

RESOLUTION FOR THE TOWN OF CARRBORO TO ADOPT OUTREACH PLAN
AND TO ESTABLISH VERIFIABLE PERCENTAGE GOAL FOR PARTICIPATION
BY MINORITY BUSINESSES IN THE AWARDED OF BUILDING
CONSTRUCTION CONTRACTS PURSUANT N.C.G.S. 143-128.2
Resolution No. 171/2006-07

WHEREAS, the North Carolina General Assembly enacted Session Law 2001-496, Senate Bill 914 to enhance and improve the good faith efforts to recruit and select minority businesses for participation in public building construction or repair contracts by adding N.C.G.S. 143-128.2; and

WHEREAS, N.C.G.S. 143-128.2 requires each city, county, or other local public entity to adopt, after notice and a public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects costing \$300,000 or more; and

WHEREAS, N.C.G.S. 143-128.2(b) requires a public entity awarding a building contract where the total cost equals or exceeds \$300,000 to establish, prior to solicitation of bids, good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects; and

WHEREAS, N.C.G.S. 143-128.2(e)(1) requires a public entity awarding a building construction or repair contract where the total cost exceeds \$300,000, prior to awarding a contract, to develop and implement a minority business participation outreach plan; and

WHEREAS, notice of the public hearing was duly published in the Chapel Hill Herald on April 15, 2007 and the required public hearing was held on April 24, 2007;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO:

1. With respect to those building projects where the Town of Carrboro is required by G.S. 143-128.2 to have a verifiable percentage goal for participation by minority businesses in the total value of work for such building projects, the town's verifiable percentage goal shall be 10 percent.
2. The Town of Carrboro shall follow the Minority-owned, Woman-owned, Disadvantages-owned Outreach Plan and Guidelines for minority business participation in building construction or repair contracts.
3. This resolution shall become effective upon its adoption.

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Jay Bryan.

A RESOLUTION ESTABLISHING A VERIFIABLE PERCENTAGE GOAL
FOR PARTICIPATION BY MINORITY BUSINESSES IN THE
AWARDING OF BUILDING CONSTRUCTION CONTRACTS
AWARDED PURSUANT TO N.C.G.S. 143-138
Resolution No. 10/90-91

WHEREAS, the North Carolina General Assembly enacted Chapter 480 and Section 74.17 of Chapter 770 of the 1989 Session Laws, thereby rewriting N.C. General Statute 143-138; and

WHEREAS, N.C.G.S. 143-128(c) requires each city, county or other public body to adopt, after notice and a public hearing, an appropriate verifiable percentage goal for participation by minority businesses (as defined in that statute) in the total value of work for building contracts the costs of which exceed (\$100,000) and which are awarded pursuant to N.C.G.S. 143-128; and

WHEREAS, N.C.G.S. 143-128(c)(3) requires an authority awarding a building contract the cost of which exceeds \$100,000 under a separate prime or separate specification contract system to adopt written guidelines specifying actions that will be taken by the awarding authority to ensure a good faith effort in the recruitment and selection of minority businesses for building contracts awarded under the separate prime or separate specification contract system; and

WHEREAS, N.C.G.S. 143-128(c)(4) requires an authority awarding a building contract the cost of which exceeds \$100,000 under a single-prime contract system to adopt written guidelines specifying the action that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for building contracts awarded under the single prime contract system; and requires that action taken by the prime contractor must be documented in writing by the contractor to the appropriate awarding authority; and

WHEREAS, N.C.G.S. 143-128(b) requires that a public body choosing to use a single-prime contract system must also seek bids for a building contract the cost of which exceeds \$100,000 under a separate prime or separate specification contract system and must award such building contract to the lowest responsible bidder(s) for the total project; and

WHEREAS, N.C.G.S. 143-128(d) requires the state and its political subdivisions to award public building contracts the costs of which exceeds \$100,000 without regard to race, religion, color, creed, national origin, sex, age or handicapping condition; and

WHEREAS, notice of the public hearing was duly published in The Chapel Hill Newspaper on September 7 and 14, 1990, and the public hearing required by N.C.G.S. 143-128(c) was held on September 18, 1990;

NOW, THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO RESOLVES:

Section 1. The Town of Carrboro shall have a verifiable goal of 15% for participation by minority business in building construction contracts awarded pursuant to N.C.G.S. 143-128.

Section 2. The Purchasing officer will be responsible for advertising such contracts and shall compile a list of minority businesses within the bidding area, using information obtained from the N.C. Department of Economic and Community Development, Minority Business Development Agency, Association of Minority Businesses, Orange County, or from other institutions or agencies providing such information. This list shall be updated on a semi-annual basis and shall be open for inspection and shall be available so that minority businesses will have the opportunity to add their names to the list. Copies of this resolution shall be transmitted to the businesses on the list as soon as practicable along with the name of the purchasing officer, who shall serve as the contract person for minority businesses and be responsible for answering project related questions posed by minority businesses.

