

DURHAM COUNTY

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Minority and  
Women-Owned  
Business Enterprise  
Program Plan

*Updated November 2016*

DURHAM COUNTY PURCHASING DIVISION

MINORITY AND WOMEN-OWED BUSINESS  
ENTERPRISE PROGRAM PLAN

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# Section 1

## INTRODUCTION

This document represents Durham County's Minority and Women-Owned Business Enterprise (MWBE) Program Plan and reaffirms the Board of County Commissioners' commitment to its policy of nondiscrimination through a positive and continuing business process of specific policies and practices designed to ensure the full realization of equal opportunity in all of the County's contracting opportunities.

The policies and procedures established under this MWBE Program Plan shall be applicable to all County Contractors, Vendors and Consultants of contracts, as well as related Subcontractors. These policies and procedures shall apply to all such contracts and agreements, unless the provisions herein are in conflict with local, state or federal laws.

**Policy Statement.** It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County's contracting programs, including, but not limited to, construction, goods and services consistent with law. It is the policy of the County to prohibit discrimination against any business in pursuit of these opportunities on the basis of race, color, national origin, religion, sex, age, disability, or veteran's status. It is further the policy of the County to conduct its contracting programs so as to prevent such discrimination, correct present discrimination and to resolve claims of such discrimination.

The County Manager or designee has the authority to establish and implement a program plan that promotes, increases and works towards eradicating the underutilization of minority and women businesses in the County's procurement of construction, goods and services. The MWBE Program Plan contained here within provides the provisions for which the program will be administered.

## PROGRAM OBJECTIVES

The County commissioned a disparity study completed by Griffin & Strong PC in January 2015 which concluded there is a compelling interest to remedy the on-going effects of discrimination in the marketplace that minority and women-owned firms continue to face. The study shows that the County tried to use race neutral measures to remediate the remnants of discrimination. The results of the program have not been sufficient to level the procurement and contracting playing field for minority and women-owned businesses. The study findings concluded there is a factual basis for the County to use both race and gender neutral and race and gender conscious remedies, along with aspirational goals to address the underutilization of minority and women-owned business firms in its procurement and contracting processes.

The objectives of the County's MWBE Program are to:

1. Provide equal access of opportunities to minority and women-owned businesses interested in doing business with the County.
2. Coordinate and facilitate outreach efforts to help identify new and interested MWBE firms.
3. Identify potential contract opportunities within the County for participation in the purchase of construction, goods and services.
4. Promote and encourage MWBE firms to seek these bid opportunities.
5. Work to identify and eradicate barriers that may prevent MWBE firms from successfully bidding and providing services to the County.
6. Monitor, evaluate and report quarterly MWBE participation.
7. Facilitate workshops, training or networking opportunities.

## Section 2

### DEFINITIONS

- A. Bidder – a business which has bid to provide goods or services to the County.
- B. Business – includes businesses regardless of legal status, including persons, corporations, partnerships, joint stock companies, joint ventures and any other private legal entity.
- C. Contractor – a business which has a contract with the County to provide goods or services.
- D. County – means the County of Durham, North Carolina.
- E. County Manager – means the Durham County Manager or the designee of the County Manager such as the Chief of Staff and/or General Managers.\_
- F. Department Heads - means the Durham County Department Head or the designee of the Department Head, such as the Deputy and/or Project Manager.
- G. Director/Procurement Manager – means the Durham County Procurement Manager in the Purchasing Division of the Finance Department.
- H. Goals – means MWBE goals expressed as a percentage of the total dollar volume for participation of minorities and women on County contracts.
- I. Goods – apparatus, supplies, materials and equipment.
- J. Historically Underutilized Business – a business which meets the conditions specified in G.S. 143-128.4(a).

K. Joint Venture – an association of two or more businesses to carry out a single enterprise for profit, for which purpose they combine their property, capital, efforts, skills or knowledge.

L. MWBE - means a business which holds a current certification as a minority or women business enterprise.

M. MWBE Management Team – means the designated staff of the Procurement Manager, such as the Assistant Procurement Manager, MWBE Contracts Compliance Manager, and the MWBE Program Coordinator.

N. Minority - an individual who is a citizen or lawful permanent resident of the United States and who is:

- (1) African American. A person having origins in any of the black racial groups of Africa.
- (2) Asian American. A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific Islands.
- (3) Hispanic American. A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
- (4) Native American. A person having origins in any of the original Indian peoples of North America.

O. Professional Services - mean construction services such as architecture, engineering, or surveying.

P. Services – mean non-construction services.

Q. Subcontractor - any business contracting with a contractor to provide goods and/or services in fulfillment of the contractor's obligations arising from a contract with the County.

R. WBE - means an M/WBE which is a woman-owned business enterprise.



# Section 3

## ROLES AND RESPONSIBILITIES

The County's MWBE Ordinance gives the County Manager or designee the authority to administer the County's MWBE Program Plan. The Purchasing Division of the Finance Department (see Exhibit 1- Purchasing Division Organization Chart) is responsible for the implementation, coordination and monitoring of the MWBE Program Plan. The Purchasing Division has established an MWBE Management Team who has the overall responsibility to administer, monitor and enforce MWBE policies, standards and procedures.

The MWBE Management Team consists of an Assistant Procurement Manager, an MWBE Contracts Compliance Manager, and an MWBE Program Coordinator. The MWBE Management Team reports directly to the Procurement Manager.

The primary roles and responsibilities necessary for implementing an effective MWBE Program has been assigned to the following personnel and staff:

**County Manager.** The County Manager has the primary responsibility of ensuring that the MWBE Program is carried out in accordance with the County's MWBE Ordinance and Policies.

Further, the County Manager is responsible for:

1. Fulfilling the goals and objectives of the M/WBE Program.
2. Determining the organizational structure, staffing and resources needed to successfully administer the MWBE Program.
3. Ensuring that the MWBE Program is implemented and integrated system-wide; and that Department Heads are engaged, involved and held accountable for successful implementation within their respective departments.
4. Establishing a reporting mechanism which may be used to inform the Board of County Commissioners on the progress of the MWBE Program and utilization of MWBE firms.

5. Considering and implementing, in consultation with the Procurement Manager, program initiatives to assist local MWBEs including, but not limited to, bonding assistance, building capacity and technical assistance.

**County Attorney's Office.** The County Attorney's Office shall provide legal assistance, as necessary, to ensure that the MWBE program's processes and implemented policies and procedures meet legal standards.

The County Attorney's Office is responsible for:

1. Working with the Procurement Manager to resolve any legal issues related to the MWBE Program, its implementation and administration.
2. Reviewing non-standard contract requirements, when feasible, commensurate with MWBE guidelines and procedures to ensure compliance with law and to increase the potential for MWBE participation.
3. Reviewing applicable insurance requirements with a view towards determining, if prudent and feasible, whether established risk/exposure limits may be changed to allow business enterprises, particularly MWBEs to bid more competitively.

**Procurement Manager.** The Procurement Manager shall oversee the County's program and shall establish and maintain communication about the County's MWBE Program planning, execution and accomplishments.

