

# RESCIND

2. Minority Business - 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 corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
  - b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.
3. Owner - The School Board of Transylvania County.
4. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
5. 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.
6. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the owner to perform construction work or repair.
7. Subcontractor - A firm under contract with the prime contractor for supplying materials or labor and materials and/or installation. Work is excluded as a part of this program.
8. Verifiable Goal means:
  - a. For purposes of separate-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded; and
  - b. For purposes of single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment

GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY  
BUSINESS FOR PARTICIPATION IN SCHOOL CONSTRUCTION CONTRACTSSECTION 1: INTENT

It is the intent of these guidelines that the Local Education Agency (LEA) is awarding authority for school construction 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 verifiable goal of ten (10) percent for participation by minority businesses in each construction project as mandated by SB 308. Nothing contained in these guidelines shall be considered to require awarding authorities to award contracts or to make purchases of materials or equipment from minority-business contracts who do not submit the lowest responsible bid or bids.

SECTION 2: 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 or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
  - e. Female.

and selection of minority businesses for participation in contracts awarded; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

### SECTION 3: RESPONSIBILITIES

1. Minority Business Development Agency of the Small Business Development Division, North Carolina Department of Economic & Community Development (hereafter referred to as Minority Business Development Agency). The Minority Business Development Agency will establish a program pursuant to which it shall certify to interested persons, businesses qualifying as Minority Business Enterprises (MBE). The information solicited from the applicant will be used by the Minority Business Development Agency to:
  - a. Determine MBE certification; i.e., that those certified are MBEs under GS 143-128 as a contractor and/or subcontractor.
  - b. Identify those areas of work for which there are certified MBEs as requested.
  - c. Provide interested parties with a list of prospective certified MBE contractors and subcontractors.
  - d. Assist in the determination of technical assistance in the certification program that needs to be provided. In addition to being responsible for the certification of those small and emerging businesses that want to participate in the LEA construction program, the Minority Business Development Agency will:
    - (1) Maintain a current list of certified MBEs. The list shall include the areas of work in which each MBE is interested.
    - (2) From information furnished by the LEA publicize the contracting and subcontracting opportunities available for each LEA construction project being advertised.

- (3) Work with the North Carolina Association of Minority Business and the Carolinas Branch AGC in developing and implementing a certification program intended to improve the ability of MBEs to compete in this program.

2. LEA-OWNER

The LEA will be responsible for the following:

- a. For contracts in excess of \$500,000 in estimated cost, furnish to the Minority Business Development Agency of Small Business Development Division, North Carolina Department of Economic and Community Development prior to the bid opening the following:
  - (1) Project description and location;
  - (2) Locations where bidding documents may be reviewed;
  - (3) Name of a representative of the owner who can be contacted during the advertising period to advise who the prospective bidders are;
  - (4) Date, time and location of the bid opening;
  - (5) Date, time and location of prebid conference, if scheduled.
- b. The prebid conference, if scheduled, conducted by the representative of the owner, will be open to all known and anticipated prime contractors, subcontractors, material suppliers, and other bidders. During the conference, this program, including the bidders' responsibilities, will be fully explained.
- c. Reviewing the apparent low bidders' compliance with the items listed in the proposal that must be complied with if the bid is to be considered as responsive. The owner reserves the right to reject any or all bids and to waive informalities.

Under the separate-prime contract system, the owner will also:

- a. Attend the scheduled prebid conference.
- b. Identify or determine those work areas or a contract where MBEs may have an interest in performing contract work.
- c. At least ten (10) days prior to the scheduled day of bid opening the owner will notify certified MBEs of potential contracting opportunities listed in the proposal. The notification will include the following:
  - (1) A description of the work for which the bid is being solicited.
  - (2) The date, time and location where bids are to be submitted.
  - (3) The name of the individual within the agency/institution who will be available to answer questions about the project.
  - (4) Where bid documents may be reviewed.
  - (5) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) certified MBEs in the area of the project, the owner shall notify three (3), but may contact more, if the owner so desires.

- a. Maintain documentation of any contacts, correspondence or conversation with MBE firms made in an attempt to meet the goals.

### 3. Prime Contractor(s)

Under the single-prime contract system and the separate prime contract system, the prime contractor(s) will:

- a. Attend the scheduled prebid conference.

- b. Identify or determine those work areas of a subcontract where MBEs may have an interest in performing subcontract work.
- c. At least ten (10) days prior to the scheduled day of bid opening, notify certified MBEs of potential subcontracting opportunities listed in the proposal. The notification will include the following:
  - (1) A description of the work for which the subbid is being solicited.
  - (2) The date, time and location where bids are to be submitted.
  - (3) The name of the individual within the company who will be available to answer questions about the project.
  - (4) Where bid documents may be reviewed.
  - (5) Any special requirements that may exist, such as insurance, licenses, bond and financial arrangements.

If there are more than three (3) certified MBEs in the area of the project, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.

- a. During the bidding process, comply with the contractor(s) requirements listed in the proposal for minority participation.
- b. Submit with the bid a description of that portion of the work to be executed by MBEs expressed as a percentage of the total contract price.
- c. Upon being named the apparent low bidder, the bidder shall provide the necessary documentation as listed in the contract documents. Failure to comply with procedural requirements as defined in 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.

- d. During the construction of a project, if it becomes necessary to replace an MBE subcontractor, advise the owner.
- e. If during the construction of a project additional subcontracting opportunities become available, make a good faith effort to solicit subbids from MBEs.

#### 4. MBE Responsibilities

While MBEs are not required to become certified in order to participate in this program, it is recommended that they become certified and should take advantage of the appropriate technical assistance that is made available. In addition, MBEs who are contacted by owners or bidders should respond promptly whether or not they wish to submit a bid.

#### SECTION 4: DISPUTE PROCEDURES

It is the policy of this LEA that disputes with another person that involves a person's rights, duties or privileges should be settled through informal procedures. To that end, MBE disputes arising under these guidelines should be resolved, if possible, by informal proceedings arranged by the Superintendent or his designee.

SECTION 5: These guidelines shall apply upon promulgation and shall expire on June 30, 1995. Copies of these guidelines may be obtained from the Office of the Assistant Superintendent, Morris Education Center, 400 Rosenwald Lane, Brevard, NC 28712, (704) 884-6173.

SECTION 6: In addition to these guidelines, there will be issued with each construction bid package guideline provisions for contractual compliance providing MBE participation in the LEA construction program.

APPROVED BY BOARD  
AND EFFECTIVE 1/8/90