bids are used for purchases that must be formally bid, procedures for receipt of electronic bids must be designed to ensure the security, authenticity and confidentiality of the bids to at least the same extent as provided with paper bids. The Superintendent shall determine whether electronic bidding is appropriate for a specific purchase or category of purchases.

E. EXCEPTIONS TO THE FORMAL AND INFORMAL BIDDING REQUIREMENTS

The school system may utilize the following purchasing options instead of pursuing competitive bidding. Formal or informal bidding is not required if any of these processes are used. The Superintendent shall gather information to document the basis for the use of any exceptions to the competitive bidding requirements. The Superintendent may determine that using one of the following exceptions is appropriate for a specific purchase or group of purchases.

1. Purchases from Other Governmental Agencies

Pursuant to G.S. 143-129(e)(1), the school system may contract for the purchase, lease or other acquisition of apparatus, supplies, materials, or equipment from any other federal, state or local governmental agency.

2. Special Emergencies

Pursuant to G.S. 143-129(e)(2), competitive bidding is not required in cases of special emergencies involving the health and safety of people or their property. For an emergency to exist under the statute, the following factors must exist: (1) the emergency is present, immediate and existing; (2) the harm cannot be averted through temporary measures; and (3) the emergency was not self-created by the school system.

3. Competitive Group Purchasing

Pursuant to G.S. 143-129(e)(3), the school system may make purchases through a competitive bidding group purchasing program, through which another entity uses a competitive process to establish contracts on behalf of multiple entities at discount prices.

4. State Term Contract

Pursuant to G.S. 143-129(e)(9), the school system may purchase products included in state term contracts with the state vendor for the price stipulated in the state contract, if the vendor is willing to extend to the school system the same or more favorable prices, terms and conditions as established in the state contract.

5. Sole Source Items

Pursuant to G.S. 143-129(e)(6), upon approval of the Board, the school system may purchase an item through a single or sole source contract under the following circumstances: (1) when performance or price competition is not available; (2) when a needed product is available from only one source of supply; or (3) when standardization or compatibility is the overriding consideration. When requesting a purchase under the sole source exception, the Superintendent shall provide the Board with documentation that justifies the use of the exception.

6. "Piggybacking" or Previously Bid Contracts

Pursuant to G.S. 143-129(g), upon approval of the Board, the school system may purchase from any supplier that, within the previous 12 months, has contracted to furnish the needed item to the federal government, to any state government, or to any agency or political subdivision of the federal government or any state government. Before recommending a purchase using the piggybacking exception, the Superintendent shall ensure that the following requirements are met: (1) the price and other terms and conditions of the contract are at least as favorable as the prior contract; (2) the contract was entered into following a public, formal bidding process substantially similar to that required by North Carolina General Statutes; (3) the same vendor is used; and (4) notice of intent to award the contract without bidding is publicly advertised at least 10 days prior to the regularly-scheduled Board meeting at which the contract will be approved. Before approving the contract, the Board must determine that using the contract is in the best interest of the school system.

7. Purchases of Information Technology Goods and Services

Pursuant to G.S. 143-129(e)(7), the school system may purchase or lease information technology through contracts established by the State Office of Information Technology Services. The Superintendent shall work with the information technology department to ensure that any such purchases meet the needs of the school system.

In addition, the school system also may purchase information technology goods and services by using a request for proposal (RFP) pursuant to G.S. 143-129.8, provided that the following requirements are met:

(1) notice of the request is provided consistent with the formal bidding notice requirements and (2) contracts are awarded to the person or entity that submits the best overall proposal as determined by the Finance Officer and Superintendent. The RFP should describe the scope of work, general terms and conditions, specifications of the product needed by the school system, and the application process. The information technology supervisor shall assist the Superintendent in reviewing the responsiveness of any RFP submitted pursuant to this subsection. RFPs will be evaluated using the "best value" method as defined in G.S. 143-135.9(a)(1) so that the system may select the most appropriate technological solution to meet the school system's objectives. However, if the Superintendent considers the purchase to be highly complex or is unable to clearly determine what the optimal solution for the school system is, the "solution-based solicitation" or "government-vendor partnership" method may be used. The Superintendent may negotiate with the proposer to obtain a final contract that meets the best needs of the school system, so long as the alterations based on such negotiations do not deprive proposers or potential proposers of the opportunity to compete for the contract and do not result in the award of the contract to a different person or entity than would have received it if the alterations had been included in the RFP.