The Procurement Manager is responsible for:

1. Reviewing and developing policies and procedures to ensure compliance with law and to increase the potential for MWBE participation.
2. Ensuring internal training is provided to County personnel on procurement and contracting procedures and how to be proactive in good faith efforts to identify and utilize MWBE firms.
3. Recommending for County Manager's approval of substitution or rejection of bids due to MWBE non-compliance.
4. Submitting quarterly reports to the County Manager on the progress of the MWBE program.
5. Serving on evaluation and selection teams to ensure review and consideration of MWBE participation on contracts and compliance with MWBE business process requirements.

**Assistant Procurement Manager.** The Assistant Procurement Manager shall ensure that solicitation notices, plans and specifications relating to County contracts are made available to prospective bidders, including MWBEs, in sufficient time to provide adequate review and response.

The Assistant Procurement Manager is responsible for:

1. Working with staff and user departments to identify MWBEs' availability for prime and/or subcontractor opportunities prior to solicitations.
2. Reviewing solicitation documentation, including the evaluation criteria, to ensure inclusion of the MWBE business process.
3. Setting appropriate goals for work in bid packages and identifying other appropriate actions and initiatives to enhance MWBE participation.
4. Attending pre-bid/proposal conferences to explain the MWBE business process and its requirements as well as respond to pertinent questions.
5. Reviewing and verifying the certification status of minority and women-owned firms.
6. Evaluating and making determination for the "good faith efforts" made by bidders in achieving MWBE participation on County procurements.

**MWBE Contracts Compliance Manager.** The MWBE Contracts Compliance Manager shall be responsible for monitoring contract compliance for the County's MWBE Program. Ensures that prime contractors, minority subcontractors and user departments meet MWBE obligations under the contract after the contract has been awarded.

The MWBE Contracts Compliance Manager is responsible for:

1. Monitoring and reporting the progress of MWBE participation in all procurements by the County.
2. Requiring compliance with MWBE contractual clauses, including but not limited to substitution of subcontractors, and reporting.
3. Reviewing user departments' contracts monitoring process and forms.
4. Conducting vendor and user department site visits.
5. Reviewing and evaluating contractors' pay applications.
6. Ensuring that MWBE utilization percentages are maintained throughout the term of the contract.

**MWBE Program Coordinator.** The MWBE Program Coordinator shall serve as the County's primary point of contact and resource for the County's MWBE Program. The MWBE Program Coordinator shall maintain the County's MWBE Program website in addition to the MWBE Facebook page as a means of enhancing the County's program by providing readily available comprehensive program information, including an MWBE vendor database to assist in facilitating effective internal and external collaboration opportunities and communications.

The MWBE Program Coordinator is responsible for:

1. Increasing the awareness of the MWBE Program and promoting it throughout the County and the relevant marketplace.
2. Participating in workshops, trade fairs, outreach seminars, etc., aimed at identifying and increasing the participation of MWBEs on County projects.
3. Providing training to MWBE firms on how to do business with the County.
4. Requiring user departments to submit a copy of the contractor's pay applications with the required MWBE contractual information to ensure an accurate accounting of MWBE participation.
5. Entering and maintaining contractual MWBE participation data into the County's MWBE database.

**Department Heads.** Each County department has as shared responsibility in promoting, supporting, and assisting in carrying out the MWBE business process. The Department Heads shall be held accountable for exercising specific functions deemed necessary by the MWBE Management Team to implement the goals and objectives of the County's MWBE Program.

The Department Heads are responsible for:

1. Promoting the MWBE Program and MWBE participation in the contracting and procurement activities in their department.
2. Notifying and providing the MWBE Management Team, upon departmental knowledge, of any upcoming project and an anticipated solicitation in a timely manner prior to the procurement announcement.
3. Notifying the MWBE Management Team, in a timely manner, prior to any key post award contract meetings or issues that could affect the contractor's ability to achieve the MWBE commitment such as contract kickoff meetings and monthly meetings.

4. Requiring that each contractor submit as part of the County's pay request process, the required MWBE contractual information.

**Departmental MWBE Liaisons.** The MWBE Departmental Liaisons shall serve as a departmental point of contact and resource to the County's MWBE Management Team disseminating information to and from the team.

The Departmental MWBE Liaisons are responsible for:

1. Working with Department Heads and the MWBE Management Team to identify contract opportunities within their respective departments.
2. Assisting MWBE firms interested in contract opportunities identified within their departments.
3. Assisting Department Heads by ensuring that all MWBE contractual information and documents are forwarded to the MWBE Management Team as required.

**MWBE Advisory Committee.** The Procurement Manager shall establish an MWBE Advisory Committee that shall consist of external representation of MWBE firms that reflect the minority categories identified in the program plan.

The MWBE Advisory Committee is responsible for:

1. Meeting at least quarterly to discuss and review MWBE participation on departmental purchases and contracts.
2. Reviewing upcoming County projects and potential contract opportunities for MWBE firms.
3. Discussing ways to increase the awareness of the County's MWBE program, and areas in which MWBE participation can be utilized and increased.
4. Assessing and recommending periodically the County's overall MWBE goals and any business process changes which may be necessary to improve the effectiveness of the MWBE Program's policies and procedures.

# Section 4

## THE PROCUREMENT FUNCTION

Since the County purchases a vast amount of services, equipment, and supplies to support its operations, in addition to construction and repair work, maximum emphasis is placed on competitive bidding to meet quality and delivery requirements at the lowest possible cost. (See Exhibit 2- Examples of Goods/Services County Buys).

There are two primary ways by which MWBE firms participate in the County's procurement activities. They are:

- 1) Direct Purchasing – the County contracts directly with the MWBE firm for the procurement of construction, goods and services.
- 2) MWBE Utilization – the MWBE firm is a sub-contractor to a prime vendor/contractor that has a contract with the County.

The MWBE's role as a prime contractor on one contract does not preclude it from also seeking work as a subcontractor on another contract. It is also not necessary for the MWBE firm to hire agents, advisors and other intermediaries in order to compete for County contracts.

**Bidding Requirements.** Normally proposals are submitted to the County as a result of the County's issuance of an Invitation to Bid (IFB), Request for Proposal (RFP) or Request for Qualification (RFQ). Solicitation of bids valued at \$30,000 or more are normally handled by the County's Purchasing Division. Other solicitations such as less than \$30,000 or for human service needs (social services or public health) are usually handled directly by the department). Each type of solicitation method contains instructions relative to proposal preparation and submission procedures.

Public notices of solicitations handled by the Purchasing Division are advertised on the County's official website under Bid Opportunities located: <http://dconc.gov/government/departments-f-z/finance/bid-opportunities>.

