

CITY OF HENDERSONVILLE

MINORITY BUSINESS PARTICIPATION OUTREACH PLAN (MBPOP)



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**OUTREACH PLAN AND GUIDELINES FOR
RECRUITMENT AND SELECTION OF MINORITY
BUSINESSES FOR PARTICIPATION IN BUILDING PROJECTS**

A. GOAL.

The goal of the City of Hendersonville (the "City") in adopting its Plan for expansion of participation by minority businesses ("MB") is to provide MBs, as defined in G.S. 143-128.2(g), equal access and opportunity to participate in all aspects of construction projects subject to this Plan and to commit to this goal through a good faith effort.

B. POLICY STATEMENT.

It is the policy of the City to award public building contracts without regard to race, religion, color, creed, national origin, sex, age or disabling condition, as defined in G.S. 168A-3, in accordance with G.S. 143-128.2(h).

C. DEFINITIONS:

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

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

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

D. PLAN OBJECTIVES AND APPLICABILITY.

The City's Minority Business Participation Outreach Plan (MBPOP) is developed to comply with Session Law 2001-496 (Senate Bill 914, signed December 10, 2001 and effective on January 1, 2002).

This Plan has further been developed to assist the City in reaching its verifiable percentage goal of 3% minority business participation in all applicable state and federally funded construction contracts, originally adopted by resolution on April 5, 1990. This Plan should be implemented on all construction projects where the total value of work exceeds \$100,000 for state and federally funded projects.

It is not the intent of this Plan to require the City to take additional steps beyond those required by G.S. 143-128.2. Rather, it is the intent of this plan to establish the procedures that the City will use to comply with G.S. 143-128.2. This Plan establishes the good faith efforts that the City will take to meet the plan objectives and accomplish the plan goal, to the best of its ability.

E. PLAN ADMINISTRATION:

The City Manager will cause this policy to be implemented, will be responsible for all activities contained in this policy and will appoint staff to administer the Plan.

F. GOOD FAITH EFFORTS:

In an effort to encourage minority business participation in all state and federally funded construction projects, the City will undertake the following actions for projects to which this Plan applies. The City established these procedures as the "minority business participation outreach plan" ("MBPOP" or the "Plan") required by G.S. 143-128.2(e)(1).

1. The City, its employees and its consultants will take whatever measures it deems appropriate to encourage the education, recruitment and interaction between MB, non-minority business and the City. [G.S. 143-128.2(e)(1)]
2. The City will make efforts to require bidders and contractors to undertake the good faith efforts required in G.S. 143-128.2(f).
3. Other steps include, but are not limited to, the following:
 - a. The City will schedule and hold a pre-bid meeting for potential bidders and interested historically underutilized business (HUB) contractors. [G.S. 143-128.2(e)(2)]
 - (1) At this pre-bid meeting, the City will furnish a copy of the City's solicitation list, if requested.
 - b. The City will establish a solicitation list of HUB's:
 - (1) The City will research, from time to time, the North Carolina Department of Administration, Office for Historically Underutilized Business (HUB) web sites, or comparable agency, and record all HUBs who have registered on the site, that have suitable qualifications for projects and may be located in or around Henderson County, NC.
 - (2) In the same time frame, the City will research, from time to time, state and federal web sites that also list HUBs (i.e., *Vendor Link NC*, *U.S. Small Business Administration - SBA*, *Minority Business Development Agency - MBDA*, etc.) and document those HUBs who have registered, that have suitable qualifications for projects and may be located in or around Henderson County, NC.
 - (3) The City will also document HUBs who directly contact the City to request that they be contacted in the event of a public bid offering.
 - c. The City will directly solicit HUBs in the City's solicitation list. [G.S. 143-128.2(e)(3)]
 - (1) At least 10-days prior to bid opening, the City will furnish HUBs on the City's solicitation list with a copy of the advertisements for bid in the categories for which they have requested. The advertisement will include a description of the work for which the bid is being solicited, the date, time and location where the bids may be submitted and where the bids will be opened, the name of the City's staff member or authorized representative who will be available to answer questions about the project, where the bid documents may be reviewed or a copy obtained and any other special requirements that may exist for the project.

(2) The City may contact such HUBs by email, fax, mail or by other means and will document each contact including responses from the HUBs and any follow up action that may be required by the City to complete the notification effort.

4. The City will advertise opportunities to bid so as to be open to HUB bidders.
 - a. The City will advertise in local and regional newspapers, as dictated by the size and scope of the project; and
 - b. The City will post such advertisements for bids for construction contracts on its website (www.cityofhendersonville.org).

G. POST-AWARD MONITORING.

To enable the City to properly report MBE participation, the City will require contractors engaged in construction projects, subject to this Plan, to submit an *MBE documentation for contract payment* form with each request for payment. The City will not consider the request for payment to be complete and will not process said request without a completed *MBE documentation for contract payment* form.

A contractor who has been awarded a project based upon a given level of minority business participation is responsible for ensuring that the minority business participation does not significantly vary from that originally specified when said contractor received the contract award.

Contractors must follow the requirements of G.S. 143-128.2 and the contract documents for all construction projects that are subject to this Plan. The City will consider failure to comply with the law and/or with the contract documents to be a breach of contract and may subject the contractor to annulment of said contract.