8. Gasoline, Fuel and Oil Purchases

Pursuant to G.S. 143-129(e)(5), the school system may purchase gasoline, fuel and oil products without using formal competitive bidding. However, such purchases are subject to the informal bidding requirements provided above for purchases above \$30,000.

9. Used Products

Pursuant to G.S. 143-129(e)(10), the school system may purchase previously used apparatus, supplies, materials or equipment without using formal competitive bidding. Before purchasing used products, the Superintendent shall ensure that the products are in good, usable condition and will be sufficient to meet the school system's needs for a reasonable period of time.

F. E-PROCUREMENT REQUIREMENTS

The school system will use the North Carolina Electronic Procurement (e-procurement) system to facilitate the electronic purchase of goods and services. School system personnel shall comply with standards established by the State Board of Education so that the school system can remain e-procurement compliant. As of the date that the school system is certified by the Department of Public Instruction to be e-procurement compliant, the Superintendent shall ensure that the school system expends at least 30 percent of its remaining unencumbered funds for that fiscal year to purchase supplies, equipment, materials, computer software and other tangible personal property through the state's e-procurement system. For the following two fiscal years, the school system must utilize 35 percent of funds in the first year and 40 percent of funds in the second year to purchase through the e-procurement system.

G. LEASE PURCHASE CONTRACTS AND OTHER CONTRACTS FINANCED OVER TIME

Lease purchase contracts, contracts that include options to purchase, and leases for the life of equipment all must be bid consistent with the requirements of G.S. 143-129 and 143-131. The Superintendent shall ensure that such contracts meet the legal requirements and the provisions of policy 8705, Contract Administration.

H. USE OF SCHOOL SYSTEM TERM CONTRACTS

The school system may create and use term contracts for items that are routinely purchased by the school system. If the estimated expenditure for a routine item under the term contract is equal to or exceeds \$90,000, the contract must be formally bid. If the estimated expenditure is at least \$30,000 but less than \$90,000, the contract must be informally bid. The Superintendent may incorporate the use of a term contract in the bidding specifications. If term contracts are used, the Board attorney shall review the contracts.

I. HISTORICALLY UNDERUTILIZED BUSINESSES

The Board affirms the state's commitment to encouraging the participation of historically underutilized businesses in purchasing functions. The Board will comply with all legal requirements and the standards in policy 8702, Participation by Historically Underutilized Businesses.

J. REPORTING

The Superintendent shall report all purchases above \$30,000 to the Board on at least a quarterly basis as an information item. The report shall be included in the minutes for the meeting.

Legal References: G.S. 115C-522; 143, art. 8; 143-129, -129.9, -131, -135.9

Cross References: Participation by Historically Underutilized Businesses (policy 8702), Organization of the Purchasing Function (policy 8703), Contract Administration (policy 8705), Local Purchasing Requirements for Equipment, Materials and Supplies (policy 8701)

Adopted:

Legal References: G.S. 115-52 , 143- 129-135.4

**PARTICIPATION BY SMALL,
MINORITY, PHYSICALLY
HANDICAPPED AND
WOMEN CONTRACTORS**

Date Reviewed/Approved:

Policy Number: 8702

Rescinds Policy Number:

Issued:

The Board affirms the State's commitment to encourage participation of small contractors, physically handicapped contractors, minority contractors and women contractors in the school system's purchase of goods and services. The Board prohibits discrimination against any person or business on the basis of race, color, ethnic origin, sex, disability or religion.

The Board has adopted the following verifiable percentage goals for participation in the school system's contracts by small contractors, physically handicapped contractors, minority contractors and women contractors:

Ten (10%) percent for participation by small contractors, physically handicapped contractors, minority contractors and women contractors in the total annual value of all purchases of goods and services.

A. SCHOOL SYSTEM GOOD FAITH EFFORTS

The Board has adopted the following guidelines to ensure that the school system will make good faith efforts to reach diverse suppliers of goods and services and to encourage participation in the school system's purchasing progress by such suppliers. The school system will:

1. make information about the school system's purchasing procedures and bidding process readily available;
2. advertise for bids in media that reaches minority businesses;
3. ensure access to bidding documents needed for making bids on projects;
4. request directory information of small contractors, physically handicapped contractors, minority contractors and women contractors by contacting the Division of Purchase and Contracts at the State Department of Administration;
5. sponsor or participate in purchasing seminars for all prospective vendors or, in particular for small contractors, physically handicapped contractors, minority contractors and women contractors;
6. provide information to small contractors, physically handicapped contractors, minority contractors and women contractors on how to have a company name included on lists maintained by the Division of Purchase and Contracts at the State Department of Administration;
7. prepare vendor lists; and
8. where allowed by law, permit performance guarantees rather than performance bonds for contracts for goods and services.

