

**PART 1 – WAKE COUNTY MINORITY AND WOMEN BUSINESS ENTERPRISE RESOLUTIONS
FOR CONSTRUCTION CONTRACTS
ORIGINAL RESOLUTION FEBRUARY 29, 1988**

1.1 R-02-52

**RESOLUTION UPDATING WAKE COUNTY PROCEDURES
AND POLICIES RELATING TO COUNTY CONSTRUCTION PROJECTS AWARDED
PURSUANT TO N.C.G.S. §143-128 ET SEQ.**

WHEREAS, the North Carolina General Assembly has recently amended Article 8 of N.C.G.S. Chapter 143, Public Contracts, to increase the threshold for public contracts which must be bid, and to make other changes related to construction methods, construction management and minority business participation, and

WHEREAS, Wake County has adopted resolutions directing the County Manager to prepare and maintain minority and women business enterprise programs for all construction projects funded by Wake County (R-88-20) and establishing a verifiable percentage goal for minority business in awarding construction contracts the costs of which exceed one hundred thousand dollars (\$100,000) (R-90-13), and

WHEREAS, recent amendments to N.C.G.S. §143-129(a) have increased the threshold amount of public construction contract which must be bid from one hundred thousand dollars (\$100,000) to three hundred thousand dollars (\$300,000), and

WHEREAS, N.C.G.S. §143-128(a1) has increased the permissible methods that public bodies may use in awarding construction contracts, and

WHEREAS, N.C.G.S. §143-128.2 now requires more extensive efforts and detailed record keeping related to minority business participation in construction projects,

NOW, THEREFORE, BE IT RESOLVED by the Wake County Board of Commissioners

Section 1. That Resolutions R-90-13 and R-88-20 be amended to provide that the County Manager be directed to establish policies and procedures for bidding and awarding County building projects which comport with the requirements of Article 8 of N.C.G.S. Chapter 143, Public Contracts, as it is from time to time amended, and which are consistent with the policies contained in those Resolutions.

1.2 R-90-13

RESOLUTION TO ESTABLISH A VERIFIABLE PERCENTAGE GOAL FOR PARTICIPATION BY MINORITY BUSINESS IN THE AWARDING OF BUILDING CONSTRUCTION CONTRACTS AWARDED PURSUANT TO N.C.G.S. §143-128

WHEREAS, N.C.G.S. §43-128(c) requires each county to adopt, after notice and a public hearing, an appropriate verifiable percentage goal for participation by minority businesses (as defined in that statute) in the total value of work for building contracts the costs of which exceed one hundred thousand dollars (\$100,000) and which are awarded pursuant to N.C.G.S. §143-128; and

WHEREAS, N.C.G.S. §143-128(c)(3) requires a county awarding a building contract the cost of which exceeds one hundred thousand dollars (\$100,000) under a separate prime or separate specification contract system to adopt written guidelines specifying actions that will be taken by the county to ensure a good faith effort in the recruitment and selection of minority businesses for building contracts awarded under the separate prime or separate specification contract system; and

WHEREAS, N.C.G.S. §143-128(c)(4) requires a county awarding a building contract the costs of which exceeds one hundred thousand dollars (\$100,000) under a single-prime contract system to adopt written guidelines specifying the action that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for building contracts awarded under the single prime contract system; and requires that action taken by the prime contractor must be documented in writing by the contractor to the County; and

WHEREAS, N.C.G.S. §143-128(b) requires that a county choosing to use a single-prime contract system must also seek bids for a building contract the cost of which exceeds one hundred thousand dollars (\$100,000) under a separate prime or separate specification contract system and must award such building contract to the lowest responsible bidder or bidders for the total project; and

WHEREAS, N.C.G.S. §143-128(d) requires the county to award public building contracts the costs of which exceed one hundred thousand dollars (\$100,000) without regard to race, religion, color, creed, national origin, sex, age or handicapping condition; and

WHEREAS, notice of the public hearing was duly published and the public hearing required by N.C.G.S. §143-128(c) was held February 19, 1990;

NOW THEREFORE, BE IT RESOLVED BY the Wake County Board of Commissioners

Section 1. That Wake County shall have a verifiable goal of ten percent (10%) for participation by minority businesses in building construction contracts awarded pursuant to N.C.G.S. §143-128.

Section 2. That for each such building contract put out for bids under the separate specification or the single prime contract systems, notice of the contract shall be transmitted to

the Minority Business Development Agency in Raleigh, North Carolina and the North Carolina Institute of Minority Economic Development in Durham, North Carolina (hereinafter "minority agencies").

