

**GUILFORD COUNTY MWBE PROGRAM
ADMINISTRATIVE MANUAL**

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A. POLICY STATEMENT

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.

B. PROGRAM CERTIFICATION AND REGISTRATION

1.0 Small Business Enterprises (SBE) Eligibility

1.1 For Profit

Only for-profit Business Enterprises shall be eligible for Small Business Enterprise certification. Non-profit corporations, as defined in North Carolina General Statutes Section 55A-1-40(17), cannot become certified as SBEs.

1.2 Licensed

A Business Enterprise must be authorized to do business in the State of North Carolina.

1.3 Eligible Owner Criteria

A person shall:

- 1.3.1 own at least fifty-one percent (51%) of the legal and equitable interest in the Business Enterprise;
- 1.3.2 demonstrate that the legal and equitable interest in the Business Enterprise is owned in the person's own name;
- 1.3.3 have acquired the legal and equitable interest with financial or equivalent resources;
- 1.3.4 not exceed the cap for Personal Net Worth; and
- 1.3.5 be a United States citizen, United States permanent resident, holder of a valid work visa from the United States government.

1.4 Threshold Size

A Business Enterprise and all its Affiliates cannot exceed twenty-five percent (25%) of the applicable size standards for the Small Business Administration set forth in 13 CFR § 121.201 et. seq. as amended or successor regulation or classification system. Threshold size must be determined by:

- 1.4.1 the average of annual receipts over the three (3) preceding fiscal years;
- 1.4.2 the number of employees; and/or
- 1.4.3 other criteria established by the MWBE Program Director.

1.5 Duration of Certification

Any certification of a Small Business Enterprise shall be valid for four (4) years from the date of issuance. A Business Enterprise may seek to be certified again but must comply with all applicable requirements of Certification and Registration before being issued a new certification. Prior certifications shall not entitle a Business Enterprise to a new and subsequent certification.

1.6 Graduation

If a Small Business Enterprise and all its Affiliates exceeds the standard set forth in the section defining the threshold size, then the Small Business Enterprise and all its Affiliates will be deemed ineligible for certification. The MWBE Program Director should permit the Small Business Enterprise and all its Affiliates a one-month transition after exceeding the standard set forth in threshold section size.

2.0 Minority-Owned Business Enterprises Registration

2.1 Certification by the State of North Carolina

A Business Enterprise must be certified by the State of North Carolina as a historically underutilized business within the meaning of North Carolina General Statutes § 143-128.4.

2.2 Duration of Registration

Any registration of a Minority-Owned Business Enterprise shall be valid for the same duration as its certification by the State of North Carolina.

3.0 Women-Owned Business Enterprises Registration.

3.1 Certification by the State of North Carolina

A Business Enterprise must be certified by the State of North Carolina as a historically underutilized business within the meaning of North Carolina General Statutes § 143-128.4.

3.2 Duration of Registration

Any registration of a Women-Owned Business Enterprise shall be valid for the same duration as its certification by the State of North Carolina.

4.0 Management and Control

The owner must have Management and Control over the daily operations of the Business Enterprise.

5.0 Commercially Useful Function

The Business Enterprise must perform a Commercially Useful Function. No Commercially Useful Function is demonstrated by a Business Enterprise if it merely acts as a Conduit.

6.0 Geographic Restriction

A Business Enterprise must have a Significant Business Presence in the Guilford County CSA. Factors that will be considered include, but are not limited to:

6.1 Guilford County Combined Statistical Area. Guilford County combined statistical area is comprised of the following 27 North Carolina counties:

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.

6.2 the Business Enterprise being headquartered in the Guilford County CSA;

6.3 the number of full-time employees;

6.4 location of managerial or decision-making personnel;

6.5 lease agreement;

6.6 previous work awarded or performed in the Guilford County CSA; previous contract awarded or performed in the Guilford County CSA; and

6.7 percentage of income or revenue earned in Guilford County CSA.

6.8 Affiliate Relationships Rebuttable Presumption

It shall be presumed that one Business Enterprise has an Affiliate Relationship with another Business Enterprise when

6.8.1 fifty percent (50%) or more of one Business Enterprise's annual gross revenue over the prior three (3) years was derived from the other Business Enterprise and

6.8.2 there is common ownership, common management, shared facilities, shared assets, family relationships or other significant connections between the Business Enterprises.

7.0 Ineligibility

A Business Enterprise shall not be registered as an MBE or WBE or certified as a SBE if a current official, officer, or employee of Guilford County:

7.1 has an ownership interest; or

7.2 has Management and Control.

8.0 National Institute of Government Purchasing (NIGP) Commodity Code.

8.1 Standard

8.2 Unless the MWBE Program Director designates a different classification standard, the National Institute of Government Purchasing Commodity Codes shall be used by MWSBEs to describe all business activity that generates income for the Business Enterprise.

8.3 Sustained Documented Business Activity

A Business Enterprise can designate itself for a National Institute of Government Purchasing Commodity Codes where the Business Enterprise can demonstrate a minimum of twelve (12) months for that business activity and possesses the necessary business license or professional license for that business activity. The County does not represent the

qualification of MWSBE based on its sustained documented business activity.

8.4 Voluntary Amendment of NIGP Codes

A Business Enterprise may request to amend its designation of National Institute of Government Purchasing Commodity Codes if the Business Enterprise can fulfill the requirement of Certification and Registration. The County does not represent the qualification of MWSBE based on its voluntary amendment of any NIGP Code.

8.5 Involuntary Amendment of NIGP Codes

Any National Institute of Government Purchasing Commodity Code listed for a Business Enterprise may be modified by the MWBE Program Director if the MWBE regularly fails to submit bids/proposals for work in a particular area or it becomes apparent that the MWBE is not qualified to perform the work in a particular area. The County does not represent the qualification of MWBE based on its involuntary amendment of any NIGP Code.

8.6 Work Performed Outside NIGP Code Designation

Nothing in Certification and Registration shall prohibit a Business Enterprise from engaging in work that has not been designated from counting towards the Committed Subcontracting Goal if the Business Enterprise demonstrates that it will be performing the work in question.

9.0 Expectations

MWSBEs are responsible for:

9.1 promoting themselves and taking the initiative to obtain work on Contracts;

9.2 monitoring the County's website for posting of contracting opportunities;

9.3 making every effort to establish contacts and relationships with prospective Bidders for potential future business, including attending pre-bid conferences;

9.4 responding promptly to solicitation requests; and

9.5 attending seminars, classes and workshops designed to facilitate networking and/or enhance business skills.

10.0 Database of Guilford County Registered and Certified Business Enterprises

Guilford County shall maintain a publicly accessible database of all active Guilford County Certified and Registered Business Enterprises.

C. RACE AND GENDER-CONSCIOUS PROGRAM ELEMENTS

1.0 GOALS

1.1 Contracting Goals

1.1.1 Aspirational Contracting Goals

A non-mandatory aspirational percentage goal shall be established by the MWBE Program Director. This non-mandatory annual aspirational percentage goal shall be for MWBE participation based on the MWBE availability by industry in accordance with the Disparity Study findings, along with such data to be collected by the MWBE Program Director reporting on the utilization of MWBE firms.

1.1.2 Prime and Subcontracting Goals

One or more Prime or Subcontracting Goals may be established for all:

- (i) Construction Contracts of \$30,000 or more;
- (ii) Architecture, Engineering and Surveying Contracts of \$50,000 or more;
- (iii) Services Contracts of \$30,000 or more;
- (iv) Other Services Contracts of \$30,000 or more; and
- (v) Goods and Commodities Contracts of \$30,000 or more.

1.1.3 Types of Prime and Subcontracting Goals

Subcontracting Goals can be in the form of an:

- (i) MWBE Goal,
- (ii) MBE Goal only,
- (iii) WBE Goal only, or
- (iv) either both an MBE Goal and an WBE Goal.

1.1.4 Participation Plan

When the County enters into Construction Manager at Risk Agreements, Design-Build Agreements, Infrastructure Reimbursement Agreements, and/or Public-Private Development Agreements, then the MWBE Program Director may choose to set goals or draft a Participation Plan describing what outreach and other efforts the Contractor will be required to undertake to meet the Subcontracting Goals established for the Contract. Any revisions to a Participation Plan after submission shall be approved in writing by the MWBE Program Director.

1.1.5 Negotiated Goals

Any agreement between one or more Business Enterprise and the County regarding prospective MWBE utilization on a Contract must be approved by the MWBE Program Director.

1.2 Approval

1.2.1 All MWBE goals must be approved by the MWBE Program Director prior to advertising the Solicitation Documents, unless the MWBE Program Director grants an exemption.