B. DOCUMENTATION AND REPORTING

The Superintendent or his or her designee will document and submit all legally required reports on the use of minority-owned businesses, female-owned businesses, disabled-owned businesses, disabled-owned enterprises, and non-profit work centers for the blind and severely disabled as necessary to comply with applicable laws. Any submitted reports under this section shall also be provided to the Board.

Legal References: City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989); G.S. 143-48, 143-128

Cross References: Minority Business Enterprise Participation in Construction Contracts (policy 9125)

Adopted:

ORGANIZATION OF THE PURCHASING FUNCTION

Date Reviewed/Approved:

Policy Number: 8703

Rescinds Policy Number:

Issued:

The Superintendent shall organize the purchasing function in a manner intended to meet the purchasing goals of the Board. The purchasing function includes the following responsibilities:

1. making purchases for all departments in accordance with applicable laws and regulations, including the requirements of the State Division of Purchase and Contract when applicable, board policy, the Superintendent's directives, good purchasing practices and ethical principles;
2. establishing and enforcing a system for approving and accounting for purchases;
3. maintaining appropriate records on price quotations of supplies most frequently purchased;
4. maintaining other supplemental data to assist in making purchases at the most economical prices possible;
5. maintaining NC E-Procurement compliance and making purchases through the E-Procurement Service to the extent appropriate to maximize savings and efficiency in the purchasing function;
6. establishing a practical degree of standardization of equipment, supplies and materials with sufficient flexibility to meet unique needs of schools and departments;
7. operating a central inventory warehouse where feasible;
8. supervising the receiving of all materials, including establishing procedures to ensure received goods are properly inspected, counted and documented;
9. maintaining lists of potential bidders for various types of materials, equipment and supplies;
10. providing information regarding bidding opportunities to vendors;
11. providing information and service to schools and departments that wish to make purchases;
12. maintaining current information on all applicable laws, regulations, board policies and administrative procedures; and
13. maximizing bulk discounts by purchasing in large quantities where feasible.

Legal References: G.S. 143-49, -52; 115C-522; N.C. Agency Purchasing Manual, Department of Administration, Division of Purchase and Contract

Cross References:

Adopted:

**CONTRACT
ADMINISTRATION**

Date Approved: 11/17/2004

Policy Number: 8705

Rescinds Policy Number: DJEG

Issued: 3/01/1982

Except as otherwise provided by Board policy, all system-level service contracts, made on behalf of the Board of Education involving expenditures exceeding fifty thousand dollars (\$50,000), must receive prior approval from the Board. Unless otherwise prohibited by statute, state regulation, or other Board policy, the Superintendent or his/her designee is authorized to enter into service contracts and approve individual change orders and approve individual change orders to service contracts involving amounts up to fifty thousand dollars (\$50,000). The Superintendent must report all service contracts and their change orders between thirty thousand dollars (\$30,000) and fifty thousand dollars (\$50,000) to the Board quarterly. Service c Contracts for unanticipated expenditures exceeding fifty thousand dollars (\$50,000) for direct or related services to exceptional children may be undertaken by the Superintendent conditioned on final approval by the Board at its next scheduled meeting. The vendor shall be notified that Board approval is required. Where feasible, the Superintendent or his/her designee shall seek informal bids for all contracts.

The Superintendent shall develop administrative procedures for implementation of this policy.

All system-level service contracts must be pre-audited by the Finance Officer and reviewed by the Board's attorney before they are awarded.

~~This policy shall not apply to items that must be purchased under the requirements of the State Division of Purchase and Contract.~~ In addition, all service contracts involving construction or repair work or purchase of apparatus, supplies, materials or equipment must be undertaken in compliance with Chapter 143 of the North Carolina General Statutes and Board policies.

Contract administration authority and procedures for purchases shall be governed by Policy 8700.

