

**GUILFORD COUNTY
MINORITY AND WOMEN
BUSINESS ENTERPRISE
PROGRAM POLICY**

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PROPOSED

GUILFORD COUNTY MINORITY AND WOMEN BUSINESS ENTERPRISE PROGRAM POLICY

1.0 Purpose

The Minority and Women Business Enterprise (MWBE) Program seeks to develop and grow Minority, Women and Small Business Enterprises (MWSBE) in the Guilford County market. The MWBE Program seeks to exercise the spending powers of Guilford County in a manner that promotes economic inclusion of all segments of the business population, regardless of race or gender, to maximize the economic vitality and development of Guilford County.

The MWBE Program shall implement the County's MWBE Policy to remedy the ongoing effects of marketplace discrimination that Guilford County has found continue to adversely affect the participation of MWBE firms in Guilford County contracts. Guilford County shall use race- and gender-conscious measures for addressing disparities within its contract participation only when it is apparent that the use of neutral means alone (as provided in this Program Plan) are likely insufficient to fully remedy the effects of identified discrimination.

It is the Policy of Guilford County to ensure that the firms it engages in business with do not discriminate in their solicitation, selection or treatment of Subcontractors, suppliers, vendors or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.

The MWBE Program Director shall have primary oversight, and responsibility with the full support and cooperation of all other Guilford County offices and departments in the establishment and administration of the Policy and Procedures established herein.

2.0 Scope. The Guilford County MWBE Program shall apply to:

- 2.1 All contracts for the purchase of construction, construction-related services, architectural and engineering services, professional services, goods, real estate development, renovation, maintenance, or other services awarded by, or on behalf of, Guilford County.
- 2.2 Any employee of the Guilford County who has the authority to award or recommend for award any Contract.
- 2.3 Any employee charged with diversity and inclusion initiatives in Guilford County.
- 2.4 Any committees established to support or in furtherance of the Guilford County MWBE Program.
- 2.5 Any Business Enterprise that registers with the Guilford County MWBE office, submits a bid or proposal to Guilford County, or contracts with Guilford County .
- 2.6 Any Subcontractor/Subconsultant who is identified on a bid or proposal to Guilford County, submits for pre-qualification, or receives funds for work performed on a Contract.

3.0 Policy

- 3.1 It is the policy of Guilford County to enhance competition in county contracting and promote economic growth and development by:
 - 3.1.1 Increasing Minority-owned Business Enterprise and Women-owned Business Enterprise utilization in County contracting.
 - 3.1.2 Promoting Small Business Enterprise start-up, development, and growth in the Guilford County Combined Statistical Area (CSA).
Alamance, Caswell, Chatham, Davidson, Davie, Durham, Franklin, Forsyth, Granville, Guilford, Hoke, Lee, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stokes, Surry, Vance, Wake, Warren, and Yadkin County.

- 3.1.3 Monitoring, evaluating, and reporting on Minority-owned Business Enterprise, and Women-owned Business Enterprise participation and contract compliance with the provisions of the Guilford County MWBE Program.
- 3.2 Enabling Legislation
 - 3.2.1 Minority-owned Business Enterprise and Women-owned Business Enterprise. North Carolina General Statutes Sections 143-128.1, 143-128.2, 143-128.3, 143-128.4, and 143-131 authorizes Guilford County to have a Minority-owned Business Enterprise and Women-owned Business Enterprise program for certain Contracts.
 - 3.2.2 Economic Development and Community Development North Carolina General Statutes Sections 158-7.1 and 160A-456 authorizes Guilford County to engage in economic development and community development activities.
- 3.3 Disparity Study Background.
 - 3.3.1 In March 2021, Guilford County retained Griffin & Strong, P.C. (“Griffin & Strong”) to conduct a disparity study (“Disparity Study”) to
 - (i) determine whether disparity exists between the number of Minority-owned Business Enterprises and Women-owned Business Enterprises available to perform on county contracts and the county’s utilization of those firms;
 - (ii) determine if there is a legally defensible basis for the use of race-conscious and gender-conscious measures; and
 - (iii) provide data and information that could be used to consider modifications to the Guilford County MWBE Program.
 - 3.3.2 Between March 2021 and October 2022, Griffin & Strong gathered quantitative data and qualitative data from the county and local businesses for the Disparity Study.
 - 3.3.3 In January 2023 Griffin & Strong completed the Disparity Study and found that disparities existed between the availability and utilization of Minority-owned Business Enterprises and Women-owned Business Enterprises. Griffin & Strong recommended that the county uses race-conscious and gender-conscious measures.
 - 3.3.4 On January 19, 2023, Griffin & Strong presented its report to the Guilford County Board of Commissioners. The Guilford County Board of Commissioners adopted the findings and recommendations set forth in the Disparity Study.
- 3.4 Program Findings.

