



AUDIT REPORT

Minority Business Participation in Construction Contracts



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GASTON COUNTY INTERNAL AUDIT
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Minority Business Participation in Construction Audit

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Minority Business Participation in Construction Audit

EXECUTIVE SUMMARY

WHY THIS AUDIT?

Annual risk assessment and the current political and social climate globally and especially within our nation make this Minority Business Participation in Construction a timely audit.

AUDIT OBJECTIVES

- Determine how the County has performed related to Board-established goals on construction contracts
- Determine the County's compliance with North Carolina State Statutes related to minority participation in construction contracts

10.0%
Minority Business
Participation
Goal

WHAT AUDITORS REVIEWED

10 Contracts* → FYs 2016-2020 → Each Contract \$ Value > \$300,000

* These 10 contracts are valued at over \$30M or 85% of the value of the 18 contracts they were selected from.

WHAT AUDITORS NOTED



FINDINGS SUMMARY

| | | |
|--|--|---|
| | HIGH RISK | 4 |
| | 1.No Formal Outreach Plan Has Been Established | |
| | 2.Inadequate Review of Required NC HUB Forms | |
| | 3.No Subcontractor Documentation | |
| | 4.Incomplete HUBSCO Reporting | |
| | MEDIUM RISK | 0 |
| | LOW RISK | 0 |

CONCLUSION

The County has not been in compliance with several Board-established requirements or state statutes related to minority participation in construction projects. Establishing a formal minority participation program will enable the County to ensure compliance as well as increase its efforts to achieve the established participation goal of 10%.

MOVING FORWARD

Training, establishing controls and oversight, and implementing leading practices will result in a compliant minority business participation in construction contract process and will provide outreach and encouragement for participation from the MWBE community.

* Auditors identified 22 total construction contracts from 2016-2020 that were greater than \$300,000 total contract value. Four (4) of those were grant funded, requiring federal DBE participation, and removed from sample consideration. Of the remaining 18, auditors selected 10 for the testing sample.

Minority Business Participation in Construction Audit

FINDINGS SUMMARY

High Risk



FINDING #1: FORMAL OUTREACH PLAN HAS NOT BEEN ESTABLISHED

COSO Principles: Control Environment #s 2, 3, and 5; Risk Assessment #s 6, 7, and 8; Control Activities #s 10, 11, and 12; and Information and Communication #14

Criteria: COSO; NC General Statutes 143-128.2 and 143-131; GC BOCC Resolutions 1990-121 and 2021-099; and Leading Practice

Causes:

- Lack of Public Works' oversight internally and externally
- No internal policies and procedures related to the implementation and administration of an Outreach Plan
- Inadequate staffing resources in Public Works
- The "way we've always done it" culture

Effects:

- Non-compliance with NC General Statutes and BOCC Resolution
- No efforts made to educate, recruit, or network between minority businesses and nonminority businesses
- Missed opportunities with qualified minority-owned businesses that are available to perform work
- Aspirational goal not met

Recommendations:

- The County Manager should identify a Gaston County employee to serve as the County's Minority Business Outreach Coordinator
- Establish a formal MWBE Outreach Program that encompasses the objectives set forth in the Board of Commissioners' approved Outreach Plan, revised as of April 27, 2021
- At least annually, the Minority Business Outreach Coordinator or Public Works Director should provide an update to the BOCC on the County's progress towards its verifiable goal percentage
- With each proposed Board Action that includes an MWBE goal component, provide the committed, certified MWBE % as part of the Board Action
- Work with the Diversity, Equity, and Inclusion Department to conduct periodic recruiting/networking events

Adding: Compliance, Accountability, Transparency, Efficiency



FINDING #2: INADEQUATE REVIEW OF REQUIRED NC HUB FORMS

COSO Principles: Control Environment #s 2, 3, 4, and 5; Risk Assessment #8; Control Activities #s 10 and 12; and Information and Communication #s 13, 14, and 15

Criteria: COSO; NC General Statutes 143-128 (repealed), 143-128.2, and 143-129; GC BOCC Resolutions 1990-121 and 2021-099; and Leading Practice

Causes:

- Lack of awareness on Public Works' staff and prime contractors' behalves to recognize and understand statute revisions since 1990 and their accompanying required documentation and appropriate responsive submission timeframes during all phases of the project
- Lack of oversight by Public Works to ensure all required documentation is present in all stages of the project and allowing designer or architect to assume oversight responsibilities
- Lack of verification of Good Faith Efforts (GFE) by Public Works and other information provided by prime contractors
- No internal policies and procedures; County procurement policy and procedures outdated
- The "way we've always done it" culture

High Risk



FINDING #2: INADEQUATE REVIEW OF REQUIRED NC HUB FORMS (continued)

Effects:

- Non-Compliance with NC General Statutes
- Aspirational goal not met
- Awarding contracts to bidders that did not complete and submit all required documentation, therefore making them unresponsive
- Creates confusion, discrepancies, and inability to verify which subcontractors work the projects (original or substitutions), if they are NC HUB certified, and how much is paid to them
- Loss of internal control components of project management, including oversight and monitoring
- Risk of fraud is increased without monitoring and oversight controls in place

Recommendations:

- Establish criteria for GFE documentation that will be used to determine the responsiveness of bid
- Establish internal policies and procedures, including checklists, for each type of contract and what forms are expected and when during the project
- Educate contractors on the appropriate process as well as what GFE documentation to use
- Verify all MWBE subcontractors identified by bidders are NC Hub certified when reviewing Affidavits C and D and offer immediate assistance to become certified, if not (for participation to count)
- As part of the review of pay applications, Public Works should confirm that appropriate MWBE documentation is included, complete, and reasonable
- Finance should be involved in the process from project initiation to ensure compliance with all applicable procurement laws
- Finance should review procurement policy to determine if any updates are needed

