

ORDINANCE FOR THE ESTABLISHMENT OF ALAMANCE COUNTY MINORITY BUSINESS ENTERPRISE (MBE) OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES

WHEREAS, the Board of Commissioners recognizes that North Carolina General Statute (N.C.G.S.) 143-128 requires public agencies to implement a minority outreach program for promoting the use of minority business enterprises as defined in the statute.

WHEREAS, the Board of Commissioners recognizes that the law does not establish set asides or quotas but instead requires agencies themselves to make, and to require contractors, a good faith effort to use minority business in major building construction projects.

WHEREAS, the Board of Commissioner in accordance with North Carolina General Statute Section 143-128.2, implements this Outreach Plan and Guidelines to establish the Alamance County goals for minority participation in single-prime bidding, dual bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on Alamance County building construction or repair projects in the amount of \$300,000 or more, or if using state funds \$100,000.00 or more.

WHEREAS, the Board of Commissioners has determined that the Outreach Plan and Guidelines shall also be applicable to the selection process of architectural, engineering, surveying and Construction Manager-at-Risk services.

WHEREAS, the Board of Commissioners recognizes the state's minority contracting program agencies requirement of state agencies to use a ten percent goal for participation, and the allowance by law of a local government to apply a different verifiable goal if it has a sufficiently strong basis in evidence to justify the use of that goal other than ten percent.

WHEREAS, the Board of Commissioners has determined that this Outreach Plan has been developed to assist Alamance County in establishing and meeting its verifiable goal of ten percent for minority participation for building construction or repair projects and encourages all those associated with construction projects subject to this Outreach Plan and Guidelines to commit to this goal through a good faith effort.

NOW, THEREFORE, THE BOARD OF COMMISSIONER FOR THE COUNTY OF ALAMANCE DOTH ORDAIN:

SECTION A: INTENT

It is the intent of this Outreach Plan and Guidelines that Alamance County, 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 ten percent for participation by minority businesses in each building construction or repair project as required by North Carolina General Statute Section 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding

authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who are not responsive bidders and/or do not submit the lowest responsible bid or bids taking into consideration quality, performance and the time specified in the bid or bids for performance of the contract. Nothing in this Outreach Plan or Guidelines shall limit the right of Alamance County to reject proposals for any reason it deems to be in the best interest of Alamance County.

SECTION B: DEFINITIONS

1. Minority - a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original peoples of North America;
 - e. Female; or
 - f. socially and economically disadvantaged individuals, as defined in paragraph 3 below.

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

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

4. Owner – Alamance County.

5. Designer – Any person, firm, partnership, association, joint venture, or corporation which has contracted with Alamance County to perform architectural or engineering work.

6. Bidder - Any person, firm, partnership, corporation, association, or joint venture bidding on a public contract or subcontract.

7. 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.

8. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has

contracted with Alamance County to perform building construction or repair work.

9. Subcontractor – Any person, firm, partnership, corporation, association, or joint venture 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 the subcontract.

10. Public Entity – The State of North Carolina and all political subdivisions and local government units.

SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES

Alamance County, as Owner, will employ the following strategies to encourage participation from MBE's:

1. Work with minority-focused and small business groups that support MBE inclusion in the solicitation of bids. These groups include NC Department of Administration Office of Historically Underutilized Businesses (HUB), NC DOT Office of Civil Rights and Business Development (OCR), Piedmont Minority Supplier Development Council (PMSDC), NC Minority/Women's Business Coordinator's Network, NC and other similar organizations (i.e. small business development centers)
2. Emphasize 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.
3. Provide detailed information to bidders and contractors concerning the bidding and good faith efforts requirements by holding meetings with the bidders and contractors.
4. 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 of the bidders and contractors.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified MBE firms that have expressed an interest in Alamance County projects. Identify these opportunities and contact interested businesses that have requested notices from Alamance County no later than 10 days prior to the bid opening and provide; a description of the work for which the bid is solicited; the date, time, and location where bids should be submitted; the name of the person that will answer questions about the project; the location of the bid documents and the availability for review; and special requirements; and a list of prime contractors who plan to participate in the project.
6. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their Minority Business Enterprise (MBE) outreach programs are working and to share "best practices" and ideas to improve programs.
7. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Alamance County's MBE outreach plan with interested businesses and organizations
8. 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.