1.2.2 The MWBE Program director may set the higher of the NC State goal of 10% or the goal calculated using the NCDOT formula.

1.3 Exclusion for Lack of Subcontracting Opportunities

No Subcontracting Goals will be established on a Contract if:

- 1.3.1 there are no subcontracting opportunities identified for the Contract, or;
- 1.3.2 there are no MWBEs to perform the work for the Contract.

1.3.3 Exclusion for State Funded or Federally Funded Contract

No Subcontracting Goals will be established on any state-funded or federally funded Contract that is subject to state or federal requirements for minority-owned business enterprises and women-owned business enterprises.

1.4 Self-Performance

The affidavit shall be provided by the County as part of the solicitation documents. In such event, the Bidder shall not be required to comply with established goals.

1.4.1 Construction Contract with MWBE Goal

A Business Enterprise, who intends to perform 100% of the work on a Construction Contract with any Subcontracting Goal, may submit an affidavit stating that the Bidder:

- (i) does not customarily subcontract any element of work; and
- (ii) normally performs, has the capability to perform, and will perform all elements of work on this Contract with its own current workforces.

1.4.2 Commodities Contract with MWBE Goal

Self-performance will not be permitted on any Commodities Contract with any MWBE Goal.

1.4.3 Service Contract with MWBE Goal

The self-performance affidavit shall be provided by the County as part of the solicitation documents. A Business Enterprise, who intends to perform 100% of the work on a Service Contract with any Subcontracting Goal, must certify in its Proposal:

- (i) it is licensed, qualified, and able to perform all aspects of the Contract without subcontracting; and
- (ii) it has a valid business reason for self-performing all work on the Contract as opposed to subcontracting.

1.5 Grounds for Denial

The MWBE Program Director may recommend rejection of a Bid or Proposal for non-compliance if:

- 1.5.1 the Business Enterprise is not licensed to perform each, and every type of work included in the Contract,
- 1.5.2 based on past practice or other grounds, the Business Enterprise will not be performing all the work under the Contract with its own current workforce;
- 1.5.3 the request for approval is within fourteen (14) Days of the Proposal Opening;
- 1.5.4 insufficient documentation is received to support;
- 1.5.5 any special skill-based qualification is available to and/or possessed by MWBEs;
- 1.5.6 there is no significant increase in the cost to the Business Enterprise for a MWBE to perform the scope of work.

1.6 Meeting Prime and Subcontracting Goals

1.6.1 Criteria

MWBEs will count towards an applicable Prime or Subcontracting Goal if the MWBE has fulfilled the requirements of Certification and Registration.

1.7 Recruitment of MWBEs

Nothing shall prohibit the recruitment of MWBEs, who have not previously fulfilled the requirements of Certification and Registration, to meet the Prime or Subcontracting Goals so long as the MWBE fulfills the requirements of Certification and Registration prior to contract execution.

1.8 Calculation of MWBE Participation Based on Type

1.8.1 Subcontractor/Subconsultant

One hundred percent (100%) of the value of the MWBE's Commercially Useful Function shall count towards meeting the applicable Subcontracting Goals.

- 1.8.2 **Manufacturer**
One hundred percent (100%) of all expenditures for materials, supplies, and equipment obtained from a MWBE shall count towards meeting the applicable Subcontracting Goals.
- 1.8.3 **Regular Dealer**
Sixty percent (60%) of all expenditures for materials, supplies, and equipment obtained from a MWBE shall count towards meeting the applicable Subcontracting Goals.
- 1.8.4 **Hauler**
Fees or commissions charged by a MWBE for providing a Commercially Useful Function shall count towards meeting a portion of the applicable Subcontracting Goals. Whenever hauling is identified as a subcontracting opportunity, it shall be restricted to no more than sixty percent (60%) of the applicable Subcontracting Goal. The costs of a Hauler's materials or supplies shall not count as part of the fees or commissions.
- 1.8.5 **Broker or Packager**
Fees or commissions charged by a MWBE for providing a Commercially Useful Function shall count towards meeting the applicable Subcontracting Goals.
- 1.8.6 **Joint Venture**
Calculation of MWBE utilization will be based on whether the MWBE will be performing a role like subcontractor, manufacturer, regular dealer, hauler, and a broker or packager. Notwithstanding, the MWBE Program Director shall:
- (i) receive a request to count a Joint Venture toward any Subcontracting Goal at least fourteen (14) Days before the Opening of Bid/Proposal and
 - (ii) render a determination on the request no later than five (5) Days before the Opening of Bid/Proposal.
- 1.9 **MWBE Participation Documentation**
- 1.9.1 **Utilization and Good Faith Effort Affidavit**
Contractor shall provide an affidavit to The County:
- (i) setting forth the MWBEs and/or other Business Enterprises that will be used on the Contract, and
 - (ii) providing all Good Faith Efforts Documentation set forth in Responsibilities After Contract Award chapter.
- 1.9.2 **Letter of Intent**
Contractor shall provide the County with a letter of intent for each MWBE listed as being utilized or listed on the Good Faith Effort Affidavit and each letter of intent shall be executed by the MWBE and Contractor.
- 1.9.3 **Submission Deadline**
Contractor shall submit the Utilization and Good Faith Effort Affidavit within twenty-four (24) hours of Opening of the Bid/Proposal. The Letter of Intent shall be submitted within five (5) days. No MWBE Participation Documentation will be accepted after the aforementioned deadline.
- 1.10 **Project Notification**
At least ten (10) Days before the Opening of Bids/Proposals, a Project Notification shall be provided to MWBEs to inform them of:
- (i) the applicable Goal;
 - (ii) the description of work being solicited,
 - (iii) date, time, and location where a Bid/Proposal must be submitted;

- (iv) contact information for any County personnel who could answer questions about the Contract;
- (v) how to access the Solicitation Documents; and
- (vi) any special requirements that may exist.

PROPOSED

C. RACE AND GENDER-CONSCIOUS PROGRAM ELEMENTS
2.0 GOOD FAITH EFFORTS

2.1 Good Faith Efforts Categories

2.1.1 Contacts (10 Points)

All communication with MWBEs must be through personal, frequent, and persistent contact and by promptly returning telephone calls, facsimiles, and emails. MWBEs shall be contacted in a manner reasonably calculated to meet each Goal established for the Contract. Factors considered may include, but are not limited, to:

- (i) The number of MWBEs contacted in the Guilford County CSA;
- (ii) Whether MWBEs perform scopes of work sufficient to meet each Subcontracting Goal;
- (iii) Whether the contacts were made for the first time at least ten (10) Days before the Opening of Bids/Proposals;
- (iv) How the contacts were made;
- (v) Whether the contacts were documented in a verifiable way (and in compliance with any forms provided by the County);
- (vi) Whether the substance of the Vendor Documents was reasonably sufficient to generate a response from MWBEs;
- (vii) Whether prompt and adequate responses were provided to MWBE inquiries;
- (viii) Whether follow-up contacts were made to MWBEs that did not respond to the initial contact;
- (ix) Whether the Bidder provided the project name, the Bidder's name, subcontract opportunities, the name and phone number of the primary contact, information on the availability of plans and specifications; and,
- (x) Whether a written correspondence log was maintained which listed the names of MWBEs contacted, telephone or fax numbers, email addresses, dates of contact, scope of work for which each MWBE was asked to provide a bid, and the results of that contact.

2.1.2 Making Plans Available (10 Points)

Project Documents shall be available at least ten (10) Days before the Opening of Bids/Proposals for inspection by any MWBE contacted under Section 4.1.1. MWBEs may access Project Documents at no cost to them:

- (i) through an email address or electronic document storage,
- (ii) on a website,
- (iii) at a physical address within the Guilford County CSA,
- (iv) by a mailing address, and/or
- (v) by a fax number.

2.1.3 Breaking Down Work (10 Points)

Any work for MWBEs should be broken down or combined to facilitate MWBE participation. The break down or combination of work may be shown through active negotiations with MWBEs or by placing the scopes of work in the Vendor Documents and expressing a willingness to negotiate with MWBEs about the scope of work. No points shall be awarded for simply restating the scopes of work listed in the Solicitation Documents.

2.1.4 Working with Assistance Organizations (10 Points)

Any outreach to a MWBE Assistance Organization for the recruitment of MWBEs must occur at least ten (10) Days before Opening of Bids/Proposals. No points shall

be awarded for only posting the Vendor Documents on the website of the MWBE Assistance Organization.

2.1.5 Attendance at Pre-Bid (10 Points)

The name and signature of the Business Enterprise's representative must be placed on the sign-in sheet for the pre-bid/pre-proposal meeting by the County.