Adding: Compliance, Accountability, Transparency, Efficiency



FINDING #3: NO SUBCONTRACTOR DOCUMENTATION

COSO Principles: Control Environment #s 2, 3, 4, and 5; Risk Assessment #7; Information and Communication #15; and Control Activities #s 10 and 12

Criteria: COSO and NC General Statute 143-128.2

Causes:

- Lack of understanding on Public Works' and prime contractors' behaviors to complete and submit required documentation, approval, and their appropriate responsive timeframes
- Lack of oversight on Public Works' behalf to ensure submission or request

Effects:

- Non-compliance with NC General Statute
- Creates confusion, discrepancies, and inability to verify which subcontractors perform work
- Lack of control over project management
- Potential loss of MWBE requirements, including GFE, which is required for most substitutions

Recommendations:

- Public Works should create policies, procedures, and a checklist to (but not limited to):
 - Ensure proper subcontractor documentation is submitted within proper timeframe following bid award
 - Ensure all appropriate documentation and approval is satisfied if any substitutions of subcontractors occur
 - Reconcile any discrepancies with subcontractors noted on any HUB forms or subcontractor documentation

Adding: Compliance, Accountability, Transparency, Efficiency

High Risk



FINDING #4: INCOMPLETE REPORTING

COSO Principles: Control Environment #s 2, 3, 4, and 5; Risk Assessment #7; Control Activities #s 10, 11, and 12; and Information and Communication #14

Criteria: COSO; NC General Statutes 143-128.3 and 143-131; GC BOCC Resolution 1990-121; and Leading Practice

Causes:

- Lack of Public Works' oversight
- Inadequate number of persons trained in HUBSCO reporting and awareness of which types of contracts are reported
- Project closeout has been inconsistent and in some cases, not timely
- No internal policies and procedures

Effects:

- Non-compliance with NC General Statutes
- HUBSCO reports are not being submitted as required by NC General Statutes 143-128.3 and 143-131. or are being inaccurately completed
- Aspirational goal not met

Recommendations:

- File/submit all required and recommended HUBSCO reports per NC DOA
- Public Works should create internal policies and procedures to outline responsibilities for and timing of reporting and create a checklist for each project, including reporting
- Public Works should train at least one backup within the department and also one employee from each department outside of Public Works that manages their own construction contracts.

Adding: Compliance, Accountability, Transparency, Efficiency



Minority Business Participation in Construction Audit BACKGROUND

MINORITY BUSINESS PARTICIPATION IN GASTON COUNTY:

North Carolina (NC) recognizes both historically-underutilized businesses along with minority and/or women-owned businesses/enterprises; for the purposes of this report the single term, MWBE, will encompass both. Since 1989, the NC General Assembly has required local governments to promote MWBEs through various means, including aspirational goals for MWBE participation in construction-related contracts. The state manages their MWBE efforts via the NC Department of Administration's (DOA) Office of Historically Underutilized Businesses (HUB). Overall, NC has two main types of contracts that require bids, formal and informal, typically with an established dollar amount as the threshold.* In NC, construction-related contracts face two main thresholds: one for informal vs formal bidding and the other for minority business participation goals. Note that thresholds involve the total dollar value of work. While informal bidding for construction-related contracts ranges from \$30,000-\$500,000, the threshold for MWBE goals is \$300,000. For the purposes of our audit and following the leading practice of employing the stricter restrictions for a lesser amount to be safe, we consider \$300,000 as the threshold for formal bidding and MWBE goals in construction-related contracts.

In 1990 following the state's guidance to local governments on MWBE participation, the Gaston County Board of Commissioners (BOCC) passed Resolution 1990-121, establishing a 10% verifiable goal for MWBE participation in construction contracts over \$100,000. The Resolution also included directives to encourage minority participation - a precursor to the minority outreach plans recommended today. Bear in mind, while this 10% goal is verifiable, it is only aspirational. The UNC School of Government's (UNC SOG) February 2013 Bulletin regarding HUB Participation in Building Construction Contracting reminds us "the level of minority participation in bidders' bids does not affect the contract award decision." Through this audit it was determined that our County has not met its aspirational goal of 10%. The average participation in the 10 contacts considered in testing was only 2.6%. Regardless of whether the aspirational goal is met, NC General Statute 143-128.2(b) requires public entities to make good faith efforts (GFE) to recruit minority participation.

Recently, the BOCC updated its Resolution and re-established its 10% verifiable goal for construction-related contracts, but changed its threshold to \$300,000 to align with state statutes and expectations. In conjunction with the updated Resolution, the BOCC also passed a formal Outreach Plan for our County to encourage MWBE education and participation. More details regarding this resolution and plan are in Finding #1.

PURCHASING IN GASTON COUNTY:

Purchasing is a decentralized operation in Gaston County. The County Finance Department has a County Purchasing Manager who is available to advise departments on their purchasing actions, but is not responsible for overseeing all purchasing operations

* Threshold is dependent on funding source. Any contracts involving federal or state monies have different thresholds and expectations. For the purposes of this audit, we are only considering locally-funded contracts and thus only the \$300,000 threshold applies.



Minority Business Participation in Construction Audit BACKGROUND

within the County. Departments are thus responsible for managing any state MWBE or federal Uniform Guidance (UG) requirements for their contracts or grants.

With no prior emphasis on MWBE vendors or outreach (as explained further in Finding #1 below), the County is not currently tracking if a vendor is an MWBE in our Tyler Munis (Munis) system. This capability exists in Munis, but there is no current requirement or instruction to do so per our County Purchasing Policy or procedures.

Due to this decentralized structure, there is no centralized archive of construction-related contract documents, such as bid documents or other purchasing documents such as requests for proposals (RFPs), other than the contract copy itself in Munis and Laserfiche.