School Principal Contracting Authority

School principals may enter into contracts with a term of one year or less for:

- A. School pictures;
- B. Yearbooks and school newspapers (all other contracts for printing of reports, forms, etc., should be handled through the finance officer);
- C. Fund-raising activities undertaken in compliance with Board policies;
- D. Disc jockeys/bands and facilities for dances to be paid for with school funds;
- E. Athletic officials and other persons working at athletic events to be paid from athletic funds derived from gate receipts;
- F. Class rings;
- G. Caps and gowns;
- H. Senior supplies (i.e., invitations, note cards, class keys, etc.);and
- I. Vending

School principals may enter into other contracts with a term of one year or less for goods or services in amounts up to \$500.00 without prior approval, provided there are sufficient funds in the local school account to cover the contract and the contract is executed during the current fiscal year. Principals are required to present contracts in excess of one year to the Superintendent for approval. Principals shall submit quarterly reports to the school system's finance officer of all school contracts.

Legal Reference: G.S. 115C-288, -518, -522; 143-129 to -133

PLANNING FOR FACILITY NEEDS

Date Reviewed/Approved: 10/04/2004 Policy Number: 9000

Rescinds Policy Number: FD

Issued: 09/01/1979

PRINCIPLES

The Board strives to provide safe, orderly and inviting schools for students and staff. The Board also strives to provide other facilities needed to support the educational program. Long-range planning by the Board and Superintendent is essential for providing an educational environment where students can succeed.

LONG-RANGE PLAN

The long-range plan will identify facility needs of the school district. The plan will consider whether to renovate existing facilities or build new facilities. The plan also will consider creative options for meeting the needs of the educational program such as expansion or reduction through modular construction, future alternative uses of space, the availability of community facilities, the use of temporary facilities or leasing arrangements, sharing facilities with other school districts, energy efficient design, and sustainability. The Board shall also seek the cooperation of state government concerning improvement of roadways serving the schools.

PROCESS

The following information will be considered in long-range planning efforts.

- Data which reflect the possibility of enrollment declines or increases as well as other demographic changes in the population of students that are or may be served.
- A facilities inventory which includes the size of sites, building capacities, age of building, energy consumption, ability to utilize technology, the suitability of the space for its current or future purpose, and accessibility by the community.
- The availability or anticipated availability of innovations in construction or design that would allow existing building to be renovated or new facilities constructed at a lower cost, in a more energy efficient manner, or in a way which will better meet the needs of the educational program.

The Superintendent may utilize the services of consultants to obtain information necessary for the long-range planning process consistent with Policy 8705. School staffs, students and parents will be involved in considering the needs for new and renovated facilities.

The Board will work with the Board of County Commissioners when possible in developing a Capital Improvement Plan. The Board and Superintendent will communicate in a positive and persuasive manner the need for school construction to the public and other governmental bodies in order to receive necessary funding.

Legal References: G.S. 115C-47, -204, -426.2, -521, -524, -530, 153A-164

BIDDING FOR CONSTRUCTION WORK

Date Reviewed/Approved:

Policy Number: 9100

Rescinds Policy Number:

Issued:

The Board strives to obtain high quality services at a reasonable price through the bidding process employed by the school system.

A. STANDARDS FOR PARTICIPATION IN CONSTRUCTION CONTRACTS

All contracts formally or informally bid will be awarded to the lowest responsible bidder, taking into consideration quality, performance, reliability and the time specified in the bids for performance of the contract.

The Board prohibits discrimination against any person or business on the basis of race, color, ethnic origin, sex, disability or religion. The Superintendent is required to conduct contracting and purchasing programs so as to prevent such discrimination.

The Superintendent, on behalf of the board, must certify that good faith efforts have been made to increase the participation in construction contracts by minority-owned and female-owned businesses, as required by policy 9125, Minority Business Enterprise Participation in Construction Contracts.

The Board will grant a North Carolina resident firm providing architectural, engineering, surveying or construction management at-risk services a preference over a nonresident firm, if the home state of the nonresident firm has a practice of granting a preference to its resident firms over North Carolina resident firms. Any preference granted to a resident firm will be in the same manner, on the same basis and to the same extent as the preference granted by the nonresident firm's home state. The school system's bid documents will require that nonresident firms disclose and describe any construction contract preferences granted by the firm's home state.

B. BIDDING METHODS

The Board may request bids for contracts for building projects using either single prime, multi-prime (separate prime), construction management at-risk or dual bidding methods, as permitted by law. The Superintendent shall make a recommendation to the board as to the method(s) that should be used for a particular project.