2.1.6 Bonding or Insurance Assistance on Construction Contract (20 Points)

No points shall be award for any assistance provided to an Affiliate. MWBEs should receive significant and meaningful bonding, insurance, or an alternative to bonding and insurance requirements and any corresponding verification shall provide:

- (i) the MWBE's contact information;
- (ii) a description of what was provided;
- (iii) when it was provided; and,
- (iv) any additional information requested by the County.

2.1.7 Negotiating in good faith with MWBEs (10 Points)

No points shall be awarded for any assistance provided to an Affiliate or for reasons deemed to be illegitimate by the County. Frequent communications must demonstrate an ongoing good faith negotiation with any MWBE about performing a scope of work. If the MWBE is not utilized, then any corresponding verification shall provide:

- (i) the MWBE's contact information;
- (ii) a description of the scope of work discussed during the negotiation;
- (iii) the price for the scope of work;
- (iv) when the negotiation occurred;
- (v) the results of the negotiation;
- (vi) any legitimate reason for not utilizing the MWBE; and,
- (vii) the responses to the Vendor Documents from other Business Enterprises.

2.1.8 Financial Assistance (25 Points)

No points shall be awarded for any assistance provided to an Affiliate. MWBEs should receive significant and meaningful Financial Assistance and any corresponding verification shall provide:

- (i) the MWBE's contact information;
- (ii) a description of what was provided;
- (iii) when it was provided; and,
- (iv) any additional information requested by the County. No points shall be award for any assistance provided to an Affiliate.

2.1.9 Entering a Joint Venture (20 Points)

No points shall be award for any assistance provided to an Affiliate.

One or more MWBE has negotiated a Joint Venture or partnership arrangement and any corresponding verification shall provide:

- (i) the MWBE's contact information;
- (ii) a description of what was provided;
- (iii) when it was provided; and,
- (iv) any additional information requested by the County.

2.1.10 Quick Pay Commitment on Contracts Up for Award (20 Points)

A written Quick Pay Commitment must be provided to all MWBEs contacted under Good Faith Efforts contacts and must be provided prior to Opening of Bids/Proposals. No points shall be awarded if :

- (i) no points were awarded for Contacts,

- (ii) the Quick Pay Commitment has a statement indicating that the Bidder will consider entering a Quick Pay Commitment; or
 - (iii) the Bidder only verbally communicated the Quick Pay Commitment to the Subcontractor.
- 2.2 Modified Good Faith Efforts
 - 2.2.1 Applicability

A Contractor shall comply with modified good faith efforts if a replacement of an MWBE contractor is approved by the MWBE director or new subcontracting opportunities become available.
 - 2.2.2 Modified Contacts

The Contractor must solicit at least three (3) MWBEs unless the MWBE Program Director agrees in writing to a lower number.
 - 2.2.3 Applicability of Good Faith Efforts Section

Except for attendance at the Prebid meeting all provisions of the Good Faith Effort section shall be applicable for Modified Good Faith Efforts.
- 2.3 Good Faith Efforts Documentation

Good Faith Efforts Documentation must be submitted within the time specified by the County and may be requested from all Bidders/Proposers, one Bidder/Proposer, or a group of Bidders/Proposers. Regardless of when the Good Faith Effort Documentation is due, all actions necessary to earn the points under the Good Faith Efforts categories must be undertaken prior to the Opening of Bids/Proposals.
- 2.4 Demonstration of Good Faith Efforts
 - 2.4.1 Minimum Points

A minimum of fifty (50) points must be awarded from the available Good Faith Effort Categories.
 - 2.4.2 Failure to Achieve Minimum Points

Good Faith Efforts have not been demonstrated if less than fifty (50) points have been awarded. The MWBE Program Director shall recommend rejection of Bid/Proposal if Good Faith Efforts have not been demonstrated.
 - 2.4.3 Rebuttable Evidence

If the Bidder or Proposer meets the minimum good faith efforts points but the next three (3) Bidders or Proposals for the Contract have met the established goal, then the MWBE Program Director may take such rebuttable evidence into account when evaluating Good Faith Efforts. Notwithstanding, if the Bidder or Proposer has achieved eighty percent (80%) of the total points or more, then Bidder or Proposer has overcome the rebuttable evidence to show a demonstration of Good Faith Efforts.

C. RACE AND GENDER-CONSCIOUS PROGRAM ELEMENTS

3.0 Responsibilities After Contract Award

3.1 Committed Goal

3.1.1 Ongoing Affirmative Obligation

Contractors shall have an affirmative, ongoing obligation to meet or exceed the Committed Goals for the duration of the Contract.

3.1.2 Exception to Ongoing Affirmative Obligation

A Contractor shall not be deemed to be in violation of the Guilford County MWBE Program for failure to meet the Committed Goal if the:

- (i) The County has eliminated any prospective work to be performed by a MWBE;
- (ii) The County has reduced any prospective work to be performed by a MWBE; or
- (iii) the MWBE voluntary withdrawals from the Contract for any reason not within the Contractor's reasonable control.

3.2 Change in Status of MWBE

3.2.1 Expiration or Graduation

If a MWBE registration expires or graduates, then the dollars paid to the MWBE on the Contract shall count toward the Committed Goals.

3.2.2 Affiliate

If a MWBE is found to be an Affiliate of the Contractor, then the dollars paid to the MWBE shall not count toward the Committed Goals.

3.2.3 Commercially Useful Function

If a determination is made that a MWBE is not performing a Commercially Useful Function, then the dollars paid to the MWBE shall not count toward the Committed Goals on or after the date that the Contractor knew, should have known, or had constructive notice of that the MWBE was not performing a Commercially Useful Function.

3.2.4 Suspension or Termination by MWBE Program Director

If the MWBE Program Director suspends or terminates an MWBE's registration for any reason other than for being an Affiliate or not performing a Commercially Useful Function, then any dollars paid to the MWBE shall not count toward the Subcontracting Goals after the date of suspension or termination.

3.3 MWBE Termination, Replacement, or Reduction of Work

3.3.1 Ongoing Obligation

A Contractor shall not terminate, replace, or reduce the work of any MWBE counting towards the Committed Goal without approval by the MWBE Program Director.

3.3.2 Written Notice of Request

A Contractor shall provide notice of the request to terminate, replace, or reduce the work of any MWBE. Such notice shall be given to the Department Head, MWBE Program Director, and any affected MWBE and must:

- (i) identify the MWBE and the Contract;
- (ii) state the reason for the request;
- (iii) state when the requested action would occur; and
- (iv) be provided at least ten (10) Days in advance of when the requested action would occur.

3.3.3 Limited Justification for Request

The MWBE Program Director shall grant the Contractor's request if:

- (i) the MWBE refuses to enter a Contract consistent with the MWBE's Letter of Intent;
- (ii) the MWBE voluntarily withdraws from the Contract for any reason not within the Contractor's reasonable control;
- (iii) the MWBE materially breaches its contract with the Contractor;
- (iv) the MBE's registration is suspended or terminated by the MWBE Program Director; or
- (v) the County has eliminated any prospective work to be performed by the MWBE.

3.4 New Subcontracting Opportunities

3.4.1 Ongoing Obligation

If a Contract has a previously unidentified subcontracting opportunity or if a scope of work has been enlarged or increased, then the Contractor shall notify the MWBE Program Director.

3.4.2 Notice

Contractor shall promptly notify the Department Head and the MWBE Program Director of the new subcontracting opportunity and whether existing MWBEs on the Contract can and/or will perform the new work.

3.4.3 Response

Upon receipt of the notice, the MWBE Program Director shall notify the Contractor that:

- (i) there will be no Supplemental Goal; or
- (ii) there will be a Supplemental Goal based on MWBE availability.

3.5 Quick Pay Commitment

Any Business Enterprise, who offers a Quick Pay Commitment to any MWBE in its Vendor Documents, shall not rescind the Quick Pay Commitment.

C. RACE AND GENDER-CONSCIOUS PROGRAM ELEMENTS

4.0 Compliance And Reporting

4.1 Utilization Reports and Documentation of Payments

4.1.1 Minimum Dollar Threshold

For all Contracts of \$30,000 or more, Contractors:

- (i) shall report to the County the total dollars paid to each MWBE and all other Subcontractors and suppliers on each Contract, and
- (ii) shall provide such payment affidavits, certifications, or other documentation regarding payment to subcontractors and suppliers as may be requested by the County from time to time.
- (iii) The absence of an established Subcontracting Goal on a Contract shall not relieve the Contractor of the Contractor's obligation to submit MWBE Payment Affidavits.

4.1.2 Submission Deadline

If the Contract will be performed within six (6) months or less, then the Payment Affidavit may be submitted with the final deliverable. If the Contract will not be performed within six (6) months, then the Payment Affidavit shall be submitted at such times as required by the County.

