



OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN CAPE FEAR PUBLIC UTILITY AUTHORITY CONSTRUCTION OR REPAIR CONTRACTS

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on Cape Fear Public Utility Authority building construction or repair projects in the amount of \$100,000 or more. The Outreach Plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

Cape Fear Public Utility Authority has a goal of 10% percent for minority participation for building construction or repair projects. The overall goal will be reviewed annually or sooner as relevant data is available.

INTENT

It is the intent of these guidelines that Cape Fear Public Utility Authority, as awarding authority for building construction or repair 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 10% percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors that do not submit the lowest responsible, responsive bid or bids.

DEFINITIONS

1. Minority Persons - a person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
- b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
- d. American Indian, that is, a person having origins in any of the original peoples of North America; or
- e. Female

2. Minority Business (MBE) - means 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
- b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

3. Socially and economically disadvantaged individual - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
4. Public Entity – means State and all public subdivisions and local government units.
5. Owner – Cape Fear Public Utility Authority.
6. Designer – Any person, firm, partnership, or corporation which has contracted with Cape Fear Public Utility Authority 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 Cape Fear Public Utility Authority to perform building construction or repair work.
10. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

MINORITY OUTREACH PLAN

Owner

Cape Fear Public Utility Authority will employ the following strategies to encourage participation from MBEs.

1. Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
2. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
3. Assess the effectiveness of the MBE program, and identify opportunities to enhance it by evaluating MBE participation and compliance and reviewing the good faith efforts provided in bid packages.
4. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share “best practices” and ideas to improve programs.
5. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Cape Fear Public Utility Authority’s outreach plan with interested businesses and organizations
6. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.

7. Enhance Cape Fear Public Utility Authority web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
8. Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with Cape Fear Public Utility Authority have access to up-to-date information.
9. 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, and Construction Manager at Risk or alternative contracting method, the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders’ proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.
5. During construction phase of the project, review “MBE Documentation for Contract Payment “ form with monthly pay applications to the Owner and forward copies to Cape Fear Public Utility Authority
6. Forward documentation showing evidence of implementation of Items (1) through (5) of this Rule to the owner, State Construction Office and HUB Office upon request.

Prime Contractor(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) will:

1. Attend the scheduled pre-bid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. During the bidding process, comply with the owner’s requirements listed in the proposal for minority participation.
4. 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).
5. Make documentation showing evidence of implementation of Prime Contractor, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by Cape Fear Public Utility Authority, upon request.
6. Upon being named the apparent low bidder, the bidder shall provide one of the following: (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; 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.

7. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
8. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
9. If during the construction of a project additional subcontracting opportunities become available, the contractor shall make a good faith effort to solicit sub-bids from minority businesses.

Minority Business Responsibilities

Certification

Minority businesses seeking to be counted toward the minority business participation goals of G.S. 143-128.2 shall be certified or designated as minority business by the Department of Administration HUB Office or another certifying agency of the State of North Carolina, a local unit of government, or The Carolinas Minority Suppliers Development Council.

Other Responsibilities

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

- (1) Attending the scheduled prebid conference.
- (2) Responding promptly whether or not they wish to submit a bid when contacted by owners or bidders.
- (3) Attending training and contractor outreach sessions given by owners, contractors and state agencies, when feasible.
- (4) Participating in Mentor/Protégé programs, training, or other business development programs offered by owners, contractors or state agencies.
- (5) Negotiating in good faith with owners or contractors.

MINIMUM COMPLIANCE REQUIREMENTS

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and Cape Fear Public Utility Authority for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by Cape Fear Public Utility Authority that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in rejection of the contractor's bid as non-compliant or in termination of a contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of Cape Fear Public Utility Authority whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, Cape Fear Public Utility Authority will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort is grounds for rejection of the bid. Good faith efforts include:

1. Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at

least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (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. (10 points)
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 points)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 points)
5. Attending any pre-bid meetings scheduled by the public owner. (10 points)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (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. (25 points)
9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. (20 points)
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 points)

DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with Cape Fear Public Utility Authority shall be resolved pursuant to the State of North Carolina Policy G.S. 143-135.26(11)