

TABLE OF CONTENTS

<u>ARTICLE NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
I	Application	1
II	Minority Business Enterprise Goals	1
III	Subcontractor Payment Requirements	2
IV	Program Compliance Requirements	3
V	Checklist for Review of Good Faith Efforts	4
VI	MBE Utilization Commitment (Form 1)	5
VII	Contractor Certification Regarding Subcontracting Practices (Form 2)	6
VIII	MBE Letter of Intent (Form 3)	7
IX	Guidelines for Recruitment and Selection of MBE	8

ARTICLE I: APPLICATION

The requirements of the Metropolitan Sewerage District (DISTRICT) Guidelines for Recruitment and Selection of Minority Businesses for Participation in Sewage Construction Contracts are hereby made a part of these contract documents. These requirements shall apply to all contractors regardless of ownership. A copy of the Metropolitan Sewerage District Guidelines for Recruitment and Selection of Minority Businesses for Participation in Sewage Construction Contracts is attached:

ARTICLE II: MINORITY BUSINESS ENTERPRISE GOALS

The goal for Minority Business Enterprise (MBE) participation on DISTRICT projects has been set at **Twelve (12)** percent.

The Bidder shall provide, with the bid, documented proof in the form of MBE Form 1, MBE UTILIZATION COMMITMENT, that these goals have been met or exceeded;

OR

If minority participation is less than Twelve (12) percent, provide with the bid, 1) the Checklist for Review of Good Faith Efforts, and 2) MBE Form 1 (MBE UTILIZATION COMMITMENT) identifying the amount of MBE participation.

NOTE: If the Bidder awards ALL subcontracts to MBE's, the Checklist for Review of Good Faith Efforts listed above will not be required; however, this shall be noted on MBE Form 1.

OR

If there is no minority participation, provide with the bid, MBE Form 2, CERTIFICATION REGARDING SUBCONTRACTING PRACTICES, and upon request, information sufficient for the DISTRICT to determine that the Bidder does not customarily subcontract work on this type of project.

Failure to provide this evidence may result in rejection of the bid and award to another responsible, responsive bidder.

NOTE REGARDING MBE FORM 3:

Bidders employing MBE's shall provide with the bid, or within 72 hours from the receipt of bids, a Letter of Intent (**MBE Form 3**), complete with a description of the scope of services and dollar value for each MBE firm proposed for use in this contract. Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to another responsible, responsive bidder. The DISTRICT reserves the right to waive any irregularities in MBE documentation if they can be resolved prior to award of the contract, and the DISTRICT finds it to be in its best interest to do so and award the contract.

Section VII - Minority Business Enterprises

ARTICLE III: SUBCONTRACTOR PAYMENT REQUIREMENTS

North Carolina General Statute 143-134.1 states that the percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the DISTRICT to the prime CONTRACTOR. Failure to comply with this provision shall be considered a breach of the contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The CONTRACTOR shall provide an itemized statement of payments to each MBE subcontractor with each request for payment or before final payment is processed.

(THIS SPACE IS INTENTIONALLY BLANK)

ARTICLE IV: PROGRAM COMPLIANCE REQUIREMENTS

All written statements, certifications or intentions made by the Bidder shall become a part of the agreement between the CONTRACTOR and DISTRICT for performance of this contract. Failure to comply with any of these statements, certifications or intentions, or with the MBE Guidelines shall constitute a breach of the contract. A determination by the DISTRICT that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false or incomplete, shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the DISTRICT whether to terminate the contract for breach.