4.2 Compliance, Reporting, and Investigations

4.2.1 Compliance System

A Contract compliance and monitoring system shall be utilized to track and report data measuring the outcomes of the Guilford County MWBE Program. Such compliance and monitoring system shall be specified in the Solicitation Documents and shall be utilized by Contractors.

4.2.2 Annual Report

On an annual basis, the MWBE Program Director will issue a report by race, ethnicity, gender, and certification type where applicable showing the utilization of MWBEs on Contracts, and any information requested by the County Manager or the Guilford County Board of Commissioners.

4.2.3 Requests for Information

If the MWBE Program Director or Department Head requests information, documents, or other materials from a Contractor for the purpose of determining whether the Contractor follows the Guilford County MWBE Program, then the Contractor shall promptly comply within three (3) Days, unless otherwise agreed to by the County in writing.

4.2.4 Investigations

The MWBE Program Director may investigate complaints and/or allegations regarding compliance, eligibility for certification, and/or eligibility for registration with the Guilford County MWBE Program. The MWBE Program Director may also initiate its own investigation without a complaint or allegation and conduct onsite visits.

4.2.5 Burden of Proof

The burden of proof shall be on the party asserting that it is or was compliant with the Guilford County MWBE Program. Any ambiguity or conflict shall be construed against the party asserting that it is or was compliant.

4.2.6 Consultation with Department Head

If the MWBE Program Director determines a Contractor is violating or has violated the Guilford County MWBE Program, the MWBE Program Director shall consult

with the appropriate Department Head about the appropriate remedies. Thereafter, the MWBE Program Director shall make the decision.

4.3 Mandatory Contract Provisions

All Contracts shall include the provisions set forth below, subject to such minor revisions as may be necessary to achieve consistent terminology.

The County has adopted a Guilford County MWBE Program, and the parties agree that:

- 4.3.1 Guilford County MWBE Program Policy and its Administrative Manual are posted on the County's website and available in hard copy form upon request.
- 4.3.2 The terms of the Guilford County MWBE Policy and Administrative Manual, as revised from time-to-time, are incorporated into this Agreement by reference; and
- 4.3.3 A violation of the Guilford County MWBE Program Administrative Manual shall constitute a material breach of this Agreement and shall entitle the County to exercise any of the remedies set forth in the Guilford County MWBE Program Administrative Manual, including but not limited to liquidated damages.
- 4.3.4 The County will incur damages if the Contractor violates the Guilford County MWBE Program Administrative Manual, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources. The parties further acknowledge and agree that the damages the County might reasonably be anticipated to incur because of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay the liquidated damages assessed by the County at the rates set forth in the Guilford County MWBE Program Administrative Manual for each specified violation of the Guilford County MWBE Program. The Contractor further agrees that for each specified violation the agreed upon liquidated damages are reasonably proximate to the loss the County will incur because of such violation.
- 4.3.5 Without limiting any of the other remedies the County has under the Guilford County MWBE Policy, the County shall be entitled to withhold periodic payments and final payment due to the Contractor under this Agreement until the County has received in a form satisfactory to the County all claim releases, Payment Affidavits, MWBE Payment Affidavits and other documentation required by the Guilford County MWBE Program Administrative Manual. In the event payments are withheld under this provision, the Contractor waives any right to interest that might otherwise be warranted on such withheld amount under North Carolina General Statutes Section 143-134.1.
- 4.3.6 The remedies set forth in the Guilford County MWBE Program Administrative Manual shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 4.3.7 The Contractor agrees to participate in any dispute resolution process specified by the County from time-to-time for the resolution of disputes arising from the Guilford County MWBE Program.
- 4.3.8 Nothing in this Section shall be construed to relieve a Contractor from any obligation it may have under North Carolina General Statutes Section 143-134.1 regarding the payment of subcontractors.
- 4.3.9 MWBE Payment Affidavits
As a condition to receiving payments under this Contract, the Contractor agrees to provide an MWBE Payment Affidavit detailing the amounts paid by the Contractor to all subcontractors and suppliers receiving payment in connection with this Contract.
- 4.3.10 Anti-Discrimination

The County is committed to promoting equal opportunities in County contracting. The County has adopted a Commercial Non-Discrimination Policy that prohibits discrimination based on race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination in connection with County Contracts, including discrimination in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, brokers, joint venture partners or manufacturers. The County further prohibits retaliation against any person, Business Enterprise, or other entity for reporting any incident of prohibited discrimination.

4.4 Contractor Payments to Subcontractors Including MWBEs

4.4.1 Statutory Requirement

N.C. General Statutes § 143-134.1(b) states “Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. If any periodic or final payment to the subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.”

4.4.2 Quick Pay Commitment

If a Contractor has made a Quick Pay Commitment, then the Contractor shall comply with any provisions of the Quick Pay Commitment that are more stringent than N.C. General Statutes § 143-134.1 (b) but shall also remain bound by N.C. General Statutes § 143-134.1(b).

4.5 Outreach

4.5.1 Engagement

The MWBE Program Director will develop programs and activities including, but not limited to, networking opportunities, workshops for training and development, professional development, financial management, bonding, capital and insurance assistance and continuing education.

4.5.2 Directory

MWBEs shall be listed in either an electronic database or electronic directory and be accessible to the public. Each MWBE will have the following information displayed:

- (i) name;
- (ii) contact person;
- (iii) contact information; and
- (iv) NIGP code.

4.5.3 Guilford County MWBE Advisory Committee

The Guilford County Board of Commissioners may establish this committee and its duties. The MWBE Program Director may also consult with the Guilford County MWBE Advisory Committee regarding MBE Goals, WBE Goals, and MWBE Goals for various Contracts.

4.6 Financial Partners

4.6.1 Exemption

If a Financial Partner currently administers a program for MWBEs, or DBEs, then the Financial Partner may seek an exemption from the MWBE Program Director by communicating an intent to use the Financial Partner’s existing program in lieu of adhering to the Guilford County MWBE Program.

4.6.2 Contracting Goals

A Financial Partner shall be subject to goal setting and good faith efforts if the Financial Partner has not been exempted by the MWBE Program Director pursuant to the Financial Partner providing documentation of its own MWBE program.

4.7 Procurement Forecast

Each Department Head shall submit a forecast of Contracts to be awarded within the next twelve (12) months and identify the MWBE opportunities by industry, scope of work, and estimated project cost.

4.8 Extensions

The MWBE Program Director may grant a written extension of any deadline set forth in this Section. No extension shall be valid unless documented in writing by the MWBE Director.

4.9 Waivers

4.9.1 Minor Non-Compliance Waiver

The MWBE Program Director may, but is not obligated to, waive non-compliance if:

- (i) it is minor in nature,
- (ii) waiving the non-compliance would not put other Business Enterprises at a competitive disadvantage for the Contract, and
- (iii) the Business Enterprise seeking the waiver has not exhibited a pattern or practice of non-compliance.

4.9.2 Good Faith Efforts Waiver

The MWBE Program Director may, but is not obligated to, waive Good Faith Efforts where:

- (i) the lowest responsible, responsive Bidder did not meet the requirements of good faith efforts; and
- (ii) the lowest responsible, responsive Bidder has MWBE utilization that is greater than the next lowest responsible, responsive Bidder that meets the requirements of good faith efforts. Factors that will be considered include:
 - a. the difference in costs between the Bids;
 - b. the difference in MWBE utilization between the Bids;
 - c. the difference in points demonstrating Good Faith Efforts between the Bids; and
 - d. any prior MWBE utilization by the lowest responsible, responsive Bidder that did not meet the requirements of good faith efforts.

4.9.3 Validity

No waiver under good faith efforts and minor non-compliance waiver policy shall be valid until issued in writing by the MWBE Program Director. No oral representation by any County employee, official, agent, or representative shall be effective or bind the County.

4.9.4 Notice

The MWBE Program Director may issue a recommendation of waiver of non-compliance to the Guilford County Board of Commissioners. The MWBE Program Director may issue waiver for non-compliance without notice to or approval by the Guilford County Board of Commissioners for contracts which do not require Guilford County Board of Commissioners approval.

4.10 Suspension, Revocation, or Modification

A Guilford County certified or registered firm may have its certification and/or registration suspended, revoked, or modified for any violation of the Guilford County MWBE Program.

4.11 Reviews

4.11.1 Written Notice of Appeal

Contractors may appeal decisions by the MWBE Program Director or designee. Notices of Appeal must identify the decision being appealed and state the reason the person or business disagrees with the decision.