Section 3. For each such building contract put out for bids under the separate specification or the single prime contract systems, notice of the construct shall be transmitted to minority businesses on the above-mentioned list.

Section 4. For each such building contract put out for bids under the separate specification or single prime contract systems, documents related to the contract shall be available for inspection at a convenient and accessible location of which minority businesses shall receive notice.

Section 5. For each such building contract put out for bids under the separate specification or single prime contract systems, the purchasing officer shall hold a pre-bid conference to orient contractors and subcontractors to the policy expressed in this resolution as well as bid procedures and regulations. Minority businesses on the list obtained and maintained as provided herein shall be notified of and invited to these pre-bid conferences.

Section 6. For each such building contract put out for bids under the separate specification or single prime contract system, published notice of the contract shall include a summary of this resolution.

Section 7. For any such building contract put out for bids under the separate specification contract system, the purchasing officer shall maintain records with respect to:

(a) Those contractors or subcontractors notified of the project and the number of these contractors and subcontractors that are minority businesses as defined in N.C.G.S. 143-128 appearing on the list of minority businesses maintained pursuant to paragraph 2 herein;

(b) Those contractors or subcontractors that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses;

(c) Those contractors or subcontractors awarded contracts as part of the project and the number and identity of those that are on the list of minority businesses; and

(d) The percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this resolution.

Section 8. For any such building contract put out for bids under the single prim contract system, the single prime contractor shall:

(a) Notify those minority businesses appearing on the list of minority business, maintained by the purchasing officer, of the portion of the project which will be subcontracted by the single contractor and solicit bids from those minority businesses;

(b) Submit with his/her bid records with respect to:

(1) Those subcontractors notified of the project and of those elements of the project for which subcontracts will be let and the number of these subcontractors that are minority businesses as defined in G.S. 143-128 appearing on the list of minority businesses maintained by the purchasing agent;

(2) Those subcontractors that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses; and

(3) Those subcontractors awarded contracts as part of the project and the number and identity of those that are on the maintained list of minority business; and

(4) The percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this resolution.

Section 9. These policies shall be a part of the request for proposals for any such contract, and noncompliance by any single prime bidder shall be grounds for declaring the bid non-responsive.

Section 10. This resolution shall become effective upon adoption.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 18th day of September, 1990:

Ayes: Randy Marshall, Tom Gurganus, Hilliard Caldwell, Eleanor Kinnaird, Frances Shetley, Jacquelyn Gist, Jay Bryan

Noes: None

Absent or Excused: None

Town of Carrboro

Minority-owned, Woman-owned, Disadvantaged-owned
Outreach Plan and Guidelines

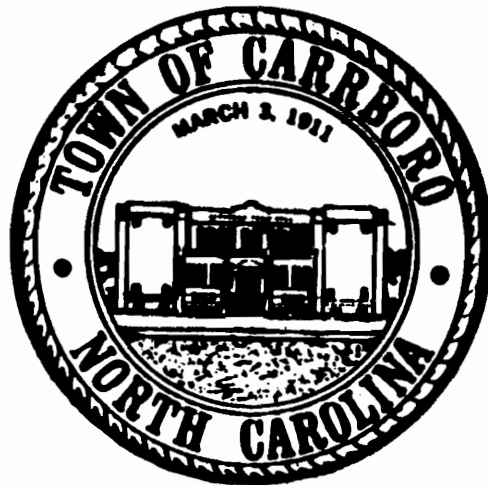


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**OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF
MINORITY BUSINESSES FOR PARTICIPATION IN TOWN OF CARRBORO
BUILDING CONSTRUCTION CONTRACTS**

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 Town of Carrboro building construction projects in the amount of \$300,000 or more (\$100,000 or more if the Town receives State funds for the project).

Town of Carrboro's current goal for minority participation for public building construction is ten percent (10%). The overall goal will be reviewed annually or as soon as relevant data is available.

INTENT

The intent of these guidelines is that the Town of Carrboro, 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 goal of ten percent (10%) for participation by minority businesses in each construction project. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

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 American, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
 - e. Female

2. Minority Business – means a business
 - a. In which at least fifty-one percent (51%) of the ownership interest is held by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

3. Socially and economically disadvantaged individual – means the same as defined in 15 U.S.C. 637. “Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities”. “Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged”.

4. Public Entity – means State (and all political subdivisions thereof) and local government units.

5. Owner – Town of Carrboro.
6. Designer – Any person, firm, partnership, or corporation, which has contracted with Town of Carrboro to perform architectural or engineering work.
7. Bidder – Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. Contract – A mutually binding legal relationship, or any modification thereof, obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
9. Contractor – Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Town of Carrboro to perform construction work or repair.
10. Subcontractor – A firm under contract with the prime contractor or Construction Manager-at-Risk to supply materials, or labor and materials, and/or installation in connection with a Town building construction or repair contract. The subcontractor may or may not provide materials in the subcontract.

