Guilford County Board of Education
Administrative Procedure

| Descriptor Term: | | Descriptor Code: |
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| PARTICIPATION BY WOMEN AND MINORITY OWNED BUSINESSES | | DK-P |
| Draft Date: March 29, 2007 | Date Issued by the Superintendent: | Revision Dates: |

The Guilford County Schools' Purchasing Department is committed to:

• Getting maximum benefits for the students from the school system's state, local and federal funds carrying out the purchasing process in the best interest of the Guilford County Schools, its students and employees and the taxpayers of Guilford County.

• Acting in accordance with NC General Statutes, local Board of Education policies and procedures, and recognized professional purchasing practices.

• Providing a climate of fair and open competition for all qualified vendors.

A. For the purposes of this procedure, the following definitions shall apply:

1. "Bidder/Participant" – Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

2. "Contract" – A mutually binding legal document which defines a business relationship or any modification at the level of performance which obligates the seller to furnish supplies, equipment, materials or services, knowledge in performing construction and procurements, and obligating the buyer to pay for services.

3. "Contractors" – Any person, firm, partnership, corporation, association, or joint venture awarded a contract purchase or service agreement at any level with GCS or has contracted with the GCS to perform construction work or repair.

4. "Discrimination" – To distinguish, differentiate, separate, or segregate solely on the basis of age, race, religion, sex, national origin, handicap or veteran's status.

5. "Equipment" – Includes materials, supplies, commodities, apparatus.

6. "Goal" – An objective, expressed numerically to evaluate the type and amount of

public contract awards and performance of M/WSEDBEs.

7. "Good Faith Effort" – An activity performed by bidders to assure the participation of M/WSEDBEs in contracts covered under this plan.

8. "Joint Venture" – A legal merger of two or more separately owned businesses/firms for the purpose of submitting a single bid, to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills or knowledge.

9. "LEA" – Local Education Administration unit, thusly Guilford County Schools (GCS).

10. "Minority or Women or Socially and Economically Disadvantaged Business Enterprises (M/WSEDBE)" – A business enterprise owned and controlled at a minimum of 51% by one or more members of a group defined as a minority or women. A business certified as an M/WSEDBE will show evidence of ownership and management interests and the daily business operations are real and continuing not created solely to meet the M/WSEDBE requirements.

11. "Owner" – The Guilford County Board of Education (BOE).

12. "Subcontractor" – A firm under contract with the prime contractor for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract. Work subcontracted in an emergency and which could not have been anticipated is excluded as a part of this program.

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

14. "Verifiable Goal" –

    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 M/WSEDBEs for participation in contracts awarded.

    b. For purposes of separate 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 and selection of M/WSEDBEs for participation in the contract awarded; and

c. The required actions must be documented in writing by the prime contractors to the GCS.

B. GCS's Duties

1. Identification/Certification of Minority, Women and Socially and Economically Disadvantaged Business Enterprises

a. The school system shall affirmatively seek out and gain knowledge of minority and women-owned business enterprises (hereinafter M/WSEDBE) in the construction trades.

b. The school system shall assist in certifying the eligibility of M/WSEDBE and joint venture involving M/WSEDBEs.

c. The school system will maintain a list of products and services provided by M/WSEDBEs.

d. Attend the scheduled prebid conference.

e. At least 10 days prior to the scheduled day of bid opening, notify M/WSEDBEs that have requested notices from the GCS for public construction or repair work and M/WSEDBEs that have indicated to the M/WSEDBE coordinator's office an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall 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 owner's organization who will be available to answer questions about the project.
4. Where bid documents may be reviewed.
5. Any special requirements that may exist.

f. Utilize other media, as appropriate, likely to inform potential M/WSEDBEs of the bid being sought.

g. Maintain documentation of any contacts, correspondence, or conversation with M/WSEDBEs made in an attempt to meet the goals.

h. Review jointly with the designer all requirements of G.S.143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders' proposals for identification of the M/WSEDBEs 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 to the Guilford County Board of Education.

i. Evaluate and analyze documentation to determine that a good faith effort has been achieved for M/WSEDBE utilization prior to recommendation of award to Guilford County Board of Education.

j. Review prime contractor's pay applications for compliance with M/WSEDBE utilization commitments prior to payment.

k. Make documentation showing evidence of implementation of GCS's responsibilities available for review by State Construction Office and HUB Office and other interested parties upon request.

C. Minority Business Subcontractor Goals (Click here to view/print the affidavits and appendix referenced in this section.)

1. The goals set for participation by M/WSEDBEs as subcontractors have been set at 12.46%.

2. The bidder must identify on its bid the MWSEDBE that will be utilized on the project with corresponding total dollar value of the bid and an affidavit listing good faith efforts (Section I of Affidavit A) or an affidavit of self-performance of work (Affidavit B), if the bidder will perform work under contract by its own workforce, as required by G.S.143-128.2(c) and G.S.143-128.2(f).