In adopting the Disparity Study on January 19, 2023, the Guilford County Board of Commissioners made the following findings:

 - 3.4.1 Accepted the findings and conclusions set forth or referenced in the Disparity Study and they are hereby fully incorporated by reference;
 - 3.4.2 Acknowledged the disparity in all five areas of County contracting categories: Goods; Construction, Architecture & Engineering, Surveying, Professional Services; and Other Services;
 - 3.4.3 Acknowledged that the use of race-conscious and gender-conscious measures have been effective in increasing the utilization of Minority-owned Business Enterprises, and Women-owned Business Enterprises, ;
 - 3.4.4 Found that the County has a compelling interest to remedy the ongoing effects of marketplace discrimination against Minority-owned Business Enterprises and Women-owned Business Enterprises and to avoid becoming a passive participant in private sector discrimination;

- 3.4.5 Proclaimed that the County is fully committed to not only remedying the ongoing effects of marketplace discrimination, but also to using its spending powers in a manner that promotes a robust and inclusive economy that fully utilizes all segments of its business population, regardless of race or gender; and;
- 3.4.6 Based upon an extensive factual predicate, determined that a narrowly tailored combination of race-neutral and gender-neutral remedies and race-conscious and gender-conscious remedies is necessary to serve those compelling interests and needs of the County.
- 3.5 **Race-Conscious and Gender-Conscious Remedies**
The race-conscious and gender-conscious remedies shall be met by the racial/ethnicity groups and gender groups that were found to have a statistically significant underutilization on the Disparity Study. Race-conscious and gender-conscious remedies will be narrowly tailored to address the documented statistical disparity. Any subcontracting goals will be based on Minority-owned Business Enterprise's, and Woman-owned Business Enterprise's availability.
- 3.6 **Race and Gender-Neutral Remedies**
The MWBE Director or designee shall be responsible for implementing non-industry-specific Program Elements such as bonding assistance, capital access assistance, vendor rotation, mentor-protegee programs and education programs that will further facilitate the increase in MWBEs contracting with Guilford County.
- 3.7 **Sunset for Race-Conscious and Gender-Conscious Measures**
Absent an extension by the Guilford County Board of Commissioners, the race-conscious and gender-conscious measures will expire on July 1, 2028.
- 3.8 **Severability**
If any provision of the Guilford County MWBE Policy or Administrative Manual or any application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect other provisions or applications of the Guilford County MWBE Program which can be given effect without the invalid provisions or applications and the remaining provisions are to be severable and shall remain in full force and effect.

4.0 Definitions

All capitalized terms used in the Guilford County MWBE Policy shall be defined and set forth in the Guilford County MWBE Administrative Manual.

5.0 Program Roles and Responsibilities

The Guilford County Board of Commissioners sets forth the following roles and responsibilities in administering and enforcing the Guilford County MWBE Program.

- 5.1 **County Manager.** Such person shall have the authority to:
 - 5.1.1 Determine the Guilford County MWBE office's organizational structure;
 - 5.1.2 Evaluate the County's efforts to further the purpose of the Guilford County MWBE Program;
 - 5.1.3 Propose any amendment to Guilford County MWBE Program Policy;
 - 5.1.4 Hear appeals concerning a MWBE Program Director's decision;
 - 5.1.5 Direct the Procurement Director to develop uniform standards for inclusion of the Guilford County MWBE Program into county documents and procedures; and,
 - 5.1.6 Receive advice and input regarding the Guilford County MWBE Program from the MWBE Program Director and County Attorney.

- 5.2 **MWBE Program Director.** Such person shall have the authority to:
- 5.2.1 Determine the appropriate staffing, operations, and training for the Guilford County MWBE office;
 - 5.2.2 Ensure compliance with federal, state, and local requirements; and,
 - 5.2.3 Establish stakeholder groups and teams to facilitate the administration and enforcement of the Guilford County MWBE Program.
 - 5.2.4 Administer the daily operation of the Guilford County MWBE Program;
 - 5.2.5 Serve as an ombudsman for concerns by Minority-owned Business Enterprises, Women-owned Business Enterprises, and Small Business Enterprises;
 - 5.2.6 Offer programs and supporting services for outreach and business development assistance to Minority-owned Business Enterprises, Women-owned Business Enterprises and Small Business Enterprises;
 - 5.2.7 Develop, amend, and enforce an Administrative Manual;
 - 5.2.8 Ensure compliance with federal, state, and local requirements;
 - 5.2.9 Maintain data tracking and reporting and publish appropriate reports; and,
 - 5.2.10 Oversee the County's disparity study, and;
 - 5.2.11 Set an aspirational MBE and WBE goal for county contracts.
- 5.3 **Department Heads.** Such persons shall have the authority to:
- 5.3.1 Promote the Guilford County MWBE Program and Minority-owned Business Enterprises and Women-owned Business Enterprises participation in the contracting and procurement activities of their respective county departments;
 - 5.3.2 Develop and implement strategies in furtherance of the Guilford County MWBE Program;
 - 5.3.3 Monitor and report utilization of Minority-owned Business Enterprises, Women-owned Business Enterprises, and Small Business Enterprises to the MWBE Program Director; and,
 - 5.3.4 Ensure compliance with all federal, state, and local requirements.
- 5.4 **County Attorney.** Such person shall have the authority to:
- 5.4.1 Advise the Guilford County Board of Commissioners, County Manager, and the MWBE Program Director on legal issues related to the Guilford County MWBE Program;
 - 5.4.2 Review any recommendation to reject a Bid for non-compliance with the Guilford County MWBE Program; and
 - 5.4.3 Ensure compliance with federal, state, and local laws.
- 5.5 **Delegation**
The County Manager, MWBE Program Director, Department Head, and County Attorney may designate other individuals to perform any tasks or functions assigned to them.