Minority Business Participation in Construction Audit

AUDIT DETAILS

WHY WE DID IT (OBJECTIVE(S)):

The original audit objective was solely to determine how the County has performed related to achieving Board-established minority business participation goals on construction contracts. As we completed our planning phase, we revised our audit objectives to the following:

- Determine how the County has performed related to Board-established goals on construction contracts
- Determine the County's compliance with North Carolina State Statutes related to minority participation in construction contracts

Annual risk assessment and the current political and social climate globally and especially within our nation make this a timely audit.

WHAT WE DID (SCOPE):

Internal Audit considered the 22 construction-related contracts that occurred from FYs 2016-2020. From those, four (4) were removed due to their grant-related funding source and federal DBE requirements. Of the remaining 18, auditors selected 10 as our testing sample (random and judgmental selection). These 10 contracts account for \$30,010,951 in total construction dollars, which is 85% of the total monies available with the 18 contracts (\$35,244,381). All 10 are governed under BOCC Resolution 1990-121, which was updated during the course of this audit on April 27, 2021, Resolution 2021-099.

HOW WE DID IT (METHODOLOGY):

To achieve the audit objectives, auditors performed the following:

- Attended MWBE training provided by UNC SOG
- Discussed MWBE efforts with NC DOA, UNC SOG, and subject-matter experts
- Interviewed relevant department personnel
- Reviewed related internal policies and procedures
- Reviewed BOCC Resolution 1990-121, relevant NC General Statutes, and guidance from NC DOA and UNC SOG
- Reviewed construction contracts from FYs 2016-2020, including bid documents, pay applications, and any documents related to said contracts
- Performed outreach to prime contractors and subcontractors on selected contracts for confirmation of information



THE FINE PRINT (COMPLIANCE):

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

FINDING #1

FORMAL OUTREACH PLAN HAS NOT BEEN ESTABLISHED

Outreach Efforts and Plan; BOCC Resolution 1990-121 and NC Guidelines

NC General Statute 143-128.2 requires all public entities subject to the requirements for building contracts to implement a program [outreach] for promoting the use of minority business enterprises. Gaston County's BOCC Resolution 1990-121 established certain practices the County should be undertaking to connect with and recruit MWBE firms. Resolution 1990-121 was in effect until April 27, 2021 when the BOCC approved an updated form of the Resolution and Outreach Plan, 2021-099. All ten projects in our testing sample were governed by 1990-121. While outreach is primarily a County responsibility, 1990-121 also had outreach objectives outlined for the prime contractor. Our focus is the County's responsibilities.

1990-121 outlined the following efforts to be undertaken regarding MWBE outreach and their related bullet points convey how Public Works explained in interviews they are addressing them at the time of the audit. Quotations indicate direct quotes from said interviews. Public Works confirmed they have no internal policies or procedures to perform outreach activities. Please note only relevant County-specific, outreach-related objectives, not all objectives, from 1990-121 are referenced:

1990-121.2

Compile a list of minority businesses within the bidding area* and update it on an annual basis and shall be available so minority businesses will have the opportunity to add their names to the list. Copies of resolution will be transmitted to businesses on the list along with the name of the official, employee, or agent who serves as the contact person for minority businesses and is responsible for answering project-related questions by minority businesses.

- "Public Works has not compiled a list of minority businesses in our bidding area. A list of certified minority businesses for the state of NC is kept on the NC DOA's HUBSCO website."
- "A Gaston County employee has not been specified as an MWBE liaison or contact person."

1990-121.3

For each building contract put out for bid, notice of the contract shall be transmitted to the minority businesses on the aforementioned list.

- Public Works stated bids are advertised in the Charlotte Observer, Gaston Gazette, La Noticia (or equivalent MWBE publication) and NC DOA's HUBSCO website and a Public Works contact person is always listed.

* Bidding area has not previously been defined. UNC SOG and court decisions are using the term "relevant market area." Disparity studies have been helpful in determining a jurisdiction's relevant market area and as a way to document past discrimination.



Minority Business Participation in Construction Audit FINDINGS & RECOMMENDATIONS

1990-121.5

The contact person designated in 1990-121.3 will hold a pre-bid conference to orient contractors and subcontractors to the policy expressed in this resolution as well as bid procedures and regulations. Minority businesses on the aforementioned list obtained and maintained as provided herein shall be notified of and invited to these pre-bid conferences.

- "Pre-bid conferences are held for all Public Works' bid projects. A representative from the designer and a representative from Public Works are present at all pre-bid meetings. At the pre-bid conference, bidding requirements, including MWBE requirements are reviewed."
- "The published project advertisement [as described above in 1990-121.3 bullet point] does invite any interested contractors and subcontractors to the pre-bid meeting (this advertisement is listed on the NC DOA HUBSCO website)."

1990-121.7

Contact person designated shall maintain records with respect to a) contractors and subcontractors notified of the project and the number of those contacted who are MWBE firms appearing on the aforementioned list in 1990-121.2; b) those contractors or subcontractors that bid or otherwise respond to the notice of the project and the number of these that are on the maintained list of minority businesses; c) those contractors or subcontractors awarded contracts as part of the project and the number and identity of those that are on the aforementioned list; and d) percentage of work on the project to be performed by minority businesses appearing on the aforementioned list pursuant to this resolution.

- "Gaston County does not maintain a local MWBE contractor/subcontractor listing."



Key Takeaways on Outreach vs. Resolution 1990-121

- Lists are not being compiled, as directed, and minority businesses are not able to add their information since no list exists
- No Gaston County employee has been designated as an MWBE Coordinator/liaison/specific contact person
- Notices of bid opportunities and pre-bid conferences are only provided to a few news publications and are not being disseminated to a "list" of minority businesses
- The County is not keeping or maintaining records of:
 - Contractors/subcontractors notified of the project who are MWBE firms from the "list"
 - Contractors/subcontractors awarded projects - number and identity of MWBE ones from the "list"
 - % of work to be performed by minority businesses from the "list"

The identified issues represent misunderstanding and lack of oversight on Public Works' behalf to conduct outreach efforts as prescribed by NC and our BOCC.