4.11.2 General Deadline

Any person or business, who is directly and adversely affected by a determination of the MWBE Program Director, may appeal such decision within thirty (30) Days after receiving notice of the decision. This paragraph shall not be construed to create a right of standing that does not otherwise exist under North Carolina law.

4.11.3 Recommendation on Awarding a Contract Appeal Deadline

Any person or business, who is directly and adversely affected by the MWBE Program Director's recommendation for the awarding of a Contract, may appeal such decision within three (3) Business Days after the person or entity first learned of the decision for which review is sought.

For example, if a Bidder learns at 10:00 am on Monday, March 1 that the County is rejecting its Bid due to non-compliance with this Program, and the Bid Award is set for the following Monday, March 8, the Bidder must request a review in writing from the MWBE Program Director by 10:00 am Thursday, March 4. This paragraph shall not be construed to create a right of standing that does not otherwise exist under North Carolina law.

4.11.4 County Manager Review

Any person or business may seek a review of the MWBE Program Director's decision and must notify the MWBE Program Director within three (3) Business Days after the person or business first learned of the decision for which review is sought. Any determination made by the County Manager is final.

C. RACE AND GENDER-CONSCIOUS PROGRAM ELEMENTS

5.0 Remedies And Liquidated Damages

5.1 Remedies

The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other available remedies:

5.1.1 Violations by Contractor

A violation of the Guilford County MWBE Program by a Contractor is deemed to be a material breach of the Contract.

5.1.2 Rights

The County shall be entitled to:

- (i) exercise all rights and remedies at law or at equity;
- (ii) terminate the Contract for default;
- (iii) suspend the Contract for default;
- (iv) withhold all payments due to the Contractor until the violation has been fully cured;
- (v) withhold all payments due to the Contract until a mutually agreeable resolution has been reached with the County; and/or
- (vi) assess any liquidated damages.

5.2 Liquidated Damages

5.2.1 Failure to Meet Committed Subcontracting Goal

This may be assessed only once if a Contract will not or did not meet a Committed Subcontracting Goal and such failure is not excused pursuant to any exception to ongoing affirmative obligation, then the County may assess the lesser of:

- (i) \$200,000 or
- (ii) the dollar difference between the Committed Subcontracting Goal and the Contractor's actual MWBE utilization.

5.2.2 Use of a Conduit

If the Contractor lists a MWBE for a Committed Subcontracting Goal with knowledge that the MWBE will be acting as a Conduit or will not be performing a Commercially Useful Function reasonably commensurate with the payment amount for which the Contractor will be seeking credit, the County may assess the lesser of:

- (i) \$100,000 per incident; or
- (ii) the dollar amount stated on the MWBE's letter of intent.

5.2.3 Wrongful Termination or Replacement of MWBE

If the Contractor terminates or replaces a MWBE in violation of an Ongoing Obligation, then the County may assess the lesser of:

- (a) \$50,000 per incident; or
- (b) the dollar amount of the prospective work to be performed by the MWBE.

5.2.4 Failure to Perform Modified Good Faith Efforts

If the Contractor fails to comply with modified good faith efforts, then the County may assess the lesser of:

- (i) \$50,000 per incident; or
- (ii) the dollar amount of the prospective work to be performed by the MWBE.

5.2.5 False Statements and Misrepresentations

In the event of any overlap between the damages for false statements and misrepresentations and the damages for use of a conduit then the damages for misrepresentations and false statements shall apply. If the Contractor makes a false statement, material misrepresentation, or materially misleading omission regarding

any matter, then the County may assess the lesser of:

- (i) \$50,000 per incident; or
- (ii) the dollar difference between the Contractor represented as payment and what was actually paid.

5.2.6 Failure to Respond to Request for Information

If the Contractor fails to provide any report, documentation, affidavit, certification, or written submission required under the Guilford County MWBE Program within the time set forth therein, the County may assess \$40 per Day until receipt of the item.

5.2.7 Use of An Affiliate to Meet the Committed Subcontracting Goal

In the event of any overlap between the use of an Affiliate to meet the subcontractor goal and the damages for use of a conduit then the damages for misrepresentations and the use of an affiliate to meet the subcontractor goal shall apply. If the Contractor listed a MWBE for a Committed Subcontracting Goal with knowledge that the MWBE is an Affiliate and the County cannot invoke the Affiliate section, then the County may assess the lesser of:

- (i) \$75,000 per incident or
- (ii) the dollar amount paid to the MWBE.

5.2.8 Quick Pay Commitment

If a Quick Pay Commitment is offered to any MWBE at bid but is not subsequently honored, then the County may assess the lesser of:

- (i) \$50,000 or
- (ii) ten percent (10%) of the dollar amount listed on the MWBE's letter of intent.

5.3 Flow Down

The County shall be entitled to exercise all remedies and recover all damages set forth, directly from each Contractor that the County enters a Contract with, regardless of whether such remedies or damages are due to a breach by that Contractor or by a Lower Tier Business Enterprise on the applicable project. Each Contractor on a Contract shall be responsible for taking appropriate measures to enable it to exercise all remedies and recover all damages set forth directly from each Lower Tier Business Enterprise. Additionally, the County shall be a third-party beneficiary to each Contract for the purpose of seeking injunctive relief and other remedies to the extent necessary to enforce the Guilford County MWBE Program directly against Contractors, though the County shall have no obligation to do so.

CHAPTER 8 Race and Gender-Neutral Program Elements

D. RACE AND GENDER-NEUTRAL ELEMENTS

1. Bonding Assistance

The MWBE Program Director or designee is authorized to establish a workgroup to research “best practices” in bonding assistance programs. The workgroup will recommend to the Program Director the establishment of a Bonding Assistance Program.

2. Capital Access Assistance

The MWBE Program Director shall provide programs for Guilford County certified firms to obtain technical and financial assistance from County financial partners.

3. Low Cost Wrap Up Insurance

The MWBE Program Director or designee is authorized to establish a workgroup to research “best practices” in low cost wrap up insurance programs. The workgroup will recommend to the Program Director the establishment of a low cost wrap up insurance program.

4. Construction Direct Purchasing

The MWBE Program Director or designee is authorized to establish a workgroup to research “best practices” in construction direct purchasing. The workgroup will recommend to the Program Director the establishment of a Construction Direct Purchasing Program.

5. Vendor Rotation Program

The MWBE Program Director or designee is authorized to establish a workgroup to research “best practices” in vendor rotation. The workgroup will recommend to the Program Director the establishment of a vendor rotation Program.

6. Mentor-Protegee Program

The MWBE Program Director or designee is authorized to establish a workgroup to research “best practices” in mentor-protegee. The workgroup will recommend to the Program Director the establishment of a Mentor-Protegee Program.

7. Guilford County MWBE University

The MWBE Program Director or designee is authorized to establish a workgroup to research “best practices” in establishing a MWBE University. The workgroup will recommend to the Program Director the establishment of an MWBE University.

8. Sheltered Market

The MWBE Program Director or designee is authorized to establish a workgroup to research “best practices” in establishing a sheltered market. The workgroup will recommend to the Program Director the establishment of a sheltered market.

E. DEFINITIONS

Terms used in the Guilford County MWBE Program Administrative Manual shall have the meanings set forth below:

- 8.1 **Affiliate:** The term “Affiliate” is defined as a organization officially attached to an organization. The definition applies to MWBEs.
- 8.2 **Bid:** Documents a Business Enterprise submits in response to County Solicitation Documents for the purpose of obtaining a Contract (including without limitation responses to requests for qualification, requests for proposals and invitations to bid).
- 8.3 **Bidder:** A Business Enterprise that submits a Bid or Proposal for a Contract.
- 8.4 **Bid Opening:** For Contracts that are subject to formal bidding requirements under the North Carolina Bid statutes (G.S. 143-128 and 143-129 et. seq.), the Bid Opening shall be the date that Bids are opened by the County. For other Contracts, the Bid Opening shall mean the date that Bids, Proposals, or submittals are due.
- 8.5 **Broker:** A Business Enterprise that performs a Commercially Useful Function as an intermediary, for a fee, in the acquisition of materials, supplies or equipment, regardless of whether it takes title to such materials, supplies or equipment, but is not a Hauler, Manufacturer or Regular Dealer. A manufacturer's representative shall be deemed a Broker. Only bona fide commissions earned by a Broker for its activities in performing a Commercially Useful Function on County projects shall be counted toward the MWBE Goal, provided such commissions are reasonable and not excessive as compared with fees customarily allowed for similar services.
- 8.6 **Business Advisory Committee:** A committee of citizens appointed by the Board of Commissioners for the purpose of providing recommendations and advice to the County on ways the County helps businesses in Guilford County.
- 8.7 **Business Days:** Days on which the administrative offices of Guilford County are open for the public to do business.
- 8.8 **Business Enterprise:** Any corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity, whether operated for profit or a non-profit, other than: (a) a Financial Partner; or (b) the County or any other unit of federal, state or local government.
- 8.9 **GC MWBE Program:** The Guilford County Minority and Women Business Enterprise Program.
- 8.10 **Guilford County MWBE Department:** The County department charged with administering and enforcing the Guilford County MWBE Program.
Guilford County Combined Statistical Area: The Guilford County Combined Statistical Area in effect as of July 1, 2023, consisting of the North Carolina counties of: *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.*
- 8.11 **County:** Guilford County, North Carolina, a North Carolina body politic and corporate established by the North Carolina General Assembly.
- 8.12 **County Solicitation Documents:** The documents issued by the County to solicit Bids or Proposals for a Contract, including but not limited to invitations to bid, requests for qualifications, requests for proposals, requests for quotes, plans and specifications and proposed contract provisions.