In determining whether a CONTRACTOR has made good faith efforts to include minority participation, DISTRICT will evaluate all efforts made by the CONTRACTOR and will determine compliance. DISTRICT may take into account any or all of the following:

1. Whether the Bidder attended any pre-bid meetings scheduled by the DISTRICT;
2. Whether the Bidder advertised in general circulation, trade association, and minority-focused media concerning the subcontracting opportunities;
3. Whether the Bidder provided written notice to a minimum of three MBE's for each portion of the work subcontracted, that their interest in the contract was being solicited in sufficient time to allow the MBE's to participate effectively;
4. Whether the Bidder followed up initial solicitations of interest by contacting MBE's to determine with certainty whether the MBE's were interested;
5. Whether the Bidder selected portions of the work to be performed by MBE's in order to increase the likelihood of meeting MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation);
6. Whether the Bidder provided interested MBE's with adequate information about the Plans, Specifications and requirements of the contract;
7. Whether the Bidder negotiated in good faith with interested MBE's and not rejecting MBE's as unqualified without sound reasons based upon a thorough investigation of their capabilities.

Section VII - Minority Business Enterprises

ARTICLE V - CHECKLIST FOR REVIEW OF GOOD FAITH EFFORTS

(Must be submitted with Bid under certain conditions – See Article II)

1. Have you attended any of the pre-bid conferences scheduled?
() Yes () No () None Scheduled
2. Have you advertised for at least three (3) consecutive days in general circulation, trade association, construction and minority focused media regarding subcontracting opportunities with your firm at least fifteen (15) days prior to bid opening on formal projects?
() Yes () No (Show how and attach proof)
3. Have you utilized the services of state and/or federal minority business assistance, minority contractors' group, available minority community organizations, , and other organizations that provide assistance in the recruitment and placement of minorities and women? () Yes
() No (Show how and attach proof)
4. Have you provided interested MBE's with adequate and equal access to information about the plans, specifications and requirements of the contract and insurance or licenses?
() Yes () No
5. Did you provide written notice to all appropriate certified MBE's within the identified subcontracting / supplier / service categories that their interest in the contract was being solicited and in sufficient time to allow the MBE'S to participate? Additionally, did the solicitation contain a description and location of the project, the work for which the subcontractors' bids are being solicited, date, time and location where the subcontractors' bids are to be submitted, locations where bidding documents could be reviewed?
() Yes () No
6. Have you selected portions of the work to be performed by MBE's in order to increase the likelihood of meeting MBE's goals including breaking it into economically feasible units where appropriate?
() Yes () No
7. Have you designated someone in your firm to be the single contact for MBE's that may have questions, etc.? () Yes () No (Please indicate name of person and title)
_____.
8. Did you follow up initial solicitations of interest by contacting MBE's to determine with certainty whether they are interested in bidding? () Yes () No
9. Did you negotiate in good faith with interested MBE's, not rejecting MBE's as unqualified without sound reasons based on a thorough investigation of their capabilities?
() Yes () No (Show how)

COMPANY NAME OF BIDDER:

Signature

Title

ARTICLE VI: MBE FORM 1

(Must be submitted with Bid if any subcontractors are used.)

MBE UTILIZATION COMMITMENT

We, _____, do certify that on the

Elk Mountain Place Sanitary Sewer Rehabilitation, Project No. 2010094

that we will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. MBE's will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. If the Bidder intends to subcontract, this form must be completed regardless of the amount or lack of participation attained.

<u>Name and Phone</u> <u>Number of Firm</u>	<u>Indicate</u> <u>MBE</u>	<u>Description</u> <u>of Work</u>	<u>% of Contract</u>
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The undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the **Metropolitan Sewerage District**. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: _____

(Name of Bidder)

By: _____
Title: _____

ARTICLE VII: MBE FORM 2

(Must be completed with Bid if MBE Form 1 is not submitted)

CERTIFICATION REGARDING SUBCONTRACTING PRACTICES

We, _____, hereby certify that it is our intent to perform
(Name of Bidder)

100% of the work required for the **Elk Mountain Place Sanitary Sewer Rehabilitation, Project No. 2010094.**

In making this certification, the Bidder states the following:

1. 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
2. That, if requested, the Bidder agrees to submit the following information after bid and before the award of the contract:
 - * List of the scope of services involved in this project.
 - * List of previous projects of this type that Bidder has performed with his/her forces.
 - * Payrolls from the above-mentioned jobs which illustrate Bidder's employee's job classifications needed to perform the elements of the work on the Project or a breakdown of Bidder's entire work force which illustrates the number of employees in each job classification.
 - * Name and phone number of the Field Supervisors for these jobs.
 - * List of equipment Bidder owns that has been used on previous projects.
 - * Copies of lease agreements for equipment that was leased.