If the Superintendent believes the project cannot be reasonably completed under the methods authorized by G.S. 143-128, the superintendent shall so inform the Board and make the recommendation to the board that it approve the use of alternative methods. Upon Board approval, the Superintendent shall submit to the State Building Commission a request to use an alternative contracting method along with supporting documentation.

C. FORMAL BIDDING

Construction and repair work requiring the estimated expenditure of \$300,000 or more will be advertised for bid and will be awarded through formal bidding procedures. Dividing contracts to lower the expenditure amounts so as to evade these requirements is prohibited. The Board authorizes the use of newspaper advertisement, electronic advertisement or both for formal bids; however, the superintendent has the authority to determine which method will be used for an individual construction or repair project. The Superintendent shall establish formal bidding procedures consistent with this policy and applicable law and make the procedures available to all bidders or potential bidders.

D. INFORMAL BIDDING

Informal bids will be obtained for construction and repair contracts between \$30,000 and \$300,000. Quotations from contractors may be solicited by telephone or in writing. At least two quotes shall be solicited for construction and repair work costing between \$5,000 and \$30,000.

Dividing contracts to lower the expenditure amounts so as to evade the informal bidding requirements is prohibited. The Superintendent shall develop informal bidding procedures consistent with this policy and applicable law and make the procedures available to all bidders and potential bidders.

E. APPROVAL

All formally bid construction contracts must be reviewed by the Board attorney and submitted by the Superintendent to the Board for approval.

The Superintendent shall consult with the Board attorney in developing standard form contracts for informally bid construction projects. Board approval of informally bid projects is not required, unless otherwise directed by the Board on specific projects.

F. RECORDS AND REPORTING REQUIREMENTS

Records of all informal or formal bids received will be maintained and will be available for public inspection. Such records should include the date the bid is received, from whom it is received, and what project it is for. The records will document why the selected contractor was the lowest responsive, responsible bidder if the contractor was not the low bidder.

Each year by April 1, the Superintendent shall submit to the secretary of the Department of Administration a report on the cost and effectiveness of each construction method used by the Board during the previous year. The Superintendent also must submit required reports to the State and provide reports to the Board on the progress being made towards reaching the Board's goals.

G. DISPUTE RESOLUTION PROCESS

The Board establishes the following dispute resolution process to resolve issues arising out of construction and repair projects or contracts related to such projects. The dispute resolution process may be used by any party involved in the construction project for those disputes in which the amount in controversy is at least \$15,000.

Prior to initiating litigation concerning a dispute, parties to the dispute must do the following: (1) submit the dispute for review by the Superintendent or other designated school official and the project architect, as appropriate, and (2) participate in mediation, if the matter cannot be resolved by school officials and the architect. The cost of the dispute resolution process will be divided between the parties to the dispute. If the Board is a party to the dispute, the Board will pay at least one-third of the cost.

Legal References: G.S. 115C-521, -522; 143-64.31 and -128 to -135

Cross References: Minority Business Enterprise Participation in Construction Contracts (policy 9125)

Adopted: October 4, 2004

Revised:

**MINORITY BUSINESS
ENTERPRISE
PARTICIPATION IN
CONSTRUCTION
CONTRACTS**

Date Reviewed/Approved:

Policy Number: 9125

Rescinds Policy Number:

Issued:

A. GENERAL

1. It is the policy of the Orange County Board of Education to provide minority business enterprises (MBEs) equal opportunity to participate in all aspects of the school system's construction contracting, including but not limited to participation in contracts for the construction, renovation or repair of school facilities and equipment.
2. It is further the policy of the Board to prohibit discrimination against any person or business enterprise on the basis of race, color, ethnic origin, sex, handicapping condition, or religion and to conduct its construction contracting so as to prevent such discrimination.
3. It is the policy of the Board, in concert with other local, state and federal agencies and with the assistance of minority groups and agencies, actively to seek and identify qualified MBEs and to offer them the opportunity to participate and to encourage them to participate in the school system's contracting program. Under this policy, the Board adopts the definition of MBEs contained in N.C. Gen. Stat. § 143-128.2
4. It is not the policy of this Board to provide information or other opportunities to minority business enterprises that will not be available to all other business enterprises. It is the intent of this policy to establish procedures designed to assure MBEs access to information and opportunities available to other business enterprises.
5. It is not the intent of this policy to establish procedures that will increase the cost of the school system's construction program. It is the intent of this policy to widen opportunities for participation, to increase competition, and to reduce costs.
6. The Board will award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in N.C. Gen. Stat. § 168A-3. The Board will award contracts to the lowest responsible, responsive bidder.