- 8.13 **Commercially Useful Function:** A function performed by a Business Enterprise when it is responsible for supplying goods or executing of a distinct element of the work of a contract and carrying out its responsibilities by performing, managing, and supervising the work involved. The MWBE Program Director will determine whether an MWBE is performing a Commercially Useful Function, in his or her discretion, based on the amount of work subcontracted, industry practices and other relevant factors. Commercially Useful Function is measured for purposes of determining participation on a Contract, not for determination of Certification eligibility.
- 8.14 **Committed Subcontracting Goal:** An MBE, WBE, or MWBE Goal that a Contractor commits to achieve for a Contract at Contract award (which will be the MBE, WBE, or MWBE goal stated in the Contractor's Bid or Proposal unless modified by mutual agreement of the County and the Contractor).
- 8.15 **Commodities Contract:** A Contract under which a Business Enterprise agrees to provide goods, supplies, apparatus, or equipment to the County.
- 8.16 **Conduit:** An MWBE that knowingly agrees to pass the scope of work for which it is listed for participation and is scheduled to perform or supply on the contract, to a non-MWBE firm. In this type of relationship, the MWBE has not performed a Commercially Useful Function and therefore the MWBE's participation does not count toward the Goal.
- 8.17 **Construction Contract:** A Contract under which a Business Enterprise agrees to provide construction or repair services to the County. A Construction Contract may be for horizontal or vertical construction or repair work.
- 8.18 **Construction Manager-At-Risk Contract (or CM at Risk Agreement):** A construction manager-at-risk agreement as defined in N.C. Gen. Stat. 143-128.1. This includes contracts where a licensed general contractor provides construction management services throughout the construction process and guarantees the cost of the project.
- 8.19 **Contract:** Any agreement through which the County procures goods or services from a Business Enterprise, other than Exempt Contracts. Contracts include agreements and purchase orders for (a) construction, re-construction, alteration, and remodeling; (b) architectural work, engineering, surveying, testing, construction management and other professional services related to construction; (c) services of any nature (including but not limited to general consulting and technology-related services), and (d) apparatus, supplies, goods, or equipment. The term "Contract" shall also include Exempt Contracts for which an MWBE, MBE or WBE Goal has been set. Financial Partner Agreements, Development Agreements, Design-Build Agreements and Construction Manager-at-Risk Agreements shall also be deemed "Contracts," but shall be subject only to the applicable sections of the Guilford County MWBE Program Administrative Manual.
- 8.20 **Contractor:** A Business Enterprise that enters a Contract, including but not limited to construction contractors, consultants, architects, engineers, surveyors, suppliers and other providers of goods and services. For purposes of post contract award only, the term "Contractor" shall also include Business Enterprises that enter Service Contracts and Construction Contracts that qualify as Exempt Contracts based on having been procured without a competitive process or that are exempt through a waiver from the MWBE Program Director.
- 8.21 **Days:** Any reference to "days" in this Program shall mean days on which the administrative offices of Guilford County are open for the public to do business.
- 8.22 **Department Director:** Director of a County Department. As used in this Program, the term Department Director also applies to a person that the Department Director may designate to take such actions as are required or permitted under this Program.

- 8.23 **Developer Agreement:** A Contract under which the County agrees to provide funding of \$200,000 or more for a “public-private development project,” in a development zone designated pursuant to G.S. 105-129.3A.
- 8.24 **Design-Build Agreement:** A Contract under which the County contracts with a single Business Enterprise for the design, management, and construction of a horizontal or vertical construction project.
- 8.25 **Eligible Owner:** An owner of a Business Enterprise who meets the County’s SBE certification or MWBE registration criteria for “Eligible Owner” as set forth in SBE and MWBE certification guidelines of the Guilford County MWBE Program.
- 8.26 **Exempt Contracts:** Unless a County Department and the MWBE Department elects otherwise, Contracts that fall within one or more of the following categories are “Exempt Contracts” and shall be exempt from all aspects of the Guilford County MWBE Program:
- 8.26.1 **No Competitive Process Contracts:** Contracts or purchase orders that are entered into without a competitive process, or entered into based on a competitive process administered by an entity other than the County, including but not limited to contracts that are entered into by sole sourcing, piggybacking, buying off the North Carolina State contract, buying from a competitive bidding group purchasing program as allowed under G.S. 143-129(e)(3), or using the emergency procurement procedures established by the North Carolina General Statutes.
 - 8.26.2 **Managed Competition Contracts:** Managed competition contracts pursuant to which a County Department or division competes with Business Enterprises to perform a county function.
 - 8.26.3 **Real Estate Leasing and Acquisition Contracts:** Contracts for the acquisition or lease of real estate.
 - 8.26.4 **Federal Contracts Subject to DBE Requirements:** Contracts that are subject to the U.S. Department of Transportation Disadvantaged Business Enterprise Program as set forth in 49 CFR Part 26 or any successor legislation.
 - 8.26.5 **State Funded Contracts Subject to the State’s Required MWBE Goal.** Contracts that are subject to an MWBE Goal set by the State of North Carolina pursuant to N.C. Gen. Stat. 143-128.2.
 - 8.26.6 **Financial Partner Agreements with DBE or MWBE Requirements:** Contracts that are subject to a disadvantaged business enterprise program or minority and women business development program maintained by a Financial Partner.
 - 8.26.7 **Interlocal Agreements:** Contracts with other units of federal, state, or local government.
 - 8.26.8 **Contracts for Legal Services:** Contracts for legal services, unless otherwise indicated by the County Attorney.
 - 8.26.9 **Contracts with Waivers:** Contracts for which the Guilford County MWBE Program Director or the County Manager waives the Guilford County MWBE Program requirements (such as when there are no MWBE subcontracting opportunities on a Contract).
 - 8.26.10 **Special Exemptions:** Contracts where the Department and the MWBE Program Director agree that the Department or the Contractor had no discretion to hire an MWBE (e.g., emergency contracts or contracts for banking or insurance services) shall be Exempt Contracts.

- 8.27 **Financial Partner:** A non-profit agency or organization with whom Guilford County contracts to provide specific services for the community. These agencies extend the County's capacity to address strategic priorities and concerns of the community. Partnerships include those due to special legislation, and those that contribute to important community activities.
- 8.28 **Financial Partner Agreements:** Contracts under which the County agrees to provide funding to a Financial Partner.
- 8.29 **Formal Contracts:** Contracts that are estimated to equal or exceed the following dollar thresholds prior to issuing the County Solicitation Documents:
- 8.29.1 **Construction Contracts:** \$500,000
- 8.29.2 **Service Contracts and Commodities Contracts:** \$90,000.
- 8.30 **Goals Committees:** Committees of citizens and/or County staff with expertise in construction and other relevant industries, which may be appointed by the County Manager and/or MWBE Program Director to advise the MWBE Program Director as to MBE and WBE Goal setting.
- 8.31 **Good Faith Efforts (or GFEs):** The requirements that Bidders and Proposers must meet to show that they actively and aggressively sought to achieve the applicable MBE or WBE Goal.
- 8.32 **Good Faith Negotiation:** The requirements that Bidders and Proposers must meet to show that they negotiated in good faith with MWBEs.
- 8.33 **Hauler:** A Business Enterprise that delivers materials or supplies to a jobsite or hauls away materials, supplies or waste from a jobsite, but is not a Broker, Manufacturer or Regular Dealer. A Hauler may or may not take title to such materials and supplies it delivers. Only bona fide fees earned by a Hauler for performing a Commercially Useful Function (not the cost of the materials, supplies or waste it hauls) shall be counted toward the MWBE Goal, provided such fees are reasonable and not excessive as compared with fees customarily allowed for similar services.
- 8.34 **Informal Contracts:** Contracts that are estimated to be less than the following dollar thresholds prior to issuance of the County Solicitation Documents:
- 8.34.1 **Construction Contracts:** \$500,000
- 8.34.2 **Service Contracts and Commodities Contracts:** \$90,000.
- 8.35 **Infrastructure Reimbursement Agreements:** Reimbursement agreements with Private developers and property owners that are approved by the County for the design and construction of municipal infrastructure that is included in the County's Capital Improvement Plan and serves the developer or property owner. Infrastructure Reimbursement Agreements may involve, without limitation, water mains, sanitary sewer lines, lift stations, storm water lines, streets, curb and gutter, sidewalks, traffic control devices and other associated facilities.
- 8.36 **Joint Venture:** An association of two (2) or more Business Enterprises to constitute a single Business Enterprise for which purpose they combine their property, capital, efforts, skills, and knowledge. Each participant in the Joint Venture must be responsible for a clearly defined portion of work, must perform a Commercially Useful Function, and must share in the ownership, control, management responsibilities, risks, and profits of the Joint Venture.

