



RESOLUTION TITLE: TO ADOPT AN OUTREACH PLAN AND TO ESTABLISH VERIFIABLE PERCENTAGE GOAL FOR PARTICIPATION BY MINORITY BUSINESSES IN THE AWARDING OF BUILDING CONSTRUCTION CONTRACTS PURSUANT TO N.C. GEN. STAT. § 143-128.2

WHEREAS, the North Carolina General Assembly enacted Session Law 2001 – 496, Senate Bill 914 to enhance and improve the good faith efforts to recruit and select minority businesses for participation in public building construction or repair contracts by adding N.C. Gen. Stat. § 143-128.2; and,

WHEREAS, N.C. Gen. Stat. § 143-128.2 requires each county to adopt, after notice and a public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects costing \$300,000 or more; and,

WHEREAS, N.C. Gen. Stat. § 143-128.2(b) requires a public entity awarding a building contract where the total cost equals or exceeds \$300,000 to establish, prior to solicitation of bids, good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects; and,

WHEREAS, N.C. Gen. Stat. § 143-128.2(e)(1) requires a public entity awarding a building construction or repair contract where the total cost exceeds \$300,000, prior to awarding a contract, to develop and implement a minority business participation outreach plan; and,

WHEREAS, notice of the public hearing was duly published in The Gaston Gazette on Wednesday, April 14, 2021, and the required public hearing was held on April 27, 2021.

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

1. That Gaston County shall have a ten percent (10%) verifiable goal for participation by minority businesses in the total value of work for building projects awarded by Gaston County and costing \$300,000 or more.
2. That Gaston County shall follow the Outreach Plan and Guidelines for Recruitment and Selection of Minority Businesses for Participation in Building Construction or Repair Contracts with the Gaston County Board of Commissioners.
3. That the Gaston County Manager shall designate a specific Gaston County employee as the County's Minority Business Outreach Coordinator.

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I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	AFrale	BHovis	KJohnson	TKeigher	TPhilbeck	RWarley	Vote
2021-099	04/27/2021	TP	BH	A	A	A	A	A	A	A	U

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TO ADOPT AN OUTREACH PLAN AND TO ESTABLISH VERIFIABLE PERCENTAGE GOAL FOR PARTICIPATION BY MINORITY BUSINESSES IN THE AWARDED OF BUILDING CONSTRUCTION CONTRACTS PURSUANT TO N.C. GEN. STAT. § 143-128.2

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4. That the Minority Business Outreach Coordinator shall provide an annual up date to the Gaston County Board of Commissioners briefing the Board on the County's progress toward its verifiable percentage goal.
5. That this Resolution rescinds any conflicting language from any prior related resolutions.
6. That this Resolution shall become effective upon its adoption.

OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN BUILDING CONSTRUCTION OR REPAIR CONTRACTS WITH THE GASTON COUNTY BOARD OF COMMISSIONERS

In accordance with North Carolina Gen. Stat. ("G.S.") § 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on Gaston County Board of Commissioners' building construction or repair projects in the amount of \$300,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

The Gaston County Board of Commissioners has a current verifiable goal of ten percent (10%) for minority participation for building construction or repair projects. The goal will be reviewed every five (5) years.

SECTION A: INTENT

It is the intent of these guidelines that the Gaston County Board of Commissioners, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded, shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of ten percent (10%) for participation by minority businesses in each building construction or repair project as required by G.S. 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to 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.

SECTION B: DEFINITIONS

1. Minority - 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 America, 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, the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original peoples of North America; or
 - e. Female.
2. Minority business (MBE) - 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.
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 who are not socially disadvantaged.

4. Owner – The Gaston County Board of Commissioners.

5. Designer – Any person, firm, partnership, or corporation which has contracted with the Gaston County Board of Commissioners to perform architectural or engineering work.

6. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

7. Contract - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.

8. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the Gaston County Board of Commissioners to perform building construction or repair work.

9. Subcontractor - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES

Owner

The Gaston County Board of Commissioners will employ the following strategies to encourage participation from MBEs.

1. Work with minority-focused and small business groups that support MBE inclusion in the solicitation of bids. These groups include the Gaston Business Association and the U.S. Small Business Administration.
2. Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
3. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
4. Assess the effectiveness of the MBE program, and identify opportunities to enhance it by evaluating MBE participation and compliance and reviewing the good faith efforts provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified MBE firms that have expressed an interest in the Gaston County Board of Commissioners' projects. Identify these opportunities and contact interested businesses no later than ten (10) days prior to the bid opening and provide a list of prime contractors who plan to participate in the project.
6. Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share "best practices" and ideas to improve programs.
7. Participate in educational opportunities throughout the community as they become available and offer training sessions to share the Gaston County Board of Commissioners' outreach plan with interested businesses and organizations.

8. Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.
9. Enhance the Gaston County Board of Commissioners web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies a list of subcontracting opportunities when they are identified, no later than ten (10) days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with the Gaston County Board of Commissioners have access to up-to-date information.
12. Advertise upcoming bid opportunities in minority-focused media.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

Designer

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

1. Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) – (i.e., bidders’ proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) – prior to recommendation of award.
5. During construction phase of the project, review documentation for contract payment to MBEs (e.g., state form “Appendix E: MBE Documentation for Contract Payment” <http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors

Under the single-prime bidding, the separate-prime bidding, construction manager at risk, and alternative contracting methods, contractor(s) will:

1. Attend the scheduled pre-bid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. During the bidding process, comply with the owner’s requirements listed in the proposal for minority participation.
4. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).

5. Make documentation showing evidence of implementation of prime contractor, construction manager at risk, and first-tier subcontractor responsibilities available for review by Gaston County, upon request.
6. Upon being named the apparent low bidder, the bidder shall provide one of the following: (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) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
7. The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
8. The contractor(s) shall submit with each monthly pay request(s) and final payment(s) documentation for contract payment to MBEs (e.g., state form "Appendix E: MBE Documentation for Contract Payment" <http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for designer's review.
9. During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
10. If during the construction of a project additional subcontracting opportunities become available, the contractor shall make a good faith effort to solicit sub-bids from minority businesses.

Minority Business Responsibilities

Certification

The Gaston County Board of Commissioners requires certification for minority, disadvantaged, or women-owned businesses. Any business that desires to participate as an MBE will be required to complete and submit for certification, documents required by any of the agencies listed below. Only those firms holding current certification through *at least one* of the following agencies will be considered eligible for inclusion in meeting the MBE participation percentage goals:

- North Carolina Department of Administration Historically Underutilized Business (HUB) certification
- North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification
- Small Business Administration 8(a) certification
- Other governmental agencies on a case-by-case basis

Other Responsibilities

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

SECTION D: MINIMUM COMPLIANCE REQUIREMENTS

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and the Gaston County Board of Commissioners for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by the Gaston County Board of Commissioners that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the Gaston County Board of Commissioners whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, the Gaston County Board of Commissioners will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

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 (10) days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (10 points)
2. Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least ten (10) days before the bid or proposals are due. (10 points)
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 points)
4. Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 points)
5. Attending any pre-bid meetings scheduled by the public owner. (10 points)
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)
7. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
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. (25 points)
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. (20 points)

10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 points)

SECTION E: DISPUTE RESOLUTION PROCEDURES

Pursuant to G.S. § 143-128(f)(1), all disputes involving contractors on a building construction or repair project with the Gaston County Board of Commissioners shall be resolved pursuant to State of North Carolina Policy, specifically that which is located at G.S. § 143-135.26(11).

SECTION F: In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in Gaston County Board of Commissioners' projects.



Gaston County

Gaston County
Board of Commissioners
www.gastongov.com

County Attorney

Board Action

File #: 21-153

Commissioner Keigher - County Attorney - To Adopt an Outreach Plan and to Establish Verifiable Percentage Goal for Participation by Minority Businesses in the Awarding of Building Construction Contracts Pursuant to N.C. Gen. Stat. § 143-128.2

STAFF CONTACT

Jonathan L. Sink - County Attorney

BUDGET IMPACT

N/A

BUDGET ORDINANCE IMPACT

N/A

BACKGROUND

North Carolina General Assembly enacted Session Law 2001 - 496, Senate Bill 914 to enhance and improve the good faith efforts to recruit and select minority businesses for participation in public building construction or repair contracts by adding N.C. Gen. Stat. § 143-128.2. This statute requires each county to adopt, after notice and a public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for building projects costing \$300,000.

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POLICY IMPACT

Minority Business Guidelines

ATTACHMENTS

Resolution and Minority Business Guidelines

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	CBrown	AFraley	BHovis	KJohnson	TKeigher	TPhilbeck	RWorley	Vote
2021-099	04/27/2021	TP	BH	A	A	A	A	A	A	A	U

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