Minority Business Participation in Construction Audit FINDINGS & RECOMMENDATIONS

Updated Outreach Plan Going Forward; BOCC Resolution 2021-099

Following a meeting of Internal Audit, Public Works, and the County Attorney's Office, where we discussed that our local resolution should align with state statutes, the Gaston County BOCC updated resolution 1990-121 on April 27, 2021 as Resolution 2021-099, to align with state statutes and reflect updated processes and procedures outlined by the state, to best meet its expectations. The Outreach Plan is modeled off an example provided by the UNC School of Government and satisfies the requirement set forth in 143-128.2 for public entities to implement a program for promoting the use of minority business enterprise [in building contracts]. A link to BOCC Resolution 2021-099 and its Outreach Plan are in Appendix I of this report. Below is a summary of relevant changes in the update:

Relevant Key Differences Reflected in This Update Are:

- Updating the contract amount threshold, for which requirements for minority participation apply, to \$300,000 in order to align with updated statute (\$100,000 in the 1990 resolution)
- Formally identifying a Gaston County position to fulfill the role of Minority Business Outreach Coordinator who will, among other duties, provide an annual update to the Board of Commissioners on the County's progress toward the verifiable percentage goal
- Establishing a formal outreach plan and updated guidelines related to the updated resolution, which is recommended guidance from UNC's School of Government as a leading practice based on related state statutes
- Establishing a review of the verifiable percentage goal every five (5) years
- Including contracts other than building construction where minority requirements are present

Additionally, These Relevant Points Reflect a Summary of What Has Been Added to, Clarified, or Expanded-Upon From the 1990-121 to 2021-099:

- Establishes responsibilities for the designer of a project
- Establishes responsibilities for minority businesses and describes required NC certification requirements of minority businesses to meet ours and the state's requirements
- Expands and clarifies responsibilities for the owner (County)
- Expands and clarifies responsibilities for not only the prime contractor but also construction manager at risk, and first-tier subcontractors at time of bid, award, and during the project
- Expands and clarifies reporting and pay app requirements to align with the state
- Outlines what are considered Good Faith Efforts (GFE)
- Provides definitions for important terms like minority, minority business, and socially and economically disadvantaged individual



Minority Business Participation in Construction Audit FINDINGS & RECOMMENDATIONS

Auditors noted through interviews and observations a primary contributor to the lack of a formal outreach plan is the inadequate staffing resources within Public Works. County Public Works' projects and needs continue to outpace its current staffing levels and will continue to outpace as Gaston County grows, if staffing levels are not adjusted. Public Works' staff are unable to be as proactive as they would like due to this deficient staffing level.

Another main contributor has been this 'the way we've always done it' culture. Public Works stated this audit is the most they have ever dealt with MWBE and no one has ever asked. Thus, as stated directly by Public Works, it was easy to "fall into how we do things here" mentality and not seek out information or be proactive in outreach. As a result, the County has not been compliant with our local resolution and state statutes. This non-compliance led to missed opportunities to educate ourselves on model MWBE and outreach programs and the inability to foster relationships with minority and non-minority businesses. Having an outreach plan would have allowed for recruiting and networking opportunities to foster these relationships and potentially expand our pool of qualified minority-owned businesses available to perform work. Ultimately, these relationships would increase our chances of achieving our aspirational goal of 10%, which this audit determined has not been met (see Finding #4).

With the revised resolution, the County has the opportunity to focus on establishing a quality program for minority business participation. This program will allow for the resolution's objectives to be met and for all stakeholders in the construction contract process to understand and follow the necessary guidelines. Critical to the success of this program will be identifying a Minority Business Outreach Coordinator who can fully understand not only our local expectations, but also state and federal expectations to ensure we are meeting what is expected of us and also building a quality program to attract minority business participation in construction contracts.



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

FINDING #1

ACTIONS TAKEN:

Public Works supported and help pass the revised resolution and outreach plan subsequently approved by the BOCC and plans to work with the County and the newly-identified MWBE Coordinator to comply with the updated Resolution and fulfill the new Outreach Plan.

FINDING #1

RECOMMENDATIONS:

- 1.The County Manager should identify a Gaston County employee to serve as the County's Minority Business Outreach Coordinator
- 2.Establish a formal MWBE Outreach Program that encompasses the objectives set forth in the Board of Commissioners' approved Outreach Plan, revised as of April 27, 2021
- 3.At least annually, the Minority Business Outreach Coordinator or Public Works Director should provide an update to the BOCC on the County's progress towards its verifiable goal percentage
- 4.With each proposed Board Action that includes an MWBE goal component, provide the committed, certified MWBE percentage as part of the Board Action
- 5.Work with the Diversity, Equity, and Inclusion Department to conduct periodic recruiting/networking events

FINDING #1

COUNTY MANAGEMENT'S RESPONSE:

We agree.

PUBLIC WORKS' RESPONSE:

We agree.

FINDING #1

COUNTY MANAGEMENT'S ACTION PLAN:

- We will identify a Minority Business Outreach Coordinator by October 31, 2021.

