

Board Policy 6070 - Minority Business Enterprise Participation in  
Construction and Purchase Contracts

The following are regulations and procedures developed to support and implement MBE Participation in Construction and Purchase Contracts.

6070.1 Definitions.

A. Minority Business (MBE) - A business:

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

B. Minority Person - A person who is a citizen or lawful permanent resident of the United States, and who is:

1. Black, that is, a person having origins in any of the black racial groups in Africa;
2. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
3. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
4. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or

5. Female.

C. Socially and Economically Disadvantaged Individual - A person as defined in 15 U.S.C. 637.

6070.2 Owner Responsibilities for Construction and Repair Projects Equal to or Greater Than Three Hundred Thousand Dollars (\$300,000).

The school system, when soliciting bids under the provisions of N.C. Gen. Stat. § 143-128, shall perform the following acts:

- A. The school system shall designate a contact person who shall compile a list of minority businesses within the bidding area, using information obtained from the Office of Historically Underutilized Businesses, or from other institutions or agencies providing such information. This list shall be updated on a quarterly basis and shall be open for inspection and shall be available so that minority businesses will have the opportunity to add their names to the list.
- B. During the design stage, each project shall be reviewed to determine if it would be practical, feasible and legal to divide the project into separate contracts that might increase the opportunity for MBE bidders.
- C. At least ten days prior to the scheduled day of bid opening, notice of each project and invitations to bid shall be sent to MBEs that have requested notices from the school system for public construction or repair work, and to MBEs that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. Each notice shall include the following: (a) a description of the work for which the bid is being solicited; (b) the date, time, and location where bids are to be submitted; (c) the name of the individual within the public entity who will be available to answer questions about the project; (d) where bid documents may be reviewed; (e) any special requirements that may exist; and (f) notice of the date, time, and location of the prebid conference.

- D. A prebid conference shall be held for each project. A school system representative shall attend the scheduled prebid conference.
- E. During the advertising period of a project, the contact person shall be responsible for answering project-related questions MBEs might have.
- F. For each project, documents related to the contract shall be available for inspection at a convenient and accessible location. MBEs shall receive notice of the location of the documents as part of the invitation to bid specified in paragraph C above.
- G. All prime and subcontractors shall be allowed to obtain a copy of a complete set of Drawings and Specifications by providing a refundable deposit to the school system. Deposits will be refunded in accordance with school system procedures.
- H. For each building contract put out for bids under N.C. Gen. Stat. § 143-128, published notice of the contract shall include a statement that all contractors submitting bids will be required to provide either (1) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal or (2) documentation of its good faith effort to meet this goal that was identified in the bid, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority business for participation in the contract. *Failure to file the required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.*
- I. For each building contract put out for bids pursuant to N.C. Gen. Stat. § 143-128, a copy of the Board's MBE policy will be included in the materials provided to all contractors.
- J. For each building contract put out for bids, the Board or the Board's designee shall utilize other media, as appropriate, likely to inform potential MBEs of the bid being sought.

6070.3

Contractor Responsibilities for Construction and Repair Projects Equal to or Greater Than Three Hundred Thousand Dollars (\$300,000).

- A. Each bidder, including first-tier subcontractors for construction manager at risk projects, shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to N.C. Gen. Stat. § 143-128.2(f) and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager at risk project, that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection.

The apparent lowest responsible, responsive bidder, within 3 business days of the bid opening, shall also provide either (1) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal or (2) documentation of its good faith effort to meet the goal that was identified in the bid, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. *Failure to file the required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.*

- B. Bidder(s) on the Board's building projects shall undertake the following good faith efforts to recruit minority businesses to the extent required by N.C. Gen. Stat. § 143-128.2 and shall provide documentation to the Board that they have performed at least five (5) of these efforts:
1. Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least ten days before the bid or proposal date and notifying

them of the nature and scope of the work to be performed.

2. Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least ten days before the bid or proposals are due.
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
4. Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
5. Attending any prebid meetings scheduled by the Board.
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
8. Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.

9. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
  10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.
- C. Within 30 days after the award of the contract, the contractor shall provide to the school system's designated representative a list of all identified MBE subcontractors that the contractor will use on the project.
- D. Failure to comply with procedural requirements as defined in the contract documents may render the bid as nonresponsive and may result in rejection of the bid and award to the next lowest responsible and responsive bidder.
- E. During the construction of a project, if it becomes necessary to replace an MBE subcontractor, the prime contractor shall advise the owner. No MBE subcontractor may be replaced with a different subcontractor except (1) if the subcontractor's bid is later determined by the contractor or construction manager at risk to be nonresponsive or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work or (2) with the approval of the Board for good cause. Good faith efforts as set forth in N.C. Gen. State. § 143-131(b) shall apply to the selection of a substitute subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the Board or its designee of its good faith efforts pursuant to N.C. Gen. State. § 143-131(b).
- F. If during the construction of a project additional subcontracting opportunities become available, the prime contractor shall make a good faith effort to solicit sub bids from MBEs.

For any building contract put out for bids pursuant to N.C. Gen. Stat. § 143-128, the contact person shall maintain records with respect to:

- A. Those contractors notified of the project and the number that are minority businesses;
- B. Those contractors that bid or otherwise respond to notice of the project and the number that are minority businesses;
- C. The prime contractors awarded contracts for the project and the number and identity of those that are minority businesses;
- D. The subcontractors awarded contracts for the project and the number and identity of those that are minority businesses; and
- E. The percentage of work on the project that was performed by minority businesses as reported by the prime contractor(s) awarded the bid.

6070.5 Complaint Procedures.

- A. Any alleged violations of the provisions of this MBE plan by any party should be reported in writing to the Superintendent or his/her designee.
- B. The Superintendent or his/her designee shall review all facts available and respond in writing. Unresolved complaints shall be presented to the Board. The decision rendered by the Board will be final.

6070.6 Record Keeping.

- A. The office of Construction and Capital Planning shall keep all public records regarding the Minority Business Enterprise Participation in Construction & Purchase Contracts policy as related to construction and capital improvement projects.
- B. All public records pursuant to these regulations shall be kept for a period of not less than 3 years from the date of

- C. the completion of the building project. Records will be maintained in both separate project files as well as a cumulative file.