In addition, the County advertises in the local Durham Herald Sun newspaper and the Triangle Tribune (a minority newspaper). For construction and repair work, instructions for submitting bids, specifications and a complete description of work involved for which bids are invited can also be examined at the following plan rooms:

City of Durham Equal Opportunity and Equal Assurance Office, Durham, NC 27701	Carolina's AGC, Inc. Raleigh, NC 27612
The Institute of Economic Development Durham, NC 27701	Raleigh Business & Technology Center Raleigh, NC 27601
McGraw-Hill Construction Raleigh, NC 27609	Construction Data Corporation (CDC News) Cary, NC 27518

**Responding to Bid Solicitations.** For each product or service purchased, it is imperative that bidders follow all instructions and specifications. Each solicitation normally includes:

- Instructions for preparing the bid response
- Technical specification/scope of work for the item or service
- Date, time and place for bid submission
- Schedule for commencement and completion
- Place of delivery

The proposal submitted by a bidder is the document that is intended to introduce and persuade the County's staff that the bidder is qualified, understands the scope of work and can perform the work in a timely and cost-effective manner. Therefore,

- The proposal should be well written with clarity and thoroughness.
- The bid number must be referenced on all correspondences and mailings.
- Proposals must be *signed* and submitted on forms furnished by the County.
- Unless specifically extended by an addendum, proposals are due by the "bid due date" specified.

## Remember!

Bidders must respond to all questions and follow instructions explicitly. FAILURE TO DO SO MAY RESULT IN THE REJECTION OF BID. Do not assume anything. When in doubt as to any part of the procurement solicitation package, contact the assigned Procurement Specialist.



# Section 5

## MWBE UTILIZATION GOALS

The County has set an aspirational overall MWBE goal of 25% and will also set project specific goals, when deemed appropriate. The County shall adjust the goals annually, or from time-to-time, upon review of the County's utilization of MWBE firms verses their availability.

The primary consideration in setting aspiration goals for the County is based on the recently completed Durham County/City of Durham Multijurisdictional Disparity Study, January 2015. Specifically, the study provided detailed data on "utilization" and the "availability" of MWBE firms in the relevant market area. The original MWBE Ordinance and the Amended MWBE Ordinance as adopted by the Board of County Commissioners (BOCC) are located in Exhibits 3 & 4 of this document.

The County hereby establishes the following aspirational goals to be used in bid packages for solicitation of work. Project specific goals may also be established on a case-by-case basis for procurement of construction, goods and services given consideration to the actual project subcontracting opportunities. Aspirational goals are not to be construed as quotas or set-asides.

Categories	Construction	A/E	Services	Goods	MWBE Availability % (Median Availability)
Black American	14.6	9.8	10.9	2.8	<b>10.4%</b>
Asian American	1.3	3.0	1.1	.43	<b>1.3%</b>
Hispanic American	4.2	1.8	1.1	.43	<b>1.5%</b>
American Indian	.65	.75	1.0	.5	<b>.70%</b>
White Female	13.8	11.0	9.5	7.1	<b>10.3%</b>
<b>Overall MWBE Participation Goal =</b>					<b>25.0%</b>

Source: Griffin & Strong, PC Durham County/City of Durham Multijurisdictional Disparity Study, January 2015



## Section 6

### MWBE CERTIFICATION

In order to credit the participation of minority and woman-owned businesses on County procurements towards the County's MWBE overall and contract specific goals, the County will require that minority and woman-owned businesses are certified as MWBEs by a certification agency approved by the County's MWBE Management Team.

The purpose of certification is three-fold:

- 1) To ensure increased availability of minority and women-owned business enterprises for the MWBE business process;
- 2) To ensure the integrity of the MWBE business process and that the business process is implemented for its intended purpose; and,
- 3) To ensure the integrity of the MWBEs participating in County procurements as well as MWBE initiatives and programs established by the County.

The County's MWBE Management Team reserves the right to review, accept or reject any MWBE certifications on all County procurements. The MWBE Management Team also, under the appropriate circumstances, reserves the right to accept other certifications.

**MWBE Certification Eligibility.** For a business to be recognized by the County as a certified minority or woman-owned business, it is required to be certified under the North Carolina Department of Administration, Historically Underutilized Business certification program or by another certifying agency of the State of North Carolina, such as the North Carolina Department of Transportation.

If a minority business is not certified as a minority or woman-owned business by an approved certification organization at the time of the contract award, the MWBE Management Team will not allow the participation to count towards the MWBE goals.

However, the MWBE Management Team will encourage and allow the Contractor to utilize MWBEs during the performance of the contract towards the MWBE participation goals once documentation confirming such certification is submitted to the MWBE Management Team. The MWBE Management Team shall be notified of any change in the Contractor's or any identified Subcontractor's company ownership or control which could affect the MWBE participation of the project. This notification shall be made within ten (10) business days of the associated change or Contractor's knowledge of a change in ownership or control.

If County departmental personnel become aware of any potential change that would affect the achievement of the MWBE commitment, the County's Departmental MWBE Liaison is responsible to notifying the MWBE Management Team within ten (10) days of receipt of this information.

**Removal of MWBE Eligibility.** If there is a challenge to the eligibility of an MWBE, the County reserves the right not to count that participation towards the achievement of the goal. Contractors are advised that the issue of whether or not the MWBE's identified for a County opportunity are eligible certified businesses is the responsibility of the County's MWBE Management Team. If the County determines, based on evidence received, that a currently certified MWBE is ineligible as a certified business, the County shall follow the stated process:

- Provide written notification to the MWBE as well as any prime contractors utilizing that MWBE on any County contracts.
- The MWBE will have an opportunity to respond and submit documentation to the County within ten (10) days after receiving the notice.
- Gather pertinent information regarding the MWBE certification eligibility and if the information is sufficient will assess the information for a determination.
- Make a determination of MWBE certification eligibility within ten (10) business days of a receipt of that documentation. In making the determination, shall consider the response of the MWBE business, if applicable, and information obtained by County personnel either through written documentation received from a third party or based on personal investigation and data.
- Will then notify the MWBE of its determination by email as well as notify any prime contractors and other appropriate departments about the determination.

If an MWBE is determined to be ineligible due to fraudulent actions, further participation of that MWBE on County procurements will not count towards the goal. If the ineligible MWBE's participation on a County procurement is currently being credited toward the MWBE goal, the County will only count the actual dollars paid to the ineligible MWBE for one month after the ineligibility determination or at the conclusion of the current payment cycle, whichever occurs first.

If a business is determined to be an ineligible MWBE due to fraudulent actions, the County reserves the right to discontinue business with the business in question based on the combined recommendation and assessment by the County's MWBE Management Team, County Attorney's Office and relevant departments.

# Section 7

## PRE-AWARD PLAN COMPLIANCE

**MWBE Utilization Forms.** The following MWBE forms (found in Exhibits 5&6) are utilized as part of the documentation that the Contractor shall complete and submit when the initial response to the County's solicitation is due:

State of North Carolina AFFIDAVIT A FORM- List of the Good Faith Efforts  
State of North Carolina AFFIDAVIT B FORM-Intent to Perform with Own  
Workforce

**Good Faith Efforts.** If a Contractor, including MWBE prime contractors, does not meet the MWBE goal or strives to meet the goal and falls short of achieving the goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the County that it has made a good faith effort to meet the MWBE goal. This good faith effort documentation shall be submitted within three (3) business days when requested by the County's MWBE Management Team.