PUBLIC WORKS' ACTION PLAN:

- Recommendation #2 is the responsibility of Minority Business Outreach Coordinator to be identified by the County Manager's Office.
- At the Annual June Work Session meeting of the County Board of Commissioners, the Public Works Director, working in conjunction with the Minority Business Outreach Coordinator, will provide an update to the Board on the County's progress towards its verifiable goal percentage.
 - Contact: Public Works Director



Minority Business Participation in Construction Audit **FINDINGS & RECOMMENDATIONS**

PUBLIC WORKS' ACTION PLAN, Continued:

- Beginning immediately, for each proposed Board Action regarding construction and including an MWBE goal component, the general contractors committed, certified, and verified MWBE percentage will be included as part of the Board Action.
 - Contact: Public Works Director
- The Public Works Department, in conjunction with the Diversity, Equity, and Inclusion Office will host (or co-host with other local municipalities or institutions with similar goals and programs) periodic, at a minimum annually, contractor and MWBE recruiting and networking events. This can begin after the Minority Business Outreach Coordinator position is filled.
 - Contact: Public Works Director



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

FINDING #2

INADEQUATE REVIEW OF REQUIRED NC HUB FORMS

NC HUB Forms

In the spirit of fulfilling NC state statute requirements, the NC DOA has developed several HUB forms that are required to be completed during a building construction project. Most HUB forms were updated in 2010, however, per NC DOA, Appendix E was updated in 2002-2003. The most current version of the forms should be used. The following table reflects the various HUB forms required to be completed and submitted:

TABLE 1: NC-REQUIRED HUB FORMS (FORMS IN APPENDIX II)

| | ID Form | Affidavits A or B | Affidavits C or D | Appendix E |
|--------------------------|---|---|--|--|
| Purpose of Form: | List all MWBE firms to provide work or materials | Document GFE (A) or use own work to satisfy goal (B) | Work to be performed by MWBE firms (C) or GFE (D) | Lists payments made to MWBE firms during pay app period |
| Completed By: | All bidders | All bidders | Selected bidder | Prime contractor |
| Submitted To: | Gaston County | Gaston County | Gaston County | Gaston County |
| Phase of Project: | Must be included w/bid | One must be included w/bid | One must be submitted w/in 72 hours of selected bidder notification | Must be included w/each pay app submitted |
| Required By: | NC General Statutes/ NC DOA | NC General Statutes/ NC DOA | NC General Statutes/ NC DOA | NC General Statutes/ NC DOA |
| Consequences: | Bid considered non-responsive and is grounds for rejection of the bid | Bid considered non-responsive and is grounds for rejection of the bid | Bidder considered non-responsive and will no longer be selected bidder | Prime considered non-responsive. May not be considered for future projects |

Forms are submitted by contractors at different stages during the construction project process, as outlined above. When submitted as part of a bid, Gaston County's practice until now has been to rely on the project's designer or architect to review and summarize bids and forms received on a bid tabulation sheet. Gaston County is ultimately responsible for ensuring these forms are completed and submitted at appropriate times. If not, Gaston County is in violation of state statutes and could be subject to consequences, including a corrective plan through the NC Secretary of Administration's Office with further consequences, such as a new plan being approved by NC DOA and the NC Attorney General, and the public entity losing its ability to bid another contract without prior review by the NC DOA and NC Attorney General if no corrective plan is filed or implemented (NC GS 143-128.3).



Minority Business Participation in Construction Audit FINDINGS & RECOMMENDATIONS

Public Works stated in interviews they are unsure where to draw the line [on requirements] and needs guidance on when forms must be included and if not,* when are they deemed non-responsive. Additionally, the County has been including a statement in some bid advertisements waiving requirements at our discretion. Public Works expressed that in both formal and informal bids, they have reserved the right to waive the [HUB form] requirement in the best interest of the County. Per NC DOA, public entities in NC do not have discretion to waive HUB form requirements and this statement displays a lack of knowledge on Public Works' part. Furthermore, even if contract amounts are low enough that forms are not required by the state, but the County includes that language in the invitation to bid and requires them to be submitted with bid packages, then per NC DOA those forms become required, regardless of state requirements.

Auditors found the following exceptions with respect to required HUB forms submitted when reviewing the 10 construction projects in the testing sample. Please note one (1) of the 10 projects did not have bid documents available for inspection:

TABLE 2: RELATED EXCEPTIONS, FINDING #2

| Exception | # of Exceptions | # of Eligible Projects | Exception % |
|--|-----------------|------------------------|-------------|
| Selected bidder did not submit Affidavit C or D | 9 | 10 | 90% |
| Appendix E not submitted with pay apps | 8 | 10 | 80% |
| Affidavits A or B not submitted with bids | 5 | 9 | 56% |
| HUB ID Form not submitted with bids | 5 | 9 | 56% |
| Project did not have bid tabulation sheet or sheet does not account for HUB forms | 5 | 9 | 56% |
| Appendix E submitted, but filled out incorrectly | 1 | 2 | 50% |
| Selected bidder did not have HUB forms with their bid | 3 | 9 | 33% |
| Bid tabulation sheet accounts for HUB forms, but inaccurately notes bidders have forms when they did not | 1 | 4 | 25% |

* It is important to note that MWBE requirements extend beyond building construction-related contracts and apply to professional services and design. While that is not the focus of this audit, Public Works expressed they were unaware of these additional areas of requirements.



Minority Business Participation in Construction Audit FINDINGS & RECOMMENDATIONS

Reviewing NC HUB Forms

NC General Statute 143-128.2 requires public entities establish a verifiable MWBE goal and also requires contractors make GFE. NC General Statute 143-128.4 maintains only businesses certified through the state in accordance with 143-128.4 may be considered for minority participation purposes. NC General Statute 143-131 also requires public entities to maintain records of contractors solicited and document efforts to recruit minority businesses to participate in projects (informal bids).

With these requirements, it is implied that the public entity must review the HUB forms submitted in order to verify forms are present and information is accurate, so the entity may comply with statutes. Additionally, NC DOA directs entities to review the information on the forms, establishing it as a leading practice.

While the exceptions noted above reflect potential misunderstanding on contractors' and Public Works' behalves to know which form(s) to submit and when, they also show inaction on the County's part for review of HUB forms. Through interviews, auditors identified that Public Works does not require or review documentation of GFE related to construction projects and often relies on designer or architect to review bid or selected bidders' documents. This demonstrates misunderstanding and lack of oversight on their behalf. Additionally, Public Works confirmed there are no internal policies or procedures for construction-related contracts and minority participation, thus none related to acceptance and review of HUB forms. There are County procurement policies and procedures; however, they are not updated to reflect revised NC General Statutes or the revised BOCC Resolution 2021-099.