- 8.37 **Manufacturer:** A Business Enterprise that operates or maintains a factory or establishment that produces, or substantially alters, on the premises the materials, supplies or equipment provided to a Contractor in connection with a Contract. Expenditures for materials, supplies and equipment obtained from a Manufacturer shall count 100% toward the MWBE, MBE or WBE Goal.
- 8.38 **MBE:** A Business Enterprise that:
- 8.38.1 is certified by the State of North Carolina as a historically underutilized business within the meaning of N.C. Gen. Stat. 143-128.4,
- 8.38.2 is at least fifty-one percent (51%) owned by one or more persons who are members of one of the groups set forth below; and
- 8.38.3 meets the criteria established by the MWBE Program Director from time to time for determining whether the Business has a Significant Business Presence in the County's relevant market (the Guilford County CSA):

MBE Category	Owned or Controlled by a Person or Persons
African American or Black	Having origins in any of the black racial groups of Africa
Hispanic	Of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race
Asian	Having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands
Native American or American Indian	Having origins in any of the original Indian peoples of North America

- 8.39 **MBE Goal:** A goal established by the County for MBE utilization on a Contract. Calculated as a percentage, the MBE Goal represents the total dollars spent with MBEs as a portion of the total Bid or Proposal amount, including any contingency.
- 8.40 **MWBE:** The term "MWBE" is used to refer collectively to MBEs and WBEs. In some context it means all MBEs and WBEs, and in other contexts it means one or more categories of MBEs or WBEs.
- 8.41 **MWBE Goal:** The term "MWBE Goal" depends on the context. If Contract has separate Subcontracting Goals MBEs and WBEs, the term MWBE Goal is a shorthand way to refer collectively to both the MBE and WBE Goals. In some instances, the County may set one combined goal for MBEs and WBEs on a Contract, in which event the term MWBE Goal refers to the combined goal. In the latter instance, calculated as a percentage, the MWBE Goal represents the total dollars spent with MWBEs as a portion of the total Bid or Proposal amount, including any contingency.
- 8.42 **MWSBE:** The term "MWSBE" is used to refer collectively to SBEs, MBEs and WBEs. In some context it means all SBEs, MBEs and WBEs, and in other contexts it means one or more categories of SBEs, MBEs or WBEs.
- 8.43 **Modified GFEs or Modified Good Faith Efforts:** The requirements a Contractor must meet to solicit MBEs and/or WBEs during the term of a Contract or Contract renewal, as set forth post contract award guidelines.
- 8.44 **NAICS:** North American Industry Classification System (NAICS) codes expressed either in number of employees (size standards) or annual receipts in millions of dollars by industry or service type.
- 8.45 **NIGP:** National Institute of Governmental Purchasing (NIGP) codes used to describe commodities purchased by governmental agencies. Services a Business Enterprise provides are categorized by NIGP codes.


- 8.46 **Packager:** A Business Enterprise that performs a Commercially Useful Function in the packaging of goods used in or delivered under a Contract but is not a Regular Dealer or a Manufacturer. A Packager shall be considered as, and treated as, a Broker. This industry comprises establishments primarily engaged in packaging client-owned materials. The services may include labeling and/or imprinting the package. Only the fee paid to the Packager for services that constitute a Commercially Useful Function provided shall count toward the MWBE Goal, provided such fee is reasonable and not excessive as compared with fees customarily allowed for similar services
- 8.47 **Participation Plan:** A modified version of the Guilford County MWBE Program that the County may require for Service Contracts, or that private developers, property owners, Design-Build Contractors and construction managers at risk develop as a condition of entering Contracts. The Participation Plan establishes the Subcontracting Goals, as applicable, and outlines the initiatives such party will undertake to achieve the Subcontracting Goals.
- 8.48 **Prime Contract:** A Contract between the County and a Business Enterprise.
- 8.49 **MWBE Program Director:** The Director of the County's MWBE Program or a person designated to exercise the MWBE Program Director's rights or duties in a particular situation.
- 8.50 **Proposal:** Documents a Business Enterprise submits in response to County Solicitation Documents for the purpose of obtaining a Services Contract (including without limitation responses to requests for qualification, requests for proposals and invitations to bid).
- 8.51 **Proposal Opening:** The date and time that Proposals are due.
- 8.52 **Proposer:** A Business Enterprise that submits a Proposal for a Services Contract. In some instances, a Proposer may also be referred to as Bidder.
- 8.53 **Qualified MWBE:** A MWBE that has the financial ability, skill, experience, and access to the necessary staff, facilities, and equipment to complete a particular Contract or subcontract, and otherwise meets the criteria for being a "responsible bidder" within the meaning of the North Carolina bid statutes. The MWBE Program Director and Department Director with advice from the County Attorney, may develop methods and criteria for assessment of whether a particular MWBE is Qualified for a particular Contract or subcontract for the purposes of the Guilford County MWBE Program. Nothing contained herein shall in any respect supersede or invalidate rules and regulations that a Department Director or County Director may promulgate with respect to pre-qualification of County Contractors. The County makes no representations as to the qualification of any SBE, MBE or WBE or any other Business Enterprise.
- 8.54 **Quick Pay Commitment:** An agreement or policy commitment that a Prime make to pay all MWBEs participating in a Contract within twenty (20) Days after the Contractor confirms that the MWBE has properly performed the subcontracted work and the MWBE's work has been properly completed.
- 8.55 **Regular Dealer:** Business Enterprise that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a Regular Dealer, the Business Enterprise must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A Regular Dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Manufacturers, Brokers, Conduits, Packagers, Haulers, and manufacturer's representatives shall not be regarded as Regular Dealers within the meaning of this term. Expenditures for materials, supplies and equipment from a Regular Dealer shall count 60% toward the MWBE Goal.

- 8.56 **Selection Committee:** An individual or committee of County staff and/or consultants formed to evaluate Proposals for a Services Contract.
- 8.57 **Services Contract:** A Contract for a Business Enterprise to provide services to the County that is not a Construction Contract. Examples include but are not limited to contracts for architectural, engineering, surveying or construction management services, contracts for janitorial services, contracts for computer consulting and contracts for language interpretation. Contracts for legal services are not Services Contracts within the meaning of this Section unless the County Attorney decides otherwise in a particular instance.
- 8.58 **Significant Business Presence:** A Business Enterprise is deemed to have a Significant Business Presence in the Guilford County CSA if it is headquartered in the Guilford County CSA. A location utilized solely as a post office box, mail drop or message center, or any combination thereof, will not be considered a Significant Business Presence.
- 8.59 **Small Business Enterprise (SBE):** A Business Enterprise that is certified by the MWBE Program Director as meeting all the requirements for SBE certification.
- 8.60 **Small Business Enterprise Assistance Organizations (“SBE Assistance Organizations”):** An organization, other than the County, that accelerates the successful development of start-up and fledgling companies by providing them with an array of targeted resources and services. These organizations may provide management guidance, technical assistance and consulting tailored to small, minority- or women-owned businesses. The Guilford County MWBE Program Director shall have sole discretion to determine whether a particular organization constitutes an SBE Assistance Organization for purposes of this Program.
- 8.61 **Subcontractor:** A Business Enterprise that directly contracts with a Contractor, subcontractor or subconsultant to provide goods or services or perform work in connection with a Contract. The value of the Commercially Useful Function to be performed by an MWBE Subcontractor shall count 100% toward the MWBE Goals, except to the extent the Subcontractor is a Hauler, Broker, Packager or Regular Dealer (in which event the definitions shall determine the amount chargeable toward the MWBE Goals). The term “Subcontractor” also includes Subconsultants” and “Suppliers”.
- 8.62 **Subcontracting Goals:** The MBE, WBE and MWBE subcontracting Goals established by the County for a Contract.
- 8.63 **Supplemental MBE, WBE or MWBE Goal:** MBE, WBE or MWBE goal established for a renewal, amendment or change order to an existing Contract.
- 8.64 **WBE:** A Business Enterprise that:
- 8.64.1 is certified by the State of North Carolina as a historically underutilized business within the meaning of N.C. Gen. Stat. 143-128.4,
 - 8.64.2 is at least fifty-one percent (51%) owned by one or more persons who are female; and
 - 8.64.3 meets the criteria established by the MWBE Program Director from time to time for determining whether the Business is within the Guilford County CSA.
- 8.65 **WBE Goal:** A goal established by the County for WBE utilization on a Contract. Calculated as a percentage, the WBE Goal represents the total dollars spent with WBEs as a portion of the total Bid or Proposal amount, including any contingency.