B. CONSTRUCTION OR REPAIR PROJECTS IN ANY AMOUNT

1. The Board shall have a verifiable goal of ten percent (10%) for participation by minority businesses in building construction and repair projects covered by this section. These projects shall be bid strictly in accordance with N.C. Gen. Stat. § 143-128, -128.1, -129, and -131. The school system shall require bidders on school construction and renovation projects to provide documentation demonstrating that they have met the verifiable goal for participation by minority business, or that they have made good faith efforts to do so as specified in the accompanying regulations and the N.C. Gen. Stat. § 143-128.2.

- C. WHEN THE BOARD MAY LET CONTRACTS ON INFORMAL BIDS GREATER THAN \$5,000 (BUT LESS THAN THE LIMITS IN N.C. GEN. STAT § 143-129)
1. The school system shall solicit minority participation in the contracts for the erection, construction, alteration, or repair of any building covered by this section. The school system 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.
 2. The data generated pursuant to this section shall be reported to the Department of Administration, Office for Historically Underutilized Business, as required by N.C. Gen. Stat. § 143-131(b).

Legal Ref.: G.S. 143—48 to 63.1, and 143-128, 128.1, 128.2, 129, 131, 131(b), and 168A-3

Adopted:

Revised:

**REGULATIONS AND PROCEDURES FOR
IMPLEMENTING MINORITY BUSINESS
ENTERPRISE PARTICIPATION**

Date Reviewed/Approved: __ Policy Code: 9125 R&P

A. DEFINITIONS

1. Minority Business Enterprise (MBE) - A business
 - a. In which at least fifty-one percent (51 %) 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 economically disadvantaged individuals who own it.
 - 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.
2. Minority Person - 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 or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
 - e. Female.
3. Socially and Economically Disadvantaged Individual - A person as defined in 15 U.S.C. 637.

B. OWNER RESPONSIBILITIES FOR CONSTRUCTION AND REPAIR PROJECTS EQUAL TO OR GREATER THAN THREE HUNDRED THOUSAND DOLLARS (\$300,000).

The school system, when soliciting bids under the provisions of N.C. Gen. Stat. § 143-128, shall perform the following acts:

1. The school system shall compile a list of appropriate minority businesses within the bidding area that have requested notices from the school system for public construction and repair work and of the MBEs that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the types of work bid or potential contracting opportunities. This list shall be open for inspection and shall be available so that minority businesses will have the opportunity to add their names to the list.
2. During the design stage, each project shall be reviewed to determine if it would be practical, feasible and legal to divide the project into separate contracts that might increase the

opportunity for MBE bidders.

3. At least ten days prior to the scheduled day of bid opening, notice of each project and invitations to bid shall be sent to MBEs that have requested notices from the school system for public construction or repair work, and to MBEs 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. Each notice shall include the following:
 - a. a description of the work for which the bid is being solicited;
 - b. the date, time, and location where bids are to be submitted;
 - c. the name of the individual within the public entity who will be available to answer questions about the project;
 - d. where bid documents may be reviewed;
 - e. any special requirements that may exist.
4. A prebid conference shall be held for each project. A school system representative shall attend the scheduled prebid conference.
5. During the advertising period of a project, the contact person shall be responsible for answering project-related questions MBEs might have.
6. For each project, documents related to the contract shall be available for inspection at a convenient and accessible location. MBEs shall receive notice of the location of the documents as part of the invitation to bid specified in paragraph 3, above.
7. All prime and subcontractors shall be allowed to obtain a copy of a complete set of Drawings and Specifications by providing a refundable deposit to the school system. Deposits will be refunded in accordance with school system procedures.
8. For each building contract put out for bids under N.C. Gen. Stat. § 143-128, published notice of the contract shall include a statement that all contractors submitting bids will be required to provide either:
 - 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 or
 - b. documentation of its good faith effort that was identified in the bid to meet this goal including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority business for participation in the contract.
 - c. an affidavit verifying that the bidder will be self-performing all of the work as defined in N.C. Gen. Stat. § 143-128.2.