The issue of whether or not the Contractor has met or exceeded the established goal and/or has demonstrated good faith efforts is considered a matter of the Contractor's responsibility. The requirement to submit the good faith documentation is considered a matter of the Contractor's responsiveness. The County will only award contracts to Contractors determined to be responsible and responsive. The County's MWBE Management Team shall be responsible for determining if the Contractor's good faith effort is sufficient to meet the contract MWBE goals.

In evaluating a Contractor's good faith effort submission, the County will consider those documented efforts that occurred prior to the good faith effort submission. Under no circumstance shall the award of a County procurement be recommended without the final good faith efforts determination by the County's MWBE Management Team.

In making a determination that the Contractor has made a good faith effort to meet the MWBE goals, the MWBE Management Team shall consider specific documentation

concerning the steps taken to obtain MWBE participation, with a consideration of, by way of illustration and not limitation, the following factors:

1. Whether the Contractor attended any pre-bid or pre-proposal meetings scheduled by the County to discuss subcontracting and supplier opportunities for MWBE participation and whether the Contractor obtained a current list of MWBE subcontractors and/or suppliers from the County;
2. Whether the Contractor timely advertised in general circulation, trade association, and/or MWBE-focused media concerning subcontracting and supplier opportunities;
3. Whether the Contractor provided timely written notice by email, via postal mail or facsimile to a reasonable number of MWBE's and/or contacted a reasonable number of MWBE's via telephone about the subcontracting/supplier opportunities. A "reasonable number of MWBE's" is based on the number of MWBE's available in the areas of subcontracting or supplier opportunities which is a minimal of three (3) MWBE's per subcontracting opportunity;
4. Whether the Contractor solicited the MWBE's in a reasonable time prior to bid submission, exclusive of the day the bids are opened to allow MWBE's to participate effectively. Also, whether the Contractor followed up those initial solicitations of interest by contacting MWBE's to determine with certainty whether the MWBE's were interested a minimum of three (3) calendar days prior to bid opening;
5. Whether the Contractor selected portions of the work to be performed by MWBE's in order to increase the likelihood of meeting the MWBE goals (including, where appropriate, breaking down the contract into economically feasible subcontracts) to facilitate MWBE participation;
6. Whether the Contractor provided interested MWBE's with the plans, specifications, scope of work and requirements of the contract or adequate information about the locations of the plans, specifications, scope of work and requirements of the contract;
7. Whether the Contractor negotiated in good faith with interested MWBE's, not rejecting MWBE's as unqualified without sound reasons based on a thorough investigation of their capabilities;

8. Whether the Contractor negotiated in good faith with interested MWBE's using good business judgment, taking into consideration the MWBE subcontractor's price quote and not rejecting reasonable quotes from interested MWBE businesses;
9. Whether the Contractor made efforts to assist interested MWBE's in obtaining bonding, lines of credit, insurance, etc., required by the County;
10. Whether the Contractor made efforts to assist interested MWBE's in obtaining necessary equipment, supplies, materials, or related assistance or services;
11. Whether the Contractor effectively used the services of available minority and women community organizations; contractor groups; local, state, and federal business assistance offices; and other organizations that provide assistance in identifying MWBE's;
12. Whether the Contractor, if applicable, obtained written documentation from a County approved Surety Support Consultant or a bona fide surety company indicating that bonding was denied prior to the MWBE's being rejected as a potential subcontractor for failing to obtain Contractor required bonding. Documentation furnished by a surety company will be subject to verification by County's MWBE Management Team; and
13. Whether other Contractors have attained a sufficient level of MWBE participation to meet the contract goals will also be taken into consideration when determining whether the Contractor in question has made a good faith effort.

If a Contractor fails to submit the Good Faith Efforts documentation by the deadline for submission, it waives the right to appeal the Good Faith Efforts decision. The County's MWBE Management Team will review not only the different kinds of efforts the Contractor has made but also the quantity and quality of those efforts. Efforts that are merely pro forma are not good faith efforts to meet the goals. The County will consider, if given all relevant circumstances, the Contractor efforts could not reasonably be expected to produce a level of MWBE participation sufficient to meet the goal.

**Appellate Process.** Failure to submit good faith efforts documentation at the established deadline which is an issue of responsiveness will render the Contractor as non-responsive and the Contractor shall be considered not eligible for award.

In making the determination, the MWBE Management Team shall consider the good faith efforts information and within three (3) business days of receipt of the documentation, make a determination and provide a written email notification to the Contractor and user department that the Contractor is or is not responsible because it has or has not documented or demonstrated a good faith effort. If the Contractor is determined not to be responsible because it has not documented or demonstrated a good faith effort, a Contractor may request administrative review and final reconsideration.

If a Contractor desires a review of the decision, it shall submit a written email request for final reconsideration within three (3) business days after receipt of the decision to the County's MWBE Management Team at: [purchasinggroup@dconc.gov](mailto:purchasinggroup@dconc.gov).

As part of the reconsideration, the Contractor will have the opportunity to provide written documentation or argument concerning the issue of good faith efforts. The Contractor may elect to meet in person with the MWBE Management Team.

## Section 8

### POST-AWARD PLAN COMPLIANCE

**Monitoring Contract Compliance.** The County's MWBE Management Team shall be responsible for monitoring contract compliance for the County's MWBE Program. To ensure that prime contractors, minority subcontractors and County departments meet MWBE obligations under the contract after the contract has been awarded, monitoring activities shall take place on a quarterly basis throughout the life of the contract. This includes any term extensions from the original contract period.

Monitoring activities may include, but may not be limited to:

- Reviewing departmental monitoring forms;
- Conducting site visits;
- Reviewing certifications;
- Evaluating pay applications; and,
- Ensuring that MWBE percentages are maintained throughout the term of the contract.

**Sanctions.** All Contractors, after being awarded a contract by the County, are legally bound to observe the terms of the contract, including all MWBE provisions. The County have the authority to impose penalties for noncompliance with the provisions of the MWBE Program. (See section titled Non-Compliance Enforcement).

**Monitoring Departmental Compliance.** County departments who are tasked with soliciting their own quotes for goods and services usually below the informal dollar threshold range (\$30,000), shall ensure compliance and monitor Contractors at the department level. The MWBE Management Team shall randomly review the applicable monitoring forms that are required to be maintained with the departmental contract files. Additionally, it is the responsibility of departments to submit to the MWBE



Management Team, a copy of the payment documents, including pay applications, for those contracts where minority participation has been identified. This requirement is also included on the contract monitoring forms and shall be reviewed to ensure departments' compliance in this area.

**Conducting Site Visits.** Compliance monitoring shall also include site visits. This is an additional measure to confirm that MWBE subcontractors are actually providing the contracted services for which the prime has made a commitment in their bid proposal. When requested, the prime shall provide the County with a project work schedule and a list of all minority subcontractors for the scheduled work. Both the schedule and list will assist in scheduling on-site compliance reviews.

**Reviewing Certification.** Although subcontractor certification is confirmed at the pre-award phase, it must be maintained throughout the life of the project/contract. Certification will be reviewed and confirmed annually via the NC HUB Office, to ensure that subcontractors' certifications have not expired.

**Monitoring Payments to MWBEs.** The County provides that invoices are paid promptly, within 30 days from the date of receipt, or sooner if required by the terms and conditions of the contract. All responsible departments must follow this policy in order for the County to be in compliance with all necessary requirements.