3. The bidder must complete Section II of Affidavit A and attach Affidavit A to its bid, including a description of the portion of work to be executed by M/WSEDBE expressed as a percentage of the total contract price, which is equal to or more than the applicable goal, OR

4. Complete Section III of Affidavit A and attach Affidavit A to its bid, including a description of the portion of work to be executed by M/WSEDBE expressed as a percentage of the total contract price, with documentation of Good Faith Effort, if the percentage is not equal to the applicable goal, OR

5. Provide Affidavit B, which includes sufficient information for GCS to determine that the bidder does not customarily subcontract work on this type project.

The above information must be provided as required. The apparent lowest responsible, responsive bidder must provide the documentation required by Affidavit A with its bid or within 72 hours of notification of being the apparent lowest responsible, responsive bidder, as specified by Affidavit A. The apparent lowest responsible, responsive bidder also may make additions to or deletions from Affidavit A within 72-hours of notification of being the apparent lowest responsible, responsive bidder however, such additions or deletions must be accompanied by a written justification for

such changes. Failure to submit these documents/information is grounds for rejection of the bid.

D. Communications with M/WSEDBEs

GCS shall provide information to M/WSEDBEs about the GCS's construction program. This shall be accomplished by:

1. Sending a notice to each M/WSEDBE engaged in any aspect of school construction that is identified and certified for each school construction project that is advertised for bids;

2. Insuring that prospective M/WSEDBE bidders and subcontractors have access to bidding documents; and

3. Furnishing M/WSEDBE subcontractors with the name of prospective bidders on a project upon request, and providing prospective bidders with the schools system's list of known M/WSEDBEs.

E. Designer

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

Attend the scheduled pre-bid conference to assist in the explanation of M/WSEDBEs requirements to the prospective bidders.

Assist the owner to identify and notify prospective M/WSEDBE prime and subcontractors of potential contracting opportunities.

Maintain documentation of any contacts, correspondence, or conversation with M/WSEDBEs made in an attempt to meet the goals.

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 M/WSEDBE 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.

During construction phase of the project, review "M/WSEDBE Documentation for Contract Payment" – (Appendix E) for compliance with M/WSEDBE utilization commitments. Submit Appendix E form with monthly pay applications to the owner.

Make documentation showing evidence of implementation of Designer's responsibilities available for review by State Construction Office and HUB Office, upon request.

F. Anticipated Assurances from Contractors

1. Upon adoption of its verifiable goal GCS is expected to require bidders on projects to provide assurances in writing that they will make a good faith effort to solicit M/WSEDBEs as subcontractors should they be awarded the construction contract. Bidders shall provide the following information to GCS and any other information requested in the attached forms:

    a. Provide applicable GCS Affidavit A or B on bid date with back up information for any requested items as specified by Affidavit A or B. Failure to submit this information shall be deemed non responsive and subject to rejection of bid.

    b. Participating (Identification of M/WSEDBE Participation form)

    c. A description of the work each named M/WSEDBE will perform; (AFFIDAVIT A, Section II)

    d. The dollar amount of participation by each M/WSEDBE (AFFIDAVIT A, Section II) and

    e. Copies of any advertisements ~~or~~ and correspondence the bidder has used to attract M/WSEDBE subcontractors.

2. A contractor's good faith effort to included but are not limited to involve M/WSEDBEs in the project can be demonstrated by using, among other factors, the following:

    Contacted five M/WSEDBEs that reasonably could have been expected to submit a quote and that were known to the contractor, or available on approved lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed. "Contact" means contact by letter, fax, e-mail or other means to a viable and active address. Contractor must attach evidence of this contact to bid document to Affidavit A and submit with its bid.

    Made the construction plans, specifications and requirements available for review by prospective M/WSEDBEs or providing these documents to them at least 10 days before the bids are due.

    Broken down or combined elements of work into economically feasible units to facilitate M/WSEDBE participation.

    Worked with M/WSEDBE trade, community, or contractor organizations identified by the M/WSEDBE Coordinator's Office and included in the bid documents that provide assistance in recruitment of M/WSEDBEs.

Attended pre-bid meetings scheduled by the public owner.

Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.

Negotiated in good faith with interested M/WSEDBEs and did not reject them as unqualified without discussion with entity a sound reasons based on their capabilities. Any rejection of an M/WSEDBE based on lack of qualification should have the reasons documented in writing and submitted with Affidavit A with the bid.

Provided assistance to an otherwise qualified M/WSEDBE 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 M/WSEDBEs in obtaining the same unit pricing with the bidder's suppliers in order to help M/WSEDBEs in establishing credit.

Negotiated joint venture and partnership arrangements with M/WSEDBE participation on a public construction or repair project when possible.

Provided quick pay agreements and policies to enable M/WSEDBE and suppliers to meet cash-flow demands.

3. Failure to submit backup information for any item required by Affidavit A may result in the bid being declared non responsive and subject to rejection.