Failure to file the required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

9. For each building contract put out for bids pursuant to N.C. Gen. Stat. § 143-128, a copy of the Board's MBE policy will be included in the materials provided to all contractors.
10. For each building contract put out for bids, the Board or the Board's designee shall utilize other media, as appropriate, likely to inform potential MBEs of the bid being sought.
11. If a contractor provides an affidavit indicating that it will self perform the work such that no outreach effort was made to recruit MBE participation in accordance with C.2. below and the contractor subsequently subcontracts a portion of the work, the owner may prohibit the contractor from bidding on future work for 24 months as a penalty for the misrepresentations in the affidavit, unless the contractor can provide reasonable justification for the statements that were included in the affidavit.

C. CONTRACTOR RESPONSIBILITIES FOR CONSTRUCTION AND REPAIR PROJECTS EQUAL TO OR GREATER THAN THREE HUNDRED THOUSAND DOLLARS (\$300,000)

1. Each bidder, including first-tier subcontractors for construction manager at risk projects, shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to N.C. Gen. Stat. § 143-128.2(f) and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager at risk project that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection.

The apparent lowest responsible, responsive bidder, within 3 business days of the bid opening, shall also provide either

- 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 or
- b. documentation of its good faith effort to meet the goal that was identified in the bid, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.
- c. an affidavit verifying that the bidder will be self-performing all of the work as defined in N.C. Gen. Stat. § 143-128.2.

Failure to file the required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

2. Bidder(s) on the Board's building projects shall undertake the following good faith efforts to recruit minority businesses to the extent required by N.C. Gen. Stat. § 143-128.2 and shall provide documentation to the Board that they have performed efforts totaling at least 50 points:
 - a. (10 points) 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 ten days before the bid or proposal date and

notifying them of the nature and scope of the work to be performed.

- b. (10 points) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least ten days before the bid or proposals are due.
 - c. (15 points) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
 - d. (10 points) Working 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.
 - e. (10 points) Attending any prebid meetings scheduled by the Board.
 - f. (20 points) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
 - g. (15 points) 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.
 - h. (25 points) 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.
 - i. (20 points) 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.
 - j. (20 points) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.
3. Within 30 days after the award of the contract, the contractor shall provide to the school system's designated representative a list of all identified MBE subcontractors that the contractor will use on the project.
 4. Failure to comply with procedural requirements as defined in the contract documents may render the bid as nonresponsive and may result in rejection of the bid and award to the next actual lowest responsible and responsive bidder.
 5. During the construction of a project, if it becomes necessary to replace an MBE subcontractor, the prime contractor shall advise the owner. No MBE subcontractor may be replaced with a different subcontractor except:
 - a. if the subcontractor's bid is later determined by the contractor or construction manager at risk to be nonresponsible or nonresponsive, or the listed subcontractor refused to enter into a contract for the complete performance of the bid work or
 - b. with the approval of the Board for good cause. Good faith efforts as set forth in N. C. Gen. State §143-131 (b) shall apply to the selection of a substitute subcontractor. Prior

to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the Board or its designee of its good faith efforts pursuant to N. C. Gen. State. § 143-131 (b).

6. If during the construction of the project, additional subcontracting opportunities become available, the prime contractor shall make a good faith effort to solicit subbids from MBE's.
7. Report monthly the payments made to MBE subcontractors using Appendix E from the State Construction Office.

D. PROCEDURES FOR MONITORING CONTRACTOR COMPLIANCE/REPORTING

For any building contract subject to N.C. Gen. Stat. § 143-128.2, the school system shall report the following information regarding minority businesses certified by the North Carolina Secretary of Administration to the Department of Administration Office of Historically Underutilized Business:

1. The verifiable percentage goal.
2. The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or rules used to recruit minority business participation, and good faith documentation accepted by the school system from the successful bidder; and
3. The utilization of minority businesses under the various construction methods under G.S. 143-128(a1)

E. COMPLAINT PROCEDURES

1. Any alleged violations of the provisions of this MBE plan by any party should be reported in writing to the Superintendent or his/her designee.
2. The Superintendent or his/her designee shall review all facts available and respond in writing. Unresolved complaints shall be presented to the Board. The decision rendered by the Board will be final.

F. RECORD KEEPING

The Superintendent or his/her designee shall keep all public records created pursuant to these regulations and the Minority Business Enterprise Participation in Construction and Purchase Contracts Policy for a period of not less than three years from the date of the completion of the building project.

Adopted: October 4, 2004

Revised: Date revision approved by the Board