When submitting invoices to the responsible departments, prime contractors must include an Appendix E Pay Application form (Exhibit 7), concurrent with the submission of each invoice. Data reflected on the pay application will be used to provide constant monitoring of the payments made to MWBE subcontractors in relation to the percentage of work performed.

The pay applications will be reviewed to ensure that:

1. Minority subcontractors are being paid in a timely manner.
2. Minority subcontractors are being paid for the actual work commitment made by the prime.
3. Minority subcontractors are paid the dollar value or percentage identified by the prime contractor.

4. Prime contractors are maintaining the MWBE percentages indicated at the time of contract award, and throughout the term of the contract, including any increase to the contract by amendment or change order.
5. Prime contractors have not made any subcontractor substitutions without permission.

**Non-Compliance Enforcement.** All participants in the MWBE business process must comply with the requirements set forth in the County's MWBE Program, and applicable federal and state laws. The County reserves the right to apply legal and contract remedies available under the law.

The MWBE participation percentage commitment made by the prime contractor at the time of contract award is considered a contractual obligation. Failure to meet the commitment may constitute a material breach. The County may withhold all or portions of payment due to a prime contractor, if the prime fails to make prompt payments to its subcontractors.

If a prime contractor has been identified by the MWBE Management Team as deficient in complying with the County's MWBE Program requirements, the County Manager or designee with the advice of the MWBE Management Team, shall notify the Contractor and impose a time limit to resolve the deficiency. If the deficiency is not resolved within the required time limit and the deficiency is considered a material breach of the contract, the County shall have the right to terminate the contract and impose liquidated damages, and/or consider the Contractor to be non-responsible when awarding future County contracts.

The County may recommend additional sanctions against Contractors found to be non-compliant with MWBE Program requirements at any time during the term of the contract. If a County department has been identified as deficient in complying with the County's MWBE Program requirements, the County Manager or designee with the advice of the MWBE Management Team, shall notify the Department Head and impose a time limit to resolve the deficiency. If the deficiency is not resolved within the

required time limit, the County Manager or designee may impose certain restrictions against the department, to be determined at that time.

**Data Tracking & Reporting.** The MWBE Management Team shall monitor contracts to review the County's overall progress and performance in achieving MWBE utilization goals. In order to monitor progress and performance, the team shall maintain a record-keeping system designed to:

1. Access overall MWBE utilization on County contracts and subcontracts.
2. Identify and monitor prime and subcontractor's MWBE utilization for the overall project and on a task-by task basis.
3. Identify and list certified MWBEs, to be made available to the County's bidders and contractors in their efforts to meet MWBE requirements

To fulfill this obligation, reports shall be generated from the County's MWBE database which houses subcontractor data. And, an additional report to be utilized shall come from SAP (the County's internal financial computer system) which houses prime contractor data. The combination of the data from both reports shall provide the following information, both quarterly and annually:

1. The total number of contracts monitored for compliance.
2. The percentage of participation of goal met.
3. Amounts paid to MWBEs.
4. The percentage of funds spent with MWBEs.

Other MWBE-related internal and external reports shall also be prepared, as required or requested.

# Section 9

## OUTREACH AND COMMUNICATION

The County's commitment to the achievement of equitable contracting opportunities is the principal reason in establishing an outreach component within the MWBE Program Plan. The MWBE outreach efforts are designed to document initiatives and establish procedures which best inform, present, and achieve results for maximum consideration and participation by MWBEs. Key actions to the County's outreach efforts are internal and external communication as well as interaction by the County's MWBE Management Team, departments and the MWBE business community.

**Internal Communication.** All County departments have a responsibility to support and assist in promoting and carrying out the MWBE Program Plan initiatives. In support of the County's MWBE Ordinance and Program Plan, the MWBE Management Team has established procedures to enhance qualifications, competitiveness, and opportunities for MWBE involvement. Processes have been jointly established to capture, disseminate, analyze, and communicate County business opportunities, and address barriers to effective MWBE participation.

**External Communication.** Communication and support of the County's MWBE Program initiatives by entities that represent or promote MWBE interest is a crucial element in achieving a viable and effective MWBE Program. Correspondingly, the County has also formalized efforts to ensure communication and participation by external MWBE related entities in maximizing the County's MWBE identification and solicitation efforts. Efforts with these entities are geared towards establishing a fluid communication process that informs, facilitates networking, and assists in the overall development and management of the County's MWBE Program initiatives. The MWBE Program Coordinator shall participate in MWBE sponsored activities and look to these entities as the principle organizations to generate support and participation by the minority and women business community.

**Social Media/Website Presence.** The County's MWBE Program's outreach is enhanced by the use of the social media platform Facebook and a program dedicated website. The County's MWBE Program Coordinator shall maintain the County's MWBE Program website in addition to the MWBE Facebook page as a means of enhancing the County's MWBE Program by providing readily available comprehensive program information to include an MWBE vendor database to assist in facilitating effective internal and external collaboration opportunities and communications. The listings maintained in the MWBE database will provide a central point of contact for bidders/proposers and Contractors to help assist them in complying with MWBE Ordinance/Program initiatives, and also serve as a crucial resource for internal departmental personnel with purchasing responsibilities.

# Section 10

## MWBE ADVOCATE

To provide additional support and value to the County's commitment to improving the MWBE Program initiatives, the County has entered into partnership with the North Carolina Institute of Economic Development. (Institute). As an Advocate, the Institute will act as a liaison to assist MWBE firms in obtaining technical, managerial, financial and other business assistance.

**Surety Bond Assistance Program.** The County's Surety Bond Assistance Program provide technical and financial assistance to help MWBE firms secure bonding. By working directly with the Institute for assistance, MWBE firms may be eligible to secure a surety bond line, bid bond, or a performance and payment bond on County projects.

**Contractor Readiness Program.** The County's MWBE Management Team and the Institute conducted a survey with local businesses to identify obstacles that those businesses may have encountered with doing business with the County. As a result, the County's Contractor Readiness Program has been established to offer an opportunity for MWBE firms to enroll to receive classroom training and technical support at no cost. The associated training and technical assistance may be held at various locations and times throughout Durham, North Carolina. The County's program curriculum in partnership with the Institute is as follows:

## **Durham County Contractor Readiness Program Curriculum**

- ***Business Planning and Management for Construction***

This workshop focuses on assessing the legal form of the company, developing a succession/business continuation plan, managing and controlling growth, and assembling a business team. Subjects covered include legal and corporate structures, certifications, licenses, permits, establishment of goals and objectives for a business plan, and issues related to company management, policies and procedures, and staffing. The team-building portion of the workshop describes: (1) the importance of choosing the right construction lawyer, accountant, banker, insurance agent, and producer; (2) how to identify the aforementioned; (3) why they are important; (4) what role these individuals will play and how they interrelate; (5) what they will expect from the small business; and (6) how their involvement contributes to the small business's overall success.