Below are some notations specific to each set of HUB forms, the current practice, and why review of each set is important. Sets are grouped by who completes them from Table 1 on page 11:

1 ALL BIDDERS' FORMS

The Requirements:

Bidders are required to furnish either Affidavit A or B with their bid packages. If they are planning to complete all work themselves, they use Affidavit B. If not, they are required to undertake and document their Good Faith Efforts (GFE) and use Affidavit A. Unless using Affidavit B, Affidavit A is required whether you intend to use MWBE firms or not. If not, you must have satisfied the GFE requirements set forth by the state in 143-128.2(f.1) or for informal bids, 143-131. The ID Form must be completed and is either none if no MWBE utilized or list the MWBE firms expected to be used with their respective expected dollar amounts of work. Any firms listed should reflect the GFE extended on Affidavit A. Affidavit B is fairly straightforward in attesting the bidder expects to do all work themselves.



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

What Shall Be Reviewed:

- Did the bidder submit all required documentation?
 - If not, the bid may be considered non-responsive
- Documentation from the contractors of their GFE and the boxes they selected on Affidavit A
 - The County will need to determine examples of what documentation should be included or be able to furnish for their selections on Affidavit A
 - Documentation should satisfy efforts were made
- Additionally, any other information provided on all of these forms should be verified by the County for responsiveness and responsibility

Why Review?

- Compliance with state statutes
- Information provided may be inaccurate or potentially false
 - Bids may be disregarded if information provided or not provided is considered non-responsive or non-responsible
- Confirm any MWBE firms listed for potential work on the ID Form are NC HUB certified
 - Must be NC HUB certified to count toward reportable percentage
 - If not certified, assist in helping them become certified prior to work
- Uphold our commitment to MWBE outreach in our community and encourage MWBE participation

What Auditors Found in their Review:

Auditors reperformed an appropriate review of the documents submitted for the testing sample. As noted in the exceptions summary in Table 2, much of the required documentation was not available for review. Had that been available, auditors could have referenced that information for their reperformance.

As stated in the exceptions summary in Table 2, 56% of testing sample bids did not have Affidavit A or B or the ID Form submitted with them. Thirty-three percent (33%) of selected bids did not have appropriate Appendix C or D with their bids and should have been considered non-responsive.

GFE Verification

As outlined in detail in NC General Statute 143-128.2, GFE include 10 types of efforts bidders can undertake to satisfy GFE requirements. These 10 effort types have point values assigned to them by the state, noted on the form itself, and bidders must undertake any combination of those efforts that calculate to being a minimum of 50 points. However, as auditors reviewed the form, Box 1 indicates:

- ☐ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.

Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

This seemed to auditors as a must/given in order to satisfy the other box choices (see Appendix II), which may involve working with the firm or providing assistance, yet was not always being selected as a satisfied GFE by the bidder. Technically, the form does not require it be checked and/or satisfied, but gave auditors pause. Auditors confirmed with a subject-matter expert, who stated the bidder must select box 1 in order to earn any remaining points, with the exception of box 5, and that even if they do not check box 1, the bidder still has to show documentation that they technically satisfied box 1 since state statutes refer to the recruitment of minority firms.

In discussing review of HUB forms, Public Works confirmed it has been their practice for the architect/designer to manage this process. Public Works explained they do review for HUB certification, but only at the time of completing the HUBSCO report. NC General Statute 143-128.4 requires firms to be NC HUB certified for participation purposes and Affidavit C requires certification prior to form being completed. They also established they are not currently requiring any verification of GFE - only that the form is signed, if applicable. These reflect a lack of oversight on Public Works' behalf in understanding their responsibility to review and verify.

2 SELECTED BIDDERS' FORM

The Requirements:

Bidders who are notified they are the lowest, responsive, responsible bidder (selected bidder) are required to furnish either Affidavit C or D within 72 hours of being notified. If the bidders' efforts leads them to expect a 10% or greater MWBE participation on the project, they complete Affidavit C. If participation is expected to be less than 10%, they complete Affidavit D.

What Shall Be Reviewed:

- Was the appropriate Affidavit (C or D) submitted by the selected bidder within the established 72-hour timeframe?
- Are the MWBE firms listed NC HUB certified?
 - If they completed C, but verification shows not all firms certified and it drops below 10%, they should redo the information on Affidavit D
 - If MWBE Coordinator is able to help them be certified quickly, they can remain using Affidavit C, if not, they do not count towards participation
- Documentation of GFE if using Affidavit D

Why Review?

- Failure to provide makes bidder non-responsive and is grounds for rejection of bid
- Information provided may be inaccurate or potentially false

Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

- Confirming any changes since Affidavit A or B submitted and check/recheck HUB certification (only NC HUB-certified firms count toward participation)
- Reconciling their Affidavit A or B against Affidavit C or D also helps identify if any subcontractors were substituted (see Finding #3)
- Compliance; and upholding of NC GFE requirements/laws

What Auditors Found in Their Review:

Auditors reperformed an appropriate review of the documents submitted for the testing sample. As noted in the exceptions summary, much of the required documentation was not available for review. Had that been available, auditors could have referenced that information for their reperformance.

As stated in the exceptions summary in Table 2 above, auditors found 90% of testing sample contracts did not have an Affidavit C or D submitted by the selected bidder. As mentioned in all bidders' forms section, Public Works has confirmed it is their practice to have the architect/designer manage the HUB form process, including whether Affidavit C or D are received and within the 72-hour timeframe required.

Verification of Information Provided

Auditors selected a smaller sample of five (5) projects from the testing sample to verify the subcontractor information submitted on HUB forms of the selected bidders. Altogether, the five (5) projects had a total of 13 subcontractors listed on the selected bidders' forms that should have been contacted by that prime contractor for a quote and potentially plan to provide work. Auditors called and spoke to all 13 subcontractors to verify information provided by the prime contractors: 46% of them (6 of 13) either did not know the bidder or did not provide a quote.