The Bidder agrees to provide any additional information requested for the statement contained in Paragraph Number 1 above.

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 Bidder)

By: _____

Title: _____

ARTICLE VIII: MBE FORM 3

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR
OR
PROVIDE MATERIALS OR SERVICES**

SUBJECT: Elk Mountain Place Sanitary Sewer Rehabilitation, Project No. 2010094

TO: _____
(Name of Prime Bidder)

The undersigned intends to perform work in connection with the above project as a Minority Business Enterprise.

The MBE status of the undersigned **is / is not** (circle one) certified by the Office of Historically Underutilized Businesses for the State of North Carolina. The DISTRICT encourages all qualified MBE's to become certified by this office.

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials or services to be performed or provided):

at the following price: _____.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>Items</u>	<u>Projected Commencement Date</u>	<u>Projected Completion Date</u>
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Subcontracting at any tier must be reported and is subject to all MBE compliance requirements. This form shall be used for MBE subcontracting at any level.

Date: _____

Name of Minority Contractor

By: _____

Title: _____

ARTICLE IX: THE METROPOLITAN SEWERAGE DISTRICT
OF BUNCOMBE COUNTY, NORTH CAROLINA
GUIDELINES FOR RECRUITMENT AND SELECTION OF
MINORITY BUSINESSES FOR PARTICIPATION
IN SEWAGE CONSTRUCTION CONTRACTS

These guidelines establish goals for minority participation in single-prime and separate-prime sewage construction contracts. Legislation provides that public bodies shall have a verifiable percentage goal for participation by minority businesses in the total value of work for each project for which a contract or contracts are awarded. These guidelines are published to accomplish that end.

SECTION 1: INTENT AND APPLICATION OF GUIDELINES

It is the intent of these guidelines that The Metropolitan Sewerage District of Buncombe County, North Carolina, (DISTRICT) as awarding authority for sewage construction projects, and the contracts and subcontractors performing the construction contracts awarded, shall make a good faith effort to attain a verifiable goal of 12% participation by minority businesses in each construction project. Nothing contained in these guidelines shall be construed to require DISTRICT to award contracts to or to make purchases of materials or equipment from minority-business contractors who do not submit the lowest responsible responsive bid or bids.

These guidelines shall apply to all contracts for the erection, construction, alteration, or repair of any buildings or other construction projects when the entire cost of such work shall exceed \$100,000.00.

SECTION 2: DEFINITIONS

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

Section VII - Minority Business Enterprises

2. Minority Business - Means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one (51%) of the stock is owned by one or more minority persons; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons who owns it.
3. District - The Metropolitan Sewerage District of Buncombe County, North Carolina.
4. Bidder - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
5. Contract - A mutually binding legal relationship or any modification thereof obligating the Contractor to furnish labor, equipment, materials, or services for the erection, construction, alteration, or repair of any buildings or other construction projects and obligating the DISTRICT to pay for them.
6. Contractor - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the DISTRICT to perform a Contract to which these guidelines apply.
7. Subcontractor - Any person, firm, partnership, corporation, association, or joint venture under contract with a CONTRACTOR for supplying materials or labor, equipment, materials or services. 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 part of this program.
8. Verifiable goal - means:
 - a. For purposes of separate-prime contract system, that the DISTRICT has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and solicitation of minority businesses for participation in contracts awarded; and
 - b. For purposes of separate-prime contract system, that the DISTRICT has adopted written guidelines specifying the actions that the prime CONTRACTOR must take to ensure a good faith effort in the recruitment and solicitation of minority businesses for participation in contracts awarded; the required actions must be documented in writing by the CONTRACTOR to the DISTRICT.