MINORITY OUTREACH PLAN AND GUIDELINES

The Town of Carrboro will employ the following strategies to encourage participation from MWBE's:

1. Work with minority-focused business groups in an attempt to recruit minority business participation in contracts/bids.
2. Emphasize the importance of soliciting certified MWBE firms and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MWBE firms.
3. Provide information to majority contractors concerning the Guidelines for Recruitment and Selection of Minority Business and Outreach Plan and provide information on G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the Outreach Plan by evaluating MWBE participation and compliance and reviewing the "good faith efforts" provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified MWBE firms and small businesses that have expressed an interest in Town of Carrboro projects. Identify these opportunities, contact interested businesses no later than 10 days prior to the bid opening, and provide a list of prime contractors planning to participate in the project.

6. Build new business relationships through networking with other North Carolina cities and counties and sharing ideas to improve the Outreach Plan.
7. Offer training sessions to share the Town's Outreach Plan with interested business organizations.
8. Post the Outreach Plan and Guidelines on the Town's website, listing good faith efforts, creating links to MWBE resources, and creating awareness of specific subcontracting opportunities.
9. Maintain a database specifically for MWBE firms to ensure that those businesses are notified of bid opportunities.
10. Advertise upcoming bid opportunities in minority-focused media.
11. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

Designer

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

- a. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
- b. Assist the bidders and potential bidders to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
- c. Maintain documentation of any contacts, correspondence, or conversations 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. bidders' proposal for identification of the minority businesses that will be utilized with corresponding dollar value of the bid and affidavit listing Good Faith Efforts or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) – prior to recommendation of an award.
- e. During the construction phase of the project, review "MWBE Documentation for Contract Payment" form with monthly pay applications to the owner and forward copies to the Town of Carrboro.

Prime Contractors(s), CM at Risk and Its First-Tier Subcontractors

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

- a. Attend the scheduled prebid conference.

- b. Identify or determine those subcontractor work areas 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 must include all of the following:
 - (1) A description of the work for which the subbid is being solicited.
 - (2) The date, time and location where subbids are to be submitted.
 - (3) The name of the individual within the company who will be available to answer questions about the project.
 - (4) Where bid documents may be reviewed.
 - (5) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.
- 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) or Intent to Perform Contract With Own Workforce affidavit.
- f. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First Tier Subcontractor responsibilities available for review by Town of Carrboro upon request.
- g. Provide one of the following upon being named the apparent low bidder: (1) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. This affidavit shall give rise to a presumption that the bidder has made the required good faith effort; or (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
- h. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
- i. Submit with each monthly pay requests(s) and final payment(s), "MWBE Documentation for Contract Payment" for Designer's review.
- j. If at any time during the construction of a project, it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
- k. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

Minority Business Responsibilities

Certification

Town of Carrboro does not certify minority, disadvantaged or woman-owned businesses. Any business which desires to participate as an MWBE will be required to complete, and submit for certification, documents required by the agencies listed below. Only those firms holding current certification through at least one of the following agencies will be considered eligible for inclusion in meeting the MWBE participation percentage goals:

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

North Carolina Department of Transportation Minority/Disadvantage/Woman-owned Business certification.

Small Business Administration 8(a) certification.

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

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

Other Responsibilities

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

MINIMUM COMPLIANCE REQUIREMENTS

All written statements, affidavits or intentions made by the Bidder shall become a part of the agreement between the Contractor and Town of Carrboro for the performance of the contract. Failure to comply with any of these statements, affidavits or intentions, or with the minority business guidelines shall constitute a breach of contract. A finding by the Town that any information, submitted either prior to award of the contract or during the performance of the contract, is inaccurate, false or incomplete, shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. The Town of Carrboro shall determine, in the exercise of its sole discretion, whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, the Town of Carrboro will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. Bidders must earn at least 50 points from the good faith efforts listed below in order for their bids to be considered responsive:

- (1) Contacting those minority businesses reasonably expected to submit a quote and known or identified to the contractor, or available on State or local government maintained lists,

- at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (Value = 10 points)
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. (Value = 10 points)
 - (3) Breaking down or combining elements of work in economically feasible units to facilitate minority participation. (Value = 15 points)
 - (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and those included in the bid documents to provide assistance in recruitment of minority businesses. (Value = 10 points)
 - (5) Attending any prebid meetings scheduled by the public owner. (Value = 10 points)
 - (6) Providing assistance in obtaining required bonding or insurance, or providing alternatives to bonding or insurance for subcontractors. (Value = 20 points)
 - (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities: Any rejection of a minority business based on lack of qualification shall have the reasons documented in writing. (Value = 15 points)
 - (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (Value = 25 points)
 - (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public building construction or repair project when possible. (Value = 20 points)
 - (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. (Value = 20 points)

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

DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. 143-128(f1), all disputes involving contractors on a building construction project with the Town of Carrboro shall be resolved pursuant to the State of North Carolina Policy G.S. 143-135.26(11).