- ***Small Business & Construction Accounting and Financial Management***

This workshop focuses on small business and basic construction accounting fundamentals and will provide an overview, from job costing to financial reporting. These fundamentals include: (1) debits and credits and how they work; (2) accounting for job cost; (3) work-in-progress (WIP) schedules; (4) percentage-of-completion revenue recognition; and (5) development of financial statements.

- ***Banking and Financing for Small Businesses***

This workshop addresses the need for (1) capital equipment financing, (2) how to determine working capital requirements; (3) the use of lines of credit; and (4) the need to establish a banking relationship.

- ***Bonding and Insurance for Small Businesses***

This workshop focuses on: (1) the definition of surety bonds and the various types of surety bonds; (2) how to begin the process of obtaining a bond; (3) the role of the agent/producer and the underwriter; (4) the prequalification process; (5) the three C's of credit worthiness, capital, capacity and character; (6) the costs of bonding; and (7) how to develop a surety bond relationship. The workshop also covers the various types of insurances required (commercial general liability, workers compensation, etc.) and what to look for in an insurance agent relationship.

In addition, the workshop covers other bonding assistance programs, such as the SBA Bond Guarantee and Loan Programs, relevant state bond guarantee and loan programs, and any local bonding or financial support programs that might be available for emerging transportation-related small businesses.

- ***Marketing, Estimating and Bidding***

The marketing portion of this workshop focuses on: (1) identifying core company capabilities and determining company capacity; (2) developing a marketing plan; (3) identifying targets of opportunity; and (4) making sales calls and visits.

The estimating and bidding portion of the workshop covers: (1) methods of computing measurements, including off-the-shelf estimating software, metric conversions, and essential mathematical formulas for estimating; (2) planning construction projects; and (3) preparation of bid documents.

- ***Project Management and Field Operations***

This workshop focuses on project specific activities, including hands-on advice at the job site. The project management portion of this workshop covers: (1) plan reading; (2) types of contracts (lump sum, cost plus fee, etc.); (3) common contract forms; (4) project planning methods; (5) job costing and scheduling; (6) management of subcontractors; (7) the proper expedition of change orders; and (8) measuring project performance. The field operations portion of this workshop covers setting up the job site and on-going job site operations.

- ***Claims and Dispute Resolution***

This module focuses on: (1) mechanic's liens; (2) the claims process under Miller Act payment bonds; (3) the various mediation services and approaches available to a small business in a dispute; (4) the arbitration provision in standard form construction contracts and what it means; and (5) when and under what circumstances is litigation considered.

- ***Managing Growth: Why Some Small Businesses Succeed and Others Fail***

This workshop identifies the most common reasons why contractors, especially small businesses, fail. This workshop also provides suggestions and approaches that will help



to ensure the small business's success. In conducting this workshop, the instructor will present "real world" examples of contractors who have succeeded.

- ***Financial Resources: Traditional and Non-Traditional***

Partnering with a participating or potential lender the workshop will educate small businesses on obtaining access to capital by aligning resources to fit their business needs and growth plans.

- ***DBE Contract Compliance***

This workshop identifies and educates small disadvantaged businesses on the federal guidelines applicable to federal transportation-related contracts in regards to DBE. The small business will learn about 49 CFR Part 26, regulation to monitor DBE performance on federally-funded transportation projects. The small business will learn why it is important for their business to provide a commercially useful function to their contractors.

- ***Davis Bacon, Payroll & On the Job Training (OJT) Programs***

This workshop will focus on Department of Labor requirements on federally funded projects and how the OJT program is implemented and monitored. The module will identify labor categories, labor and pay monitoring, and the most common reasons why contractors have to pay restitution to underpaid employees. This workshop will include a discussion on how small business can benefit from using the OJT program as an employment resource and for cost savings on contracts.

- ***Safety/OSHA Regulations***

Small businesses participating in this workshop will gain industry insight on how to execute contracts while providing an injury free environment based upon the Occupational Safety and Health Administration (OSHA) standards. The instructor will present "real world" safety examples of contractors who experienced incidents, accidents and "near misses" on projects. The instructor will also give insight on the importance of good standing with Experience Modification Record.

- ***Teaming/Joint Venturing***

This workshop focuses on becoming stronger in numbers; how small businesses successfully enter into an agreement where all parties agree to develop, for a finite time,

a new entity and new assets by contributing equity. The instructor will teach small businesses how to balance the strengths and weaknesses of the team, exercise control over the enterprise, and share revenues, expenses and assets.

- *Conclusion of Workshop Component, Procurement, and Networking Opportunity*

This workshop is the conclusion of the educational component of the program and focuses on solidifying the bond-ability of the small business and discovering contracting opportunities through contacts and networking.

## **CERTIFICATES & GRADUATION**

**\*\*Optional**

For more detailed information on the County's Surety Bond and Contractor Readiness Programs, please contact:

NC Institute of Economic Development  
114 W. Parrish Street  
PO Box 1331  
Durham, NC 27701  
(919) 956-8889  
[www.theInstituteNC.org](http://www.theInstituteNC.org)