G. M/WSEDBE Responsibilities

M/WSEDBE firms do not have to be certified to be listed on the bid documents; however, M/WSEDBE firms that have been awarded contracts will not be credited towards the Bidder's M/WSEDBE Participation Plan unless they are certified with the state, any local governmental entity, the Triad Minority Supplier Development Council and Carolina Minority Supplier Development Council.

a. M/WSEDBEs should make every effort to establish contacts and relationships with contractors for potential future business, including attending pre-bid conferences and subscribing to industry and trade journals.

b. M/WSEDBEs should also document all contact and communications made with contractors above so as to be able to assist the Grievance Designee in determining whether a complaint lodged by a M/WSEDBE against a bidder for failure to use good faith efforts is valid.

c. In addition, M/WSEDBEs who are contacted by GCS or bidders should respond promptly as to whether or not they wish to submit a bid.

d. All M/WSEDBEs are strongly encouraged to seek certification. M/WSEDBEs who are not certified at the time the firm commits to provide services, should apply for certification with the state, any local government entity, Triad Minority Supplier Development Council or Carolina Minority Supplier Development Council within thirty (30) days. If the M/WSEDBE that fails to submit an application within the specified time frame or if the M/WSEDBE is not granted certification by any of these approved certification programs that M/WSEDBEs contract dollars will not be counted as M/WSEDBE participation.

e. M/WSEDBEs are urged to take advantage of appropriate technical assistance and training when it is available.

H. Penalties for Contractor Noncompliance

1. The low bidder or bidders on a school construction project must provide an a assurance in writing to the BOE prior to the acceptance of their bid that they have met, intend to meet or have a good faith effort to meet the verifiable goal for M/WSEDBE participation adopted by the BOE.

2. When deciding whether or not a bidder has made a good faith effort, the BOE shall consider the criteria set forth above; the number of certified M/WSEDBEs available and capable of performing the work and the amount of other work being awarded or performed in the market area of the GCS.

3. Failure of a low bidder to meet the M/WSEDBE verifiable action goal adopted by the BOE or to make a good faith effort to meet the goal shall result in the bid being considered as non-responsive and being rejected.

4. Failure to comply with the requirements of this GCS Good Faith Effort policy may lead to the contractor's disqualification from bidding on and receiving other GCS contracts.

5. In the event that any contractor or subcontractor fails to provide requested records for inspection, such failure shall constitute a material breach of the contract and will permit the imposition of remedies noted in this section.

I. Criteria for Certification of Minority, Women and Socially and Economically Disadvantaged Business Enterprises

1. A M/WSEDBE is a business, which is at least 51% owned and controlled by M/WSEDBEs. A M/WSEDBE is bona fide only if the M/WSEDBE ownership interests are real and continuing and not created solely to meet the M/WSEDBE requirement. In addition, the M/WSEDBE must itself perform satisfactory work or services or provide supplies under the contract and not act as a mere conduit.

2. The term M/WSEDBE means a person who is a citizen or lawful permanent resident of the United States and who is:

   a. African-American, that is, a person having origins in any of the original 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 Island, regardless of race;

   c. Native-American, that is, a person having origins in any of the original peoples of North America;

   d. Asian-American, that is, persons having origin in any of the countries of the Far East, Southeast Asia, or the Indian areas; or female.

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

3. The term "owned and controlled" means a business, which is a: 1) sole proprietorship legitimately owned by a person who is a minority or female; 2) a partnership or joint venture controlled by minorities and/or women, and in which at least 51% of the beneficial ownership interests legitimately are held by minorities and/or females, and in which at least 51% of the voting stock or interested 51% of the beneficial ownership interests are legitimately held by minorities and/or females. In addition, these persons must control the management and operations of the business on a day-to-day basis.

4. The Superintendent shall appoint an M/WSEDBE Certification Review Committee to resolve any and all disputes concerning a business's eligibility for certification as an M/WSEDBE. The Committee shall include at least one member from the Triad Minority Supplier Development Council, one from the Better Business Bureau and one representative from the Greensboro and High Point Chambers of Commerce.

J. Competitive Bids

1. Nothing contained herein is to be construed as to require the GCS or contractors to purchase supplies and equipment or award contracts to M/WSEDBEs whom do not

submit the lowest responsible bid.

K. Grievance Procedures

It is the policy of this BOE that disputes, which involve a person's rights, duties or privileges, should be settled through informal procedures. Any participant feeling himself/herself aggrieved by implementation of the MWSEDBE Program may present such grievance to the Superintendent or his designee. The grievance (internal complaint resolution) procedure is a resource available to all contractors, subcontractors, and vendors doing business with the Guilford County Schools under the M/WSEDBE Program. Grievances related to the administration of the M/WSEDBE Program will be processed as follows:

1. The grievance shall first be discussed with the responsible operating department. If the grievance is not resolved, exercise item #2.

2. The grievance (complaint) must be reported in writing, including a brief description and supporting documentation and evidence to the Superintendent's designee at 712 N. Eugene Street, Greensboro, North Carolina, 27401.

3. The Superintendent's designee will review the basis and the issue(s) of the complaint and may request additional supporting evidence. A response to the grievance will be completed within fifteen (15) working days unless circumstances mandate otherwise. Parties involved will be notified of any and all delays in processing the grievance.

4. Any participant not satisfied with the decision of the Superintendent's designee may available himself/herself or any remedies available under the Federal, State and Local law.

To that end, M/WSEDBE disputes arising under these guidelines should be resolved.