Section 3. That for each such building contract put out for bids under the separate specification or single prime contract systems, documents related to the contract shall be available for inspection at a convenient and accessible location of which minority agencies shall receive notice.

Section 4. That for any such building contract put out for bids under the separate specification contract system, the County shall maintain records with respect to:

- a. those contractors or subcontractors that bid or otherwise respond to notice of the project,
- b. those contractors or subcontractors awarded contracts as part of the project, and
- c. the percentage of work on the project that is to be performed by minority businesses.

Section 5. That for any such building contract put out for bids under the single prime contract system, the single prime contractor shall:

- a. notify appropriate minority businesses of the portion of the project which will be subcontracted by the single contractor and solicit bids from those minority agencies.
- b. submit with his bids records with respect to:
 1. those minority subcontractors notified of the project and of those elements of the project for which subcontracts will be let, and
 2. those minority subcontractors that bid or otherwise respond to notice of the project, and
 3. those minority subcontractors awarded contracts as part of the project, and
 4. the percentage of work on the project that is to be performed by minority businesses.

Section 6. That these policies shall be a part of the request for proposals for any such contract, and noncompliance by any single prime bidder shall be grounds for declaring the bid non-responsive.

Section 7. The County Manager is hereby authorized to impose additional requirements, not inconsistent with the requirements of this resolution and pursuant to the resolution of this Board enacted February 29, 1988, the purposes of which are to promote the goal and intent of this resolution.

Commissioner Heater moved the adoption of the foregoing resolution. Commissioner Ward seconded the motion and, upon vote, the motion passed unanimously this the 19th day of February, 1990.

1.3 R-88-20

WAKE COUNTY, NORTH CAROLINA MINORITY AND WOMEN BUSINESS ENTERPRISE RESOLUTION FOR CONSTRUCTION CONTRACTS

WHEREAS, the Board of County Commissioners of Wake County, North Carolina desires that all segments of the population of Wake County have equal opportunity to compete for contracting and subcontracting work offered by the County; and

WHEREAS, it is in the best interest of Wake County to develop and maintain as large a pool of qualified, prospective contractors to draw upon as possible;

WHEREAS, it is the judgment of the Wake County Board of Commissioners that the County has a compelling interest to implement a minority/women business enterprise program to ensure the representative participation of all segments of the population in the County's economy; and

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Wake County declares that it is their policy to provide minorities and women equal opportunity to participate in all aspects of the County's construction program consistent with Chapter 143, Article 8 of the General Statutes of the State of North Carolina.

BE IT FURTHER RESOLVED that the Board of Commissioners of Wake County hereby directs the County Manager to prepare and maintain a minority and women business enterprise program for all construction projects funded by the County.

Upon motion of Commissioner Stout, seconded by Commissioner Zieverink, and upon roll call vote, the Board adopted the above resolution this 29th day of February 1988

PART 2 – MINORITY BUSINESS ENTERPRISE PARTICIPATION IN WAKE COUNTY BUILDING CONSTRUCTION AND REPAIR CONTRACTS

2.1 POLICY STATEMENT

It is the policy of the County to encourage minorities to participate in its building construction, renovation and repair projects.

It is further the policy of the County to prohibit illegal discrimination against any person or business enterprise and to conduct its building construction, renovation and repair programs so as to prevent such discrimination.

It is the policy of the County in concert with other local, state and federal agencies and with the assistance of minority groups and agencies, to seek and identify qualified minority business enterprises (MBEs) and to offer them the opportunity to participate, and to encourage them to participate, in the County's building construction and repair programs. Under this policy, the County adopts the definition of MBEs contained in N.C.G.S. § 143-128.2.

It is the policy of the County to provide information and opportunities to minority business enterprises that are available to other business enterprises, and to establish procedures providing MBEs access to information and opportunities available to other business enterprises.

It is the intent of this policy to secure contractors' participation and ensure competition. Nothing in this policy shall be construed to require contractors or the County to award contracts or subcontracts or to make purchases of materials or equipment from minority business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

The County will award public building construction and repair contracts to the lowest responsible, responsive bidder as provided by Article 8 of Chapter 143 of the North Carolina General Statutes.

2.2 SCOPE: This Policy Applies To Minority Business, Minority Persons, and Socially and Economically Disadvantaged Individuals. [Ref: N.C.G.S. §143-128.2(g)]

A. A Minority Business (MBE) is 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. A Minority Person¹ is 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. A Socially and Economically Disadvantaged Individual is defined by 15 U.S.C. 637 as a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the federal government considers factors such as assets and net worth. This category includes members of economically disadvantaged Indian tribes.