Section 11

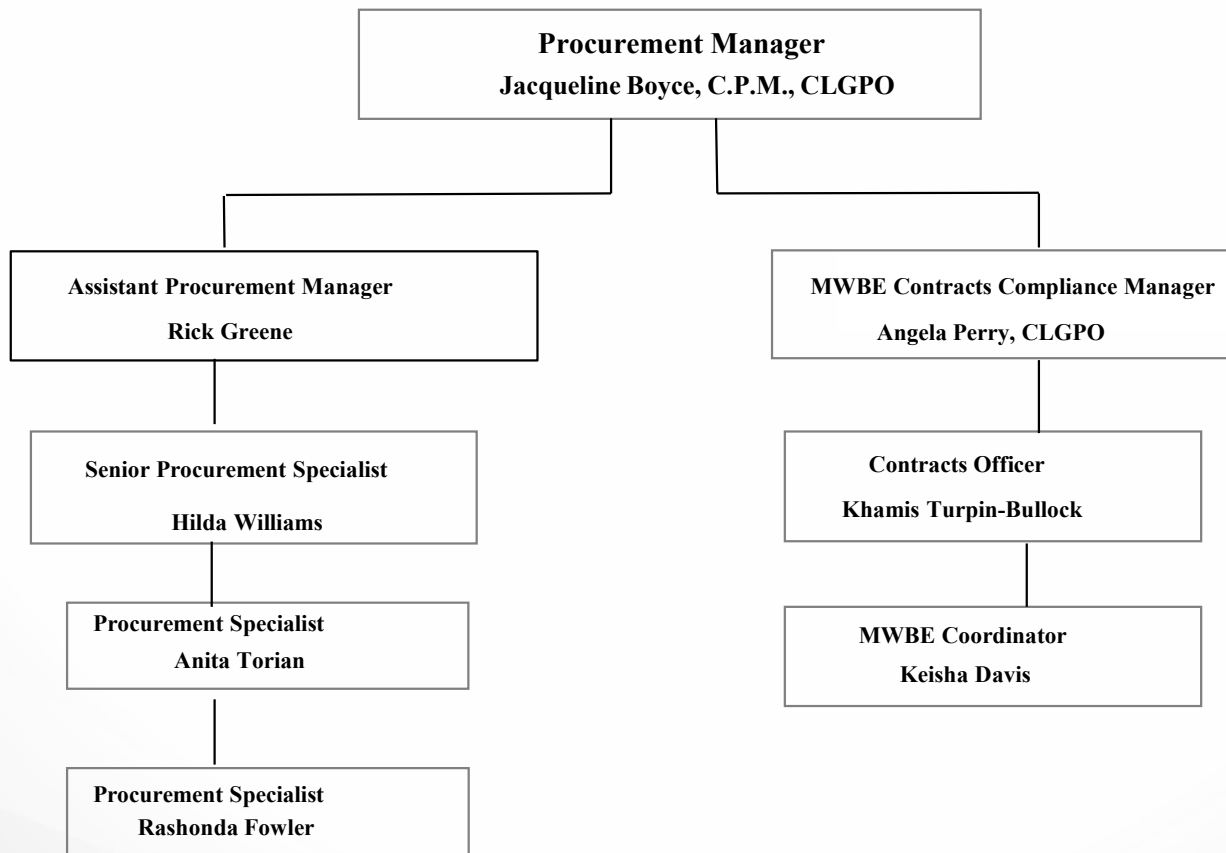
## Exhibits

- Exhibit #1 Purchasing Division Organization Chart
- Exhibit #2 Examples of Goods/Services County Buys
- Exhibit #3 Adoption of MWBE Ordinance
- Exhibit #4 MWBE Affidavit A- List of Good Faith Effort
- Exhibit #5 MWBE Affidavit B- Intent to Perform with Own Workforce
- Exhibit #6 MWBE Appendix E Form
- Exhibit #7 Contractor Performance Evaluation Form

# Exhibit #1

## Purchasing Division Organization Chart

# Procurement Division



# Exhibit #2

Examples of Goods/Services County Buys

Exhibit 2 - Purchasing Division  
Durham County Government

Examples of Goods and Services County departments purchase in an average year			
Goods / Services	Departments	Goods / Services	Departments
Asbestos, lead, mold	Engineering General Services	Auditing	Finance Tax Administration
Advertising	Purchasing Tax Administration Library Public Health	Brick and Stonework	Engineering General Services
Air Conditioning	General Services Engineering	Building	Engineering General Services
Ambulance	Emergency Medical Services	Career Services	Human Resources
Appliances	Engineering – Building & Renovation Projects General Services	Cleaning Services	General Services
Architects	Engineering General Services	Catering/Food	Most Departments
Audiovisual	Information Services & Technology Library County Manager	Electrical Supplies	Engineering General Services
Caulking	Engineering General Services	Credit Card Processing	Tax Administration

\*Informal bids valued at 30,000+ are handled through the Purchasing Division

Chemical equipment and Clothing	General Services Triangle Wastewater Treatment Plant Fire Marshall	Embroidery/Sewing Crafts	Cooperative Extension Library
Computers	Information Services & Technology	Engineering	Engineering General Services
Construction	Engineering General Services	Entertainment	Library
Consulting Services	Most Departments	Family Services	Social Services Public Health
Defense Systems	Fire Marshall	Fencing	Engineering General Services
Demolition	Engineering General Services	Financial	Finance
Educational	Human Resources Library	Inmate Supplies	Sheriff
Fire Proofing	Engineering General Services	IT Equipment and Supplies	Information Services & Technology
Fire Fighter Products	Fire Marshall	Janitorial Equipment and Cleaning	General Services





Fleet Services	General Services	Law Enforcement Supplies	Sheriff
Furniture	Most Departments	Lawn Care	General Services
Gifts – Promotional Items	Purchasing County Manager	Lighting	General Services
Graphic Designs	Library County Manager	Marketing	Library County Manager
Healthcare	Public Health Emergency Medical Services	Medical Services	Emergency Medical Services Public Health
Network Cabling	Information Services & Technology	Moving	Engineering General Services
Office Supplies	Most Departments	Community Living Services	Social Services
Painters	General Services	Sewer and Drain	Triangle Wastewater Treatment Plant
Plumbing	General Services Engineering	Signs	Engineering General Services



Publications	Library Human Resources County Manager		Sports Equipment	General Services – County Stadium
Project Management- Engineering	Engineering		Staffing Services	Public Health Social Services Tax Administration
Promotional Services	County Manager		Transportation	Cooperative Extension Social Services
Security	General Services		Water Proofing	Engineering General Services
Welding and Fabrication	Engineering General Services		Youth Services	Youth Home Cooperative Extension



# Exhibit #3

Adoption of MWBE Ordinance



## **MINORITY AND WOMEN BUSINESS ENTERPRISE (MWBE) ORDINANCE**

WHEREAS, the County of Durham commissioned a study to be performed in certain areas of purchasing and contracting in which the County of Durham is involved; and

WHEREAS, it is the policy of the County of Durham that purchasing by the County and contracts with the County be open to all people and be free of discrimination based on race or gender; and

WHEREAS, on January 14, 2008, the Board of County Commissioners adopted a Minority and Women Business Enterprise (MWBE) Ordinance; and

WHEREAS, on December 31, 2015, the adopted Ordinance expired;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH ORDAIN:

1. That Chapter 8 Article V of the Durham County Code of Ordinances hereby establishes a new Ordinance to read as follows:

### **ARTICLE V. MINORITY AND WOMEN BUSINESS ENTERPRISES**

#### **Sec. 8-131. Purpose**

- (a) The County commissioned a disparity study completed by Griffin & Strong PC in January 2015 which concluded there is a compelling interest to remedy the on-going effects of discrimination in the marketplace that minority and women-owned firms continue to face. The study shows Durham County used race neutral measures to remediate the remnants of discrimination. The results of the program have not been sufficient to level the procurement and contracting playing field for minority and women-owned businesses. The study findings concluded there is a factual basis for Durham County to use both race and gender neutral and race and gender conscious remedies, along with aspirational goals to address the underutilization of minority and women-owned business firms in its procurement and contracting processes.
- (b) This article gives the County Manager or designee the authority to implement a MWBE Program Plan document that establishes the written policies and procedures for managing the County's MWBE Program and reaffirms the Board of County Commissioners' commitment to its policy of nondiscrimination through a positive and continuing business process of specific policies and practices designed to ensure equal opportunity in all of the County's contracting opportunities.
- (c) This article is enacted pursuant to authority provided by law, including G.S. 143-128, 153A-12, 153A-13, 153A-121, and 153A-134.

### Sec. 8-132. Policy Statement

It is the policy of the County to provide minorities and women-owned businesses equal opportunities to participate in all aspects of the County's contracting programs, including, but not limited to construction, goods and services consistent with law. It is the policy of the County to prohibit discrimination against any business in pursuit of these opportunities on the basis of race, color, national origin, religion, sex, age, disability, or veteran's status. It is further the policy of the County to conduct its contracting programs so as to prevent such discrimination, correct present discrimination and to resolve claims of such discrimination.