SECTION 3: RESPONSIBILITIES

1. The State of North Carolina has an established program in which it lists certified minority and women businesses persons who may qualify as Minority or Woman-owned Business Enterprises (MBE/WBE). The State of North Carolina accepts certification through the *Office for Historically Underutilized Businesses* (www.doa.state.nc.us/hub). Current information on the program, certification and searching for minority vendors can be found at this website.
2. DISTRICT/The Metropolitan Sewerage District of Buncombe County, North Carolina.

Under the single-prime contract system and the separate-prime contract system, the DISTRICT shall:

- a. Fully explain the bidder's responsibilities and this program at the pre-bid conference, if scheduled, conducted by the representative of the DISTRICT. Said conference will be open to all known and anticipated prime contractors, subcontractors, material suppliers, and other bidders.
 - b. Be responsible for reviewing the apparent low bidder's compliance with the items listed in the proposal that must be complied with, if the bid is to be considered responsive and responsible. The DISTRICT reserves the right to reject any and all bids and to waive informalities.
 - c. Identify or determine the work areas of a contract where MBE's may have an interest in performing contract work.
3. Prime Contractor(s)

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

- a. Attend the scheduled pre-bid conference.
- b. Identify or determine those work areas of a subcontract where MBEs may have an interest in performing subcontract work.
- c. Notify certified MBE's of potential subcontracting opportunities listed in the proposal at least ten (10) days prior to the scheduled day of bid opening. The notification will include the following:
 - (1) A description of the work for which the sub-bid is being solicited.
 - (2) The date, time and location where sub-bids are to be submitted.
 - (3) The name of the individual within the company who will be available to answer questions about the project.
 - (4) Where bid documents may be reviewed.

Section VII - Minority Business Enterprises

- (5) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

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

- d. During the bidding process, comply with the DISTRICT's requirements listed in the contract documents for minority participation.
- e. Submit with the bid a description of that portion of the work to be executed by MBE's expressed as a percentage of the total contract price.
- f. Upon being named the apparent low bidder, provide the necessary documentation as listed in the contract documents provided by the DISTRICT. Failure to comply with procedural requirements as defined in contract documents may render the bid as non-responsive and may result in rejection of the bid and award to the next lowest responsible and responsive bidder.
- g. During the construction of a project, if it becomes necessary to replace an MBE subcontractor, advise the DISTRICT.
- h. If during the construction of a project additional subcontracting opportunities become available, make a good faith effort to solicit bids from MBE's.

4. MBE Responsibilities

While MBE's are not required to become certified in order to participate in this program, it is recommended that they become certified in the State of North Carolina by the N.C. Office for Historically Underutilized Businesses and should take advantage of the appropriate technical assistance that is made available. In addition, MBE's who are contacted by the DISTRICT or bidders should respond promptly whether or not they wish to submit a bid.

SECTION 4: DISPUTE PROCEDURES

It is the policy of the Metropolitan Sewerage District of Buncombe County, North Carolina, that disputes with another person that involve a person's rights, duties or privileges, should be settled through informal procedures. To that end, MBE disputes arising under these guidelines should be resolved, if possible, by informal proceedings arranged by the General Manager or his designee.

SECTION 5: EFFECTIVE DATE

These guidelines became effective on July 17, 2002. Copies of these guidelines may be obtained from the MSD Construction Office, 2028 Riverside Drive, Asheville, North Carolina, 28804; telephone number (828) 254-9646.

Section VII - Minority Business Enterprises

SECTION 6: GUIDELINES AND COMPLIANCE DOCUMENTATION TO BE PART OF CONTRACT DOCUMENTS

These guidelines will be included in the contract to each construction bid package and provisions for documenting contractual compliance in providing for MBE participation in the construction program will be included in each construction bid package.