6.0 Guilford County MWBE Program Administrative Manual

6.1 Burden of Proof

The Administrative Manual shall set forth that the burden of proof remains with the party who is challenging a decision of the MWBE Program Director and shall presume that all Business Enterprises have full knowledge of the Guilford County MWBE Policy and Administrative Manual.

6.2 Certification of Small Business Enterprises

The Administrative Manual shall, at a minimum, address the certification process, duration of the certification, the decertification process, any ownership eligibility or ineligibility, any management and control, restrictions on affiliation, certification renewals, suspension or revocation of the certification, and graduation size standards.

- 6.3 **Registration of Minority Business Enterprises and Women Business Enterprises**
The Administrative Manual shall, at a minimum, address the registration process, the process for removal of the registration, any ownership eligibility or ineligibility, any management and control, restrictions on affiliation, certification renewals, and suspension or revocation of the registration certification.
- 6.4 **Commercially Useful Function**
The Administrative Manual shall, at a minimum, address what constitutes Commercially Useful Function and/or Conduit activity.
- 6.5 **Goals**
The Administrative Manual shall, at a minimum, set forth the types of contracting goals established by the MWBE Program Director, the minimum dollar amounts for any contracting goal, alternate agreements, exclusions for state-funded and federally funded contracts, self-performance, and restrictions on certain types of Commercially Useful Functions.
- 6.6 **Good Faith Negotiation and Good Faith Efforts**
The Administrative Manual shall, at a minimum, address what constitutes Good Faith Negotiation, the documentation necessary to demonstrate Good Faith Negotiation and Good Faith Efforts, all Good Faith Effort categories, the points awarded for each Good Faith Effort category, the process for submitting Good Faith Efforts documentation, and the process for accepting or rejecting Good Faith Efforts.
- 6.7 **Responsibilities After Contract Award**
The Administrative Manual shall, at a minimum, address prime contractor compliance with the MWBE program, MWBE participation on new subcontracting opportunities, the termination or replacement of Minority Business Enterprises and Women Business Enterprises, on a contract, the reduction in work for Minority Business Enterprises, and Women Business Enterprises.
- 6.8 **Remedies & Liquidated Damages**
The Administrative Manual shall, at a minimum, address what is a violation or material breach of the Guilford County MWBE Policy, the amount of any liquidated damage, and what rights and remedies that may be exercised by Guilford County.
- 6.9 **Authority to Grant Waivers**
The Administrative Manual shall, at a minimum, address waivers by the MWBE Program Director for noncompliance with the Guilford County MWBE Program and waivers of MWBE participation on contracts.
- 6.10 **Standard Review**
The Administrative Manual shall, at a minimum, address any applicable deadlines for appealing a decision of the MWBE Program Director and the process for any appeal.
- 6.11 **Program System Administration**
The Administrative Manual shall, at a minimum, address the use of and requirements for a diversity and inclusion enterprise system.
- 6.12 **Program Documentation**
The Administrative Manual shall, at a minimum, address the MWBE portion of the procurement solicitation templates, MWBE payment compliance forms and all other types of forms or documentation that facilitate compliance with the program.
- 6.13 **Sheltered Market Program**
The Administrative Manual shall, at a minimum, address the requirements and process for a small business sheltered market for informal Contracts.

6.14 Advisory Committees

The Administrative Manual shall, at a minimum, address the composition of any stakeholder group and provide the charge for it. The Guilford County MWBE Advisory Committee may be referenced in the Administrative Manual but only in accordance with the charged mandated by the Guilford County Board of Commissioners.

6.15 Outreach, Assistance and Business Development

The Administrative Manual shall, at a minimum, address race and gender-neutral programs and activities to provide outreach and business development assistance to Minority Business Enterprises, Women Business Enterprises, and Small Business Enterprises.

7.0 Document Approvals

Role	Position	Name of Approver	Approval Signature	Date Approved
Author	MWBE Program Director	Shaunne N. Thomas	<i>Shaunne N. Thomas</i>	01/29/2023
Reviewer	County Attorney	Andrea Leslie-Fite		
Reviewer	County Manager	Michael Halford		
Owner	Board of Commissioners	Board of Commissioners		
Final Approver	Board of Commissioners	Board of Commissioners		