9. Post on the Alamance County web page Outreach Plan and Guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders and contractors that MBE subcontractors may wish to contact for subcontracting consideration.
11. Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with Alamance County have access to up-to-date information.
12. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
13. 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 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 N.C.G.S. 143-128.2(c) and N.C. 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 all pay applications and forward them to Alamance County.

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

Pursuant to N.C.G.S. Section 143-128.2 (c) each bidder including, single-prime bidding, the separate-prime bidding, construction manager at risk (including first tier subcontractors for construction manager at risk projects), and alternative contracting methods authorized under N.C.G.S. Section 143-128 (a1) 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, construction manager at risk and first-tier Subcontractor responsibilities available for review by Alamance County, 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 may present the basis for rejection of the bid and award to the next lowest responsive and responsible 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, after the bid opening, or at any time, if it becomes necessary to replace a minority business subcontractor, the prime contractor shall 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 in accordance with N.C.G.S. Section 143-131 (b).
9. If during the construction of a project additional subcontracting opportunities become available, the contractor shall make a good faith effort to solicit subcontractor bids from MBE subcontractors.

Minority Business Responsibilities

No Certification of Minority Businesses

Alamance County does not certify minority business, any business which desires to participate as a minority business in Alamance County in the public bid process for contracts will be required to become certified by at least one of the following agencies:

Certification can be obtained from the following agencies:

- 1- North Carolina Department of Administration Historically Underutilized Business (HUB) certification; statewide uniformed certification
- 2- North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification
- 3- Small Business Administration 8(a) certification
- 4- Other governmental agencies on a case-by-case basis

While minority businesses are not required to become certified in order to participate in Alamance County building construction or repair projects, it is recommended that they become certified and take advantage of appropriate technical assistance that is made available by the above referenced agencies.

Other Responsibilities of Minority Businesses

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

SECTION D: MINIMUM COMPLIANCE REQUIREMENTS

All written statements or affidavits made by the bidder shall become a part of the bid between the Bidder and Alamance County for award of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a non responsive bid. A finding by Alamance County that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of Alamance County whether to terminate the contract for breach based upon such grounds.

In determining whether a contractor has made the good faith efforts required by the Plan and Guidelines, Alamance County will evaluate all efforts made by the Contractor in terms of 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 may constitute the grounds for a determination that the bid is nonresponsive and result in the 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 the rejection of a minority business based on the 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. Encouraging the use of joint venture and partnership arrangements between 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)

SECTION E: Sanctions. When the County determines that a successful bidder has failed to make or maintain good faith efforts as required by this Plan, the County may impose any or all of the sanctions as follows:

1. Deem it as an element of “poor performance” and consider it in the award of future contracts to the bidder.
2. Refuse to award the contract to the bidder.
3. Impose a penalty in an amount equal to five percent of the contract price.
Provided however, the five percent penalty language must be made part of the bid notice and part of the contract.
4. Remove the bidder from the bid list for a period of one (1) year.

SECTION F: Records and Reports. The County shall keep records of all written statements and affidavits gathered through minority outreach program on bidder good faith efforts and provided any and all reports as required by N.C.G.S. 143-128.3 minority business participation administration to the North Carolina Department of Administration, Office of Historically Underutilized Businesses (HUB).

SECTION G: Delegation. The County Manager is authorized to delegate any or all of the authority granted and responsibilities assigned under this Ordinance to other County employees.

SECTION H: This Ordinance is adopted pursuant to the provisions of North Carolina General Statute Section 143-128; North Carolina General Statute Section 143-128.2; all requirements of N.C.G.S. 143-128.2(c) and N.C.G.S. 143-128.2(f); and alternative contracting methods authorized under N.C.G.S. Section 143-128 (a1) as applied in accordance with N.C.G.S. Section 143-131(b).

SECTION K: Amendments. The Board of Commissioner shall have the authority to amend this ordinance at anytime.

SECTION L: Effective Date. The ordinance shall become effective upon adoption.

Adopted this 4th day of May, 2009

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The foregoing ordinance was adopted by the Board of Commissioners for the County of Alamance during regular session on May 4, 2009. See Minute Book No. 39, Page 77.