### Sec. 8-133. Administration

- (a) The County Manager, with the advisement of the Purchasing Director, shall implement this article. The County Manager is hereby authorized to take all usual and legal administrative actions necessary to implement this article.
- (b) This article applies to all bids and contracts for the purchase of construction, goods and services that the County enters into after the adoption hereof.
- (c) The County Manager and the Purchasing Director shall consider and implement program initiatives and outreach to assist local MWBE firms including, but not limited to, bonding assistance, building capacity and technical assistance.

### Sec. 8-134. Goals

The County has determined to have an aspirational overall MWBE goal of 25% and to also set project specific goals, when deemed appropriate. The County Manager and Purchasing Director in consultation with the County Attorney's Office shall adjust the goals annually, or from time-to-time, upon review of the County's utilization of MWBE firms verses their availability.

Durham County hereby establishes the following aspirational goals, which may be adjusted from time to time as deemed necessary by the County Manager or designee.

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE Availability % <i>(Median Availability)</i>
Black American	14.6	9.8	10.9	2.8	<b>10.4%</b>
Asian American	1.3	3.0	1.1	.43	<b>1.3%</b>
Hispanic American	4.2	1.8	1.1	.43	<b>1.5%</b>
American Indian	.65	.75	1.0	.5	<b>.70%</b>
White Female	13.8	11.0	9.5	7.1	<b>10.3%</b>
<b>Overall MWBE Participation Goal =</b>					<b>25.0%</b>

### **Sec. 8-135. Certification of MWBEs**

Minority businesses seeking to be counted toward Durham County's minority business participation goals are required to be certified under the North Carolina Department of Administration, Historically Underutilized Business (HUB) certification program or by another certifying agency of the State of North Carolina, such as the North Carolina Department of Transportation.

As a result of North Carolina's legislative Session Law 2007 Senate Bill 320, a new requirement has been created for the State Department of Administration to develop and administer a statewide uniform program for certification of Historically Underutilized Businesses (HUBs) for use by state and local agencies, and to create and maintain a statewide database of certified HUBs.

### **Sec. 8-136 Federal and State Requirements; Conflict Resolution**

Where a federal or state grant agreement or any federal or state law or regulations prevent the full application of this article, this article shall apply to the extent permitted by the applicable agreement, laws, and regulations.

### **Sec. 8-136. - Effective Date**

This article shall remain effective until which time it be deemed repealed by action of the County Commissioners. Unless otherwise provided by an Ordinance enacted by the County Commissioners or by a contract between the County and the other party of the contract, if a legal action is commenced before the repeal of this article to enforce any contractual provision which incorporates by reference any of this article, the rights of parties with respect to such contractual provision shall, for purposes of the legal action, continue in effect notwithstanding the repeal.

This article shall be effective on ratification.

This the 28<sup>th</sup> day of November, 2016.

# Exhibit #4

MWBE Affidavit A- List of Good Faith Effort

**State of North Carolina AFFIDAVIT A - List of the Good Faith Effort**

**COUNTY OF DURHAM**

Affidavit of \_\_\_\_\_  
(Name of Bidder)

**I have made a good faith effort to comply under the following areas checked:**  
(A minimum of 5 areas must be checked in order to have achieved a "good faith effort")

- ☐ 1-Contacted minority businesses that reasonably could have expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ 2-Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☐ 3-Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ 4-Worked 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 business.
- ☐ 5-Attended prebid meetings scheduled by the public owner.
- ☐ 6-Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ 7-Negotiated in good faith with interested minority businesses and did not reject 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-Provided 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. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ 9-Negotiated 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-Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cashflow demands.

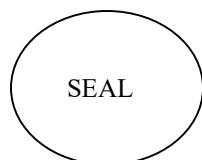
In accordance with GS 143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.  
The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of North Carolina, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_





# Exhibit #5

MWBE Affidavit B- Intent to Perform with Own Workforce

**AFFIDAVIT B – Intent to Perform contract with Own Force**

**State of North Carolina**

**COUNTY OF DURHAM**

Affidavit of \_\_\_\_\_  
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for  
the \_\_\_\_\_ contract.  
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

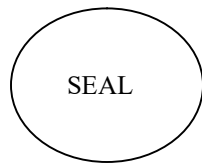
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_

# Exhibit #6

MWBE Appendix E Form

## APPENDIX E

### MWBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Pay Application #: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Total Contract Amount	Amount Paid this Period	Total Payment Amount to date	Percentage of Work Completed	Scheduled Start Date	Scheduled End Date

**\*Minority categories:** Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (I), Female (**F**)

Date: \_\_\_\_\_ Approved/Certified By: \_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**\*THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT\***

# Exhibit #7

## Contractor Performance Evaluation Form



## COUNTY OF DURHAM

### Contractor Performance Evaluation Form (End of Term)

Department: \_\_\_\_\_

Evaluated by: \_\_\_\_\_ Date: \_\_\_\_\_ Telephone#: \_\_\_\_\_

Contractor's Name and Address: \_\_\_\_\_  
\_\_\_\_\_

Contract Type: \_\_Service \_\_Goods \_\_Construction \_\_Architect/Design \_\_Consulting \_\_Other

Description of Services/Goods: \_\_\_\_\_

Contract Period: \_\_\_\_\_ Contract Amount: \_\_\_\_\_

Using a scale of 1 to 5, with 1 being the lowest and 5 being the highest, please rate the performance of the Contractor on the following:

- |    |   |   |   |   |   |   |
|----|---|---|---|---|---|---|
| 1. | Quality of Work   | 1 | 2 | 3 | 4 | 5 |
| 2. | Compliance<br><i>(Example: M/WBE, Safety/Security Measures)</i>                 | 1 | 2 | 3 | 4 | 5 |
| 3. | Timely Performance/Delivery<br><i>(Work performed within contracted period)</i> | 1 | 2 | 3 | 4 | 5 |
| 4. | Effective Communication<br><i>(Contractor responded timely, professionally)</i> | 1 | 2 | 3 | 4 | 5 |
| 5. | Invoicing<br><i>(Example: Accuracy, Timeliness)</i>                             | 1 | 2 | 3 | 4 | 5 |
| 6. | Overall Evaluation Score: _____ <i>(Divide total number by 5)</i>               |   |   |   |   |   |

**OUTSTANDING** (Score above 4.) Performance met and exceeded many of the contractual requirements.

**SATISFACTORY** (Score of 3 to 4.) Performance met contractual requirements. Minor problems were addressed and corrected.

**UNSATISFACTORY** (Score below 3.) Performance did not meet most of the contractual requirements. Contained serious problems and corrective action was ineffective.

☐ Outstanding

☐ Satisfactory

☐ Unsatisfactory

For Items #7, 8 and 9 below, please submit detailed, factual data supporting your observation. This data may be utilized to assist County Departments in their selection of contractors. Continue on separate sheet, if necessary.

7. Comments on Outstanding Performance Rating

8. Remarks on Satisfactory or Unsatisfactory Performance Ratings - ***Discussion with Contractor is advised.***

Contractor Signature: \_\_\_\_\_ Date \_\_\_\_\_

9. Is contractor recommended for future contracts? Please provide comments below.

Evaluation Performed by: \_\_\_\_\_ Date \_\_\_\_\_  
*Department Contract Administrator or Project Mgr*