2.3 VERIFIABLE GOALS FOR MINORITY BUSINESS ENTERPRISE PARTICIPATION²

- A. County Funded Building Construction or Repair Projects costing \$5000 or more.
1. The County has established a verifiable goal of ten percent (10%) for participation by minority businesses in building construction and repair projects covered by this section. [Ref: N.C.G.S. §143-128.2 (a)]
- B. For Building Construction or Repair Projects Using State Appropriations or Other State Grant Funds Where the Project Cost is Equal to or Greater than One Hundred Thousand Dollars (\$100,000), the County shall use the State's verifiable goal of ten percent (10%) for participation by minority business in building construction and repair projects covered by this section. [Ref: N.C.G.S. §143-128.2 (a)]

PART 3 – REGULATIONS AND PROCEDURES FOR IMPLEMENTING MINORITY BUSINESS ENTERPRISE PARTICIPATION POLICY

3.1 INFORMAL BUILDING PROJECTS: Building construction and repair projects costing more than Five Thousand Dollars (\$5,000), but less than Three Hundred Thousand Dollars (\$300,000).

¹ For building projects funded in whole or in part with federal funds, Hasidic Jews are also considered minority persons.

² Projects funded in whole or in part with federal funds will comply with applicable federal thresholds regarding Minority and Woman Owned Business Enterprises participation.

A. County Responsibilities:

1. Notify Minority Business Enterprises of bidding opportunities by one of the following methods:
 - a) Advertise the project at the Raleigh/Durham/Triad Minority Business Development Center or similar institution, or;
 - b) Advertise the project in an identified Minority Business Enterprise targeted newspaper(s) or;
 - c) Attempt to contact Minority Business Enterprises totaling at least 30% of the total number of vendors contacted [Ref.: N.C.G.S. §143-129. (b)]
2. Record all contractors contacted, along with the list of contractors provided with bidding documents.
3. Identify Minority Business firms contacted and record their minority category.
4. Record all contractors submitting bids, along with the amount of each bid.
5. Within five (5) days of project completion, submit a completed “Informal Construction Project Report Form” to the Wake County Finance Department.
6. The Wake County Finance Department will collect store, and report data and forms referenced in this Section 00600. See Section 3.3

B. Contractor Responsibilities:

1. The Contractor will provide the following documentation, Wake County Form MBE-6, at contract closeout and prior to final payment by the county.
 - a) A list of minority business’s used on the project, identifying the businesses name, type of work performed, and minority category.
 - b) List the dollar amount paid to each minority business and the percentage it represents of the final project value.

3.2 **FORMAL BUILDING PROJECTS:** Building construction and repair projects costing Three Hundred Thousand Dollars (\$300,000) or more.

A. County Responsibilities:

1. Advertise Building Projects. When soliciting bids for formal building construction and repair projects, the county must

- a) Advertise or post notice of bid opportunities to MBE and other potential bidders in trade publications (or whatever it is that we use now) and MBE targeted publications, plans review rooms or newspaper(s) with general circulation at least fourteen (14) days prior to the scheduled bid opening date. [Ref: N.C.G.S. §143-128.2(e)(3)]
 - b) Include the following in each advertisement or notice published: (i) a description of the work for which the bid is being solicited; (ii) the date, time, and location where bids are to be submitted; (iii) the name of the individual within the public entity who will be available to answer questions about the project; (iv) where bid documents may be reviewed; (v) notice of the date, time, and location of the prebid conference. [Ref: N.C.G.S. §143-128.2(e)(3)]
2. Hold a prebid conference prior to bid opening for each project and assure a County representative is in attendance. [Ref: N.C.G.S. §143-128.2(e)(2)]
 3. Allow contractors to obtain, at least 10 days before the bid date, a complete set of Bidding Documents by providing a refundable deposit as outlined in the project Advertisement or published notice. Deposits will be refunded as stipulated in the Bidding Documents. [Ref: N.C.G.S. §43-128.2(e)(2)]
 4. Include in the bidding documents for each project the following forms and a statement that all contractors submitting bids must include all applicable forms, fully completed, and that failure to file required forms with bids may be grounds for rejection of the bid. [Ref: N.C.G.S. §143-128.2. (c)(1)b.]
 - a) Wake County Form MBE-1, identifying minority business participation;
 - b) Wake County Form MBE-2, affidavit listing contractor's good faith efforts to meet the 10% goal for MBE participation, including any advertisements, solicitations, and evidence of other specific actions to recruit minority businesses for participation in the project;
 - c) Wake County Form MBE-3, affidavit evidencing contractor's intent to perform all contract work with its own workforce; and
 - d) A copy of the County's MBE policy and procedures.
 5. Maintain all public records created for each project, including all records and documentation relating to MBE procedures, for a period of three years from the date of project completion. See Section 3.3. [Ref: N.C.G.S. §143-128.2(i)]
 6. In any building or repair project financed in whole or in part with federal funds, the County must include a statement that all federal guidelines associated with the source of the federal funds must be complied with. For example, projects funded by HUD must comply with all requirements of 24 CFR §135.