CHAPTER 9 FORMS AND TEMPLATES

F. FORMS AND TEMPLATES

1. MWBE Goal Letter

	Guilford County STATE of NORTH CAROLINA												
<hr/>													
Date:													
To:	Guilford County Board of Commissioners												
From:	MWBE Program Director												
Subject:	MWBE Goals and Good Faith Efforts Review												
Project #:													
Project Name:													
MWBE PROGRAM OFFICE GOALS REVIEW													
Per NC GS 143-128.2. Minority Participation goals., Guilford County has adopted the state mandated minority business participation goal of 10% on all projects greater than \$30,000.													
On February 2017, Guilford County Board of Commissioners established an aspirational MWBE participation goal of fifteen percent (15%), as recorded in the approved meeting minutes Guilford County encourages each contractor to meet or exceed the aspirational goals in recruiting MWBE providers.													
The following goals were established for the [Project Name]:													
<table border="1"><thead><tr><th>MWBE Statutory Established Goal</th></tr></thead><tbody><tr><td>10%</td></tr></tbody></table>	MWBE Statutory Established Goal	10%	<table border="1"><thead><tr><th>MWBE Aspirational Established Goal</th></tr></thead><tbody><tr><td>15%</td></tr></tbody></table>	MWBE Aspirational Established Goal	15%								
MWBE Statutory Established Goal													
10%													
MWBE Aspirational Established Goal													
15%													
The following goal(s) were committed to by [Prime Vendor]:													
<table border="1"><thead><tr><th>Subcontractor Name</th><th>Work Scope</th><th>NC HUB Certification Type</th><th>NC HUB Ethnicity</th><th>Percent Committed</th><th>Amount Committed</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr></tbody></table>	Subcontractor Name	Work Scope	NC HUB Certification Type	NC HUB Ethnicity	Percent Committed	Amount Committed							
Subcontractor Name	Work Scope	NC HUB Certification Type	NC HUB Ethnicity	Percent Committed	Amount Committed								
GOOD FAITH EFFORTS REVIEW													
In accordance with NC GS 143-128.2(f).Minority business participation goals., and NC GS 143-131(b), a review of good faith efforts where the established goal has been met or exceeded is not required.													
GOOD FAITH EFFORTS REVIEW													
In accordance with NC GS 143-128.2(f).Minority business participation goals., and NC GS 143-131(b), a review of good faith efforts where the established goal has not been met is required by statute. Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.													
Good faith efforts made by [Vendor Name] listed in the proposal include the following:													

CHAPTER 9 FORMS AND TEMPLATES

FORM #2
Minority Outreach Call Log
Attach To Bid/Proposal

Project _____ Prime Contractor: _____

Use additional sheets as are necessary

Company Name Address & Phone	Date	Time	Diversity Category	Trade	Comment	Follow Up
Name: _____						
Phone #: _____						
Address: _____						
State/Zip: _____						
Name: _____						
Phone #: _____						
Address: _____						
State/Zip: _____						
Name: _____						
Phone #: _____						
Address: _____						
State/Zip: _____						
Name: _____						
Phone #: _____						
Address: _____						
State/Zip: _____						
Name: _____						
Phone #: _____						
Address: _____						
State/Zip: _____						

SECTION 00330
MWBE GUIDELINES AND AFFIDAVITS
Bid XXX - Project Title
Revised 01/2023

Invitation For Bid
00330-3

FORM #3
GOOD FAITH EFFORTS
AFFIDAVIT A
Attach To Bid/Proposal

Affidavit of _____
(Name of Bidder/Proposer)

Bidders/Proposers must earn at least 50 points from the good faith efforts listed for their bid/proposal to be considered responsive.
(1 NC Administrative Code 40-10.010)

- ☐ 1 - (10 pts) Contacted 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 proposal or bid date and notified them of the nature and scope of the work to be performed.
- ☐ 2 - (10 pts) Made 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 bids/proposals are due.
- ☐ 3 - (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ 4 - (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid/proposal documents that aid in recruitment of minority businesses.
- ☐ 5 - (10 pts) Attended Prebid meetings scheduled by the public owner.
- ☐ 6 - (20 pts) Helped in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ 7 - (15 pts) Negotiated in good faith with interested minority businesses and did not reject 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.
- ☐ 8 - (25 pts) Helped 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. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers to help minority businesses in establishing credit.
- ☐ 9 - (20 pts) Negotiated joint venture and partnership arrangements with minority businesses to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☐ 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

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CHAPTER 9 FORMS AND TEMPLATES

FORM #3 – GOOD FAITH EFFORTS, CONTINUED COMPLIANCE REQUIREMENTS

In determining whether a contractor has made Good Faith Efforts, the State will evaluate all efforts made by the Contractor and will determine compliance regarding quantity, intensity, and results of these efforts. Good Faith Efforts include:

Examples of documentation that may be required to demonstrate the Proposer's/Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date, and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder/proposed awardee, copies of quotes received from all firms submitting quotes for that subcontract.
- E. Documentation of any contracts or correspondence to minority business, community, or contractor organizations to meet the goal.
- F. Copy of pre-bid roster
- G. Letter documenting efforts to aid in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid/proposal and award to the next lowest responsible and responsive bidder/selected awardee.

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FORM #4 SELF PERFORMANCE AFFIDAVIT B Attach To Bid/Proposal

Affidavit of _____
(Name of Bidder/Proposer)

I hereby certify that it is our intent to perform 100% of the work required for the contract:

(Name of Project)

In making this certification, the Bidder/Proposer states that the Bidder/Proposer does not customarily subcontract elements of this type of project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

The Bidder/Proposer agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder/Proposer agrees to make a Good Faith Effort to utilize minority suppliers where possible.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder/Proposer to the commitments herein contained.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public _____

My commission expires _____

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MWBE GUIDELINES AND AFFIDAVITS
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Invitation For Bid
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CHAPTER 9 FORMS AND TEMPLATES

FORM #5

WORK TO BE PERFORMED BY MINORITY BUSINESSES

AFFIDAVIT C

This affidavit shall be provided by the apparent lowest responsible, responsive bidder/proposed awardee within **72 hours** after notification of being low bidder.

(Do not submit this form with the bid/proposal. This form shall be submitted only by the apparent lowest responsible, responsive bidder/proposed awardee.)

Affidavit of _____
(Name of Bidder/Proposer)

I do hereby certify that on the _____
(Project Name)

Project ID# _____ Amount of Bid/Proposal \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers, or providers of professional services. Such work will be subcontracted to the following firms listed below.

Name and Phone Number	*Minority Certification	Ethnicity	Work Description	Percent	Dollar Value
Total					

* HUB Certification with the state HUB Office required to be counted toward state participation goals.

Pursuant to GS143-12B.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder/proposer to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

SEAL

Signature: _____
 Title: _____
 State of _____ County of _____
 Subscribed and sworn to before me this _____ day of _____, 20____
 Notary Public _____
 My commission expires _____

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MWBE GUIDELINES AND AFFIDAVITS
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FORM #6

MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/ Engineer: _____

Address & Phone: _____

Project Name: _____

SCO Project ID: _____

Pay Application #: _____

Period: _____

The following is a list of payments made to Minority Business Enterprises on this project for the above-mentioned period.

MBE FIRM NAME	*TYPE OF MWBE	AMOUNT PAID THIS MONTH	TOTAL PAYMENTS TO DATE	TOTAL AMOUNT COMMITTED

* HUB Certification with the NC HUB Office required to be counted toward state participation goals.

Approved/Certified by: _____

(Name) _____ (Title) _____

(Date) _____ (Signature) _____

SUBMIT WITH EACH PAY REQUEST, FINAL PAYMENT, and FINAL REPORT

SECTION 00330

MBE GUIDELINES AND AFFIDAVITS

Bid XXX – Project Title

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Invitation For Bid

00330-B