46%

of sampled MWBE firms listed on selected bidders' HUB bid documents either did not know the bidder or did not provide a quote.

3 PRIME CONTRACTORS' FORM

The Requirements:

Appendix E is a HUB form required to be completed by the prime contractor and is turned in with every pay application. Below is a snapshot of the main body of the form. The important trait to note about this form is that it is cumulative, meaning subsequent Appendix Es submitted with pay applications will build on prior ones.


In the main body of each pay request's Appendix E form, the contractor should:

- identify each MWBE firm expected to work on the project
- the type of MWBE they are (instructions on form)



Minority Business Participation in Construction Audit FINDINGS & RECOMMENDATIONS

- how much they have paid each firm between the most recent pay application and the current
- how much they have paid that firm to date for said project
- the total amount they expect to pay them for the project's entirety (should align with Affidavit A or C/D)



| MBE FIRM NAME | * TYPE OF MBE | AMOUNT PAID THIS MONTH (With This Pay App) | TOTAL PAYMENTS TO DATE | TOTAL AMOUNT COMMITTED |
|---------------|---------------|---|------------------------|------------------------|
| | | | | |

What Shall Be Reviewed:

- Was the correct form submitted with every pay application/request, regardless if MWBE firms were used and/or paid?
- Was the form filled out correctly? Is it cumulative information?
- Are all expected subcontractors listed?
- Do the subcontractors align with those on Affidavit A or C/D?
 - If not was substitution process followed? See Finding #3

Why Review?

- Compliance with state statutes
- Ensure information provided is on correct form, cumulative, and accurate, regardless if MWBE firms used and/or paid
- Obtain a solid understanding of which MWBE subcontractors are being paid and how much
- Reconcile final pay application's Appendix E with MWBE information used to complete HUBSCO reporting

What Auditors Found in their Review:

Auditors reperformed an appropriate review of the documents submitted for the testing sample. As noted in the exceptions summary, much of the required documentation was not available for review. Had that been available, auditors could have referenced that information for their reperformance.

As previously identified as exceptions in Table 2 above, there were issues with Appendix E in our testing sample. Notably, the form was missing from most pay applications and of the two (2) projects where it was submitted consistently, one (1) was correct and one (1) was not. There is one (1) project currently underway whose Appendix Es have been submitted with each pay application and are filled out in a correct manner, albeit using the old version of the form. However, auditors found an additional issue with this project, related to both Finding #2 and Finding #3. Their original ID Form submitted with their bid reflects Subcontractor A as the MWBE sub, yet



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

yet their Appendix E forms list Subcontractor B, instead, and no substitution documentation (that particular documentation discussed below in Finding #3) to note a change. When we spoke to the prime contractor for this project, to verify expected MWBE participation, they confirmed to us that Subcontractor A will be performing the work. This is an example of why it is important to review these forms and reconcile any discrepancies and reflect a lack of oversight on Public Works' behalf.

During our review, auditors learned there is a previous version of Appendix E (pre-2003) and a newer version as of 2003. Of the three (3) projects where Appendix E was included with at least some of the pay applications submitted, two (2) of the three used the old version of the form. Furthermore, two (2) of the three forms were not filled out correctly and/or in a cumulative manner. The new version of the form makes this a clearer directive in its column headings vs the pre-2003 version. Communications with Public Works identified that they were not aware the form had been revised. It is leading practice to use the most up-to-date version of a required form and ensures all are consistently using the same form.

NC General Statute 143-128.2(c.2) maintains that failure to submit required affidavits or GFE documentation is grounds for rejection of the bid. By not ensuring receipt and proper completion of NC HUB forms, bids were considered responsive when they should not have been, per NC DOA. This has led to potential missed MWBE participation opportunities from other bids that would have been selected, instead. It also creates confusion, discrepancies, and the inability to verify which subcontractors work projects (original or substitutions), if they are NC HUB certified, and how much is paid to them. These missed opportunities have contributed to the County not achieving its aspirational goal. Proper consideration of responsive bids will increase our chances of achieving our 10% aspirational goal. Additionally, there is a loss of internal control components of project management, including oversight and monitoring, which increases the risk of fraud without those monitoring and oversight controls in place.

Through the proper implementation of the new resolution and Outreach Plan, Gaston County will establish a proactive program and specified leader (MWBE Coordinator) to work with minority businesses to encourage their participation and to educate and provide resources to other County employees, contractors, subcontractors, architects/designers, etc. on the proper procedures to remain compliant with the state and to achieve a robust outreach program.



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

FINDING #2

ACTIONS TAKEN:

- Public Works has requested contractors use updated HUB forms available on NC DOA website
- Auditors witnessed Public Works' recent and voluntary initiative to update their bid announcement and pre-bid conference language to reflect a more thorough examination of required HUB forms submittal and their appropriate completion
- Public Works is developing a checklist for each pay application, including ensuring Appendix E is submitted and completed appropriately
- Public Works has begun reviewing HUB forms and GFE submitted in more detail, beginning with their most recent project put out to bid

FINDING #2

RECOMMENDATIONS:

- Establish criteria for GFE documentation that will be used to determine the responsiveness of bid
- Establish internal policies and procedures, including checklists, for each type of contract and what forms are expected and when during the project
- Educate contractors on the appropriate process as well as what GFE documentation to use
- Verify all MWBE subcontractors identified by bidders are NC HUB certified when reviewing Affidavits C or D and offer immediate assistance to become certified, if not (for participation to count)
- As part of the review of pay applications, Public Works should confirm that appropriate MWBE documentation is included, complete, and reasonable
- Finance should be involved in the process from project initiation to ensure compliance with all applicable procurement laws
- Finance should review procurement policy to determine if any updates are needed

FINDING #2

FINANCE'S RESPONSE:

We agree.