B. Contractor Responsibilities:

1. All bidders on formal building construction or repair projects shall undertake a good faith effort to recruit minority businesses and provide documentation of meeting the minimum requirements of N.C. Gen. Stat. § 143-128.2.
 - a) Failure to comply with these procedural requirements and requirements for submittal of information in the Request for Proposals may render the bid non-responsive and may result in rejection of the bid. [Ref: N.C.G.S. §143-128.2.(c)(1)]
 - b) All contractors, including first-tier subcontractors on construction manager at risk projects, that do not propose to do all of the contract work with their own workforce must advertise for minority subcontractor, vendors and suppliers at least ten days prior to submission of the contractor's bid. [Ref: N.C.G.S. §143-128.2.(f)(1)]
2. Each bidder, including first-tier subcontractors for construction manager at risk projects, must submit a completed Wake County Form MBE-1 and Wake County Form MBE-2. 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 a Wake County Form MBE-3 in lieu of Wake County Form MBE-2 otherwise required under this subsection. [Ref: N.C.G.S. §143-128.2.(c)]
3. The apparent lowest responsible, responsive bidder, must submit the following documents within 72 hours after notification of being the low bidder:
 - a) Form Wake County Form MBE-4, 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 10% of the total cost of the contract; or
 - b) Form Wake County Form MBE-5, documentation of good faith effort to recruit MBE participation in the project, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment of minority businesses for participation in the project. [Ref: N.C.G.S. §143-128.2.(c)(1)]
4. Within 30 days after the award of the contract, or sooner if stipulated in the Bidding Documents, the contractor shall provide to the County with a list of all subcontractors that the contractor will use on the project. [Ref: N.C.G.S. §143-128.2.(c)(2)]
5. During the construction of a project, if it becomes necessary to replace an MBE subcontractor, the prime contractor shall advise the Owner in writing. No MBE subcontractor may be replaced with a different subcontractor except for the following:
 - a) If the subcontractor's bid is later determined by the contractor or construction manager at risk to be nonresponsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work; or

b) With the approval of the County for good cause. [Ref: N.C.G.S. §143-128.2.(d)]

Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the County, in writing, of its good faith efforts to replace with another MBE Subcontractor. Good faith efforts as set forth in N.C.G.S. § 143-131(b) apply to the selection of a substitute subcontractor. [Ref: N.C.G.S. §143-128.2(d)]

6. Prior to the final payment being due to the contractor Wake County Form MBE 6, which provides certification of actual work performed by Minority Businesses, must be submitted

3.3 COUNTY RECORD KEEPING PROCEDURES FOR MONITORING CONTRACTOR COMPLIANCE ON COUNTY BUILDING CONSTRUCTION AND REPAIR PROJECTS.

A. **FORMAL CONTRACTS.** The County shall maintain for three years from project completion date all records with respect to:

1. Those contractors notified or solicited for each building construction or repair projects, noting all that are minority businesses and their minority category.
2. Those contractors that bid or otherwise responded to advertisements or notices of building construction or repair projects, noting all that are minority businesses and their minority category.
3. Prime contracts awarded, the amount of the contracts, identity of those that are minority business.
4. The subcontractors utilized on projects, identity of minority subcontractors, type work performed by minority subcontractors amount paid minority businesses as reported by the prime contractor(s) awarded the bid.
5. The percentage of work on the project performed by minority businesses as reported by the prime contractor. [Ref: N.C.G.S. §143-128.2(i)]

B. **INFORMAL CONTRACTS:** Documents required to be kept by the County under this section will be maintained in the County Finance Department.

1. The requirements for record keeping for Informal Contracts is the same as for Formal Contracts listed above.

3.4 **COMPLAINT PROCEDURES.**

A. Formal and Informal Contracts:

1. Alleged violations of the provisions of this MBE plan by any party should be reported in writing to the County Manager or his/her designee.
2. The County Manager or his/her designee shall review all facts available and respond in writing. Unresolved complaints may be presented to the Board of County Commissioners. The decision rendered by the Board will be final.