H. REPORT AND REVIEW.

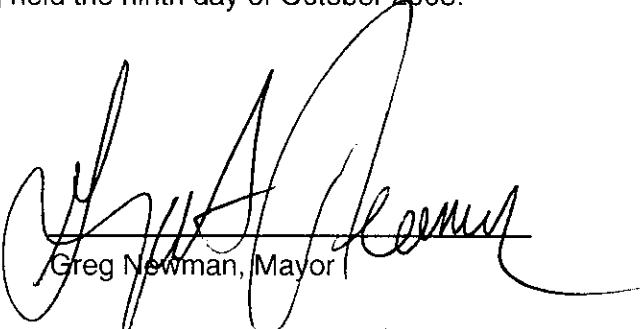
With respect to each building project that is subject to this Plan, the City will report the following to the North Carolina Department of Administration's Office for Historically Underutilized Businesses (HUB), or comparable agency, annually [G.S. 143-128.3]:

1. The verifiable percentage goal;
2. The type and total dollar value of the project, minority business utilization by minority category, trade, total dollar value of contracts awarded to each minority group for each applicable project, the applicable good faith effort guidelines or rules used to recruit minority business participation and good faith documentation accepted by the City from the affected contractors;
3. The utilization of minority businesses under the various construction methods in accordance with G.S. 143-128 (a1).

The reports shall be in the format and contain the data prescribed by the Secretary of Administration. The City will complete and submit said report even if there were no applicable building projects to report during the reporting period.


OUTREACH PLAN AND GUIDELINES FOR
RECRUITMENT AND SELECTION OF MINORITY
BUSINESSES FOR PARTICIPATION IN BUILDING PROJECTS

Adopted by the City Council at a regular meeting held the ninth day of October 2008.



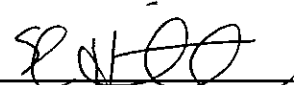
Greg Newman, Mayor

Attest:



Tammie K. Drake, CMC, City Clerk

Approved as to form:



Samuel H Fritschner, City Attorney

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

WHEREAS, the North Carolina General Assembly enacted Chapter 480 and Section 74.17 of Chapter 770 of the 1989 Session Laws, thereby rewriting North Carolina General Statute 143-128; and

WHEREAS, N.C.G.S. 143-128(c) requires each city, county or other public body 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 an authority 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 awarding authority 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.C.S. 143-128(c)(4) requires an authority awarding a building contract the cost 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 appropriate awarding authority; and

WHEREAS, N.C.G.S. 143-128(b) requires that a public body 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 state and its political subdivisions 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 in The Times News and the public hearing required by N.C.C.S. 143-128(c) was held April 5, 1990;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, City of Hendersonville:

1. That the City of Hendersonville shall have a verifiable goal of three percent (3%) for participation by minority businesses in building construction contracts awarded pursuant to N.C.G.S. 143-128.

2. That the official, employee or agent responsible for advertising such contracts shall compile a list of minority businesses within the bidding area, using information obtained from the North Carolina Department of Economic and Community Development, Minority Business Development Agency or from other institutions or agencies providing such information.

This list shall be updated on an annual 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. Copies of this resolution shall be transmitted to the businesses on the list as soon as practicable along with the name of the official, employee or agent who shall serve as the contract person for minority businesses and be responsible for answering project related questions posed by minority businesses.

3. 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 minority businesses on the above list.

4. 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 businesses shall receive notice.

5. That for each such building contract put out for bids under the separate specification or single prime contract systems, the contract person designated pursuant to paragraph 3 above shall hold a pre-bid conference to orient contractors and subcontractors to the policy expressed in this resolution as well as bid procedures and regulations. Minority businesses on the list obtained and maintained as provided herein shall be notified of and invited to these pre-bid conferences.

6. That for each such building contract put out for bids under the separate specification or single prime contract system, published notice of the contract shall include a summary of this resolution.

7. That for any such building contract put out for bids under the separate specification contract system, the contract person designated herein shall maintain records with respect to:

(a) Those contractors or subcontractors notified of the project and the number of these contractors and subcontractors that are minority businesses as defined in C.S. 143-128 appearing on the list of minority businesses maintained pursuant to paragraph 2 herein,

(b) Those contractors or subcontractors that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses,

(c) Those contractors or subcontractors awarded contracts as part of the project and the number and identity of those that are on the list of minority businesses, and

(d) The percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this resolution.

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

(a) Notify those minority businesses appearing on the list of minority businesses maintained pursuant to paragraph 2 of the portion of the project which will be subcontracted by the single contractor and solicit bids from those minority businesses.

(b) Submit with his bids records, with respect to:

1) Those subcontractors notified of the project and of those elements of the project for which subcontracts will be let and the number of these subcontractors that are minority businesses as defined in N.C.G.S. 143-128 appearing on the list of minority businesses maintained pursuant to paragraph 2 herein.

2) Those subcontractors that bid or otherwise respond to notice of the project and the number of these that are on the maintained list of minority businesses, and

3) Those subcontractors awarded contracts as part of the project and the number and identity of those that are on the maintained list of minority businesses, and

4) The percentage of work on the project that is to be performed by minority businesses appearing on the list maintained pursuant to this resolution.

9. 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 nonresponsive.

10. That this resolution shall become effective upon its adoption.

There was no one to speak in favor of or in opposition to this Resolution. Upon motion by Commissioner Whitmire and seconded by Commissioner Mills, the Resolution was unanimously approved.

Adopted the fifth day of April, 1990.