PUBLIC WORKS' RESPONSE:

We agree.

FINDING #2

FINANCE'S ACTION PLAN:

In addition to the following action plan, please note that Finance already reviews purchases involving any federal funds relative to the Uniform Guidance (UG) requirements which at the \$10,000 threshold require taking affirmative steps to solicit MWBE vendors. Finance also checks for the Qualifications Based Selection (QBS) process relative to all



Minority Business Participation in Construction Audit FINDINGS & RECOMMENDATIONS

County procurement of architectural, engineering, and surveying services. Purchasing is decentralized in Gaston County, but Finance reviews requisitions and contracts relative to purchasing requirements.

Action Plan: Building Construction and Repair Process Relative to Minority Participation

The following will begin by June 30, 2022, after the Purchasing Agent is hired and trained:

- For those building construction or repair projects that meet the threshold for minority participation (currently \$300,000 or more per BA 2021-099):
 - Finance will review information provided by Public Works prior to bid package development confirming the dollar threshold, funding source, and bid process they propose to follow. Purpose of review will be to verify meeting applicable procurement laws.
 - Finance will review draft of bid documents (including advertisement) to verify inclusion of required MWBE language (as required by North Carolina general statutes, the County's Outreach Plan and Guidelines per Board Action 2021-099, and the County's Purchasing Policy and Procedures).
 - Finance will review draft Board Action in which Public Works includes basic description of bid process (advertisement, HUB posting, MWBE outreach, pre-bid, opening date and bidders/bid costs) and language confirming that the low responsive responsible bidder completed NC HUB forms properly using the most current form version. Language should include some detail regarding required bid attachments: HUB ID form, Affidavits A or B, plus proper submittal of Affidavit C (portion of work by certified MWBE) or D (good faith efforts).
 - Finance will review the monthly construction pay applications to verify the required Appendix E is attached.
- For those building construction or repair projects which fall within the Informal threshold (currently \$30,000 to formal limit), Finance will review the Requisition for Purchase Order with attached documentation listing contractors solicited and efforts to recruit minority business participation.

Action Plan: Review of Purchasing Policy and Procedures

- The Purchasing and Contracts Manager will prepare an updated Purchasing Policy and Procedures Manual by June 30, 2022.
- Work with Legal, County Management, Diversity, Equity and Inclusion Officer, Minority Business Outreach Coordinator, and department stakeholders during development.
- The updated manual will include current bidding thresholds, but also include a reference to thresholds automatically changing with any general statutes revisions (unless local policy is more restrictive). More detail will be included regarding the construction and repair bid and award process, the QBS process for selecting architectural, engineering, surveying, construction management at risk, and design-build services. MWBE requirements will be added (including reference to BA 2021-099 and the Outreach Plan and Guidelines).



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

PUBLIC WORKS' ACTION PLAN:

- Beginning immediately, this list of examples will be provided to all general contractors in attendance at pre-bid meetings. This list of examples will show what the County is looking for when determining if a GFE was made and if a bid is responsive. The GFE Example list will be included in a comprehensive Bid/Contract/Pay Application checklist packet. This comprehensive packet will be in place and in use no later than October 31, 2021.
 - Contact: Public Works Director
- A comprehensive procedure checklist for bids, contracts, and pay applications will be developed and in use no later than October 31, 2021.
 - Contact: Public Works Director
- Public Works has already begun educating general contractors on the correct process and acceptable GFE documentation. This process occurs at pre-bid meetings. A formal checklist for pre-bid meetings will be fully developed and in place no later than October 31, 2021.
 - Contact: Public Works Director
- Beginning no later than October 31, 2021, Public Works will verify all HUB/MWBE subcontractors identified by general contractors in bid documents are North Carolina HUB certified. If a subcontractor is found to not be certified, the Public Works office will offer assistance and guidance on becoming certified. If a subcontractor is found to not be certified, and they elect to not become NC HUB certified, their participation will not be counted towards the verifiable percentage goal.
 - Contact: Public Works Director & Public Works Administrative Assistant
- A pay application review checklist will be developed and in place no later than October 31, 2021. Included in this checklist will be a section where the Project Coordinator/Project Manager will be required to verify and sign off that the appropriate MWBE documentation is included and complete. For each MWBE subcontractor listed for a project, the Project Coordinator/Project Manager will be required to contact each subcontractor, at least once during the duration of the project, and verify that they have performed work on the project and that they have received the payments noted in the MWBE documentation.
 - Contact: Public Works Director



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

FINDING #3

NO SUBCONTRACTOR DOCUMENTATION*

As discussed in previous sections, the ID Form, Affidavits A, C, D, and Appendix E identify subcontractors, and Affidavits C and D are required within 72 hours of being notified of being the selected bidder. However, in the statutes mentioned below, there are additional requirements for listing and substituting of subcontractors that require documentation.

NC General Statute 143-128.2 requires a few items related to subcontractors:

- 143-128.2(c.2): within 30 days after award of contract, prime contractor will submit a list of all identified subcontractors that will be used on the project.
- 143-128.2(d.1-2): no subcontractor identified and listed pursuant to subsection (c) may be replaced with a different subcontractor, except:
 - if their bid is later determined to be non-responsive or non-responsible or if the subcontractor refuses to enter into a contract to complete the work, or
 - with the approval of the public entity for good cause
 - GFE still applies to the selection of a substitute subcontractor and prior to substituting, the contractor shall identify the subcontractor and inform the public entity of its GFE pursuant to 143-131(b)

Auditors' review of the testing sample identified the following exceptions related to the lack of this subcontractor documentation:

TABLE 3: RELATED EXCEPTIONS, FINDING #3

| Exception | # of Exceptions | # of Eligible Projects | Exception % |
|--|-----------------|------------------------|-------------|
| No substitution documentation, in general | 9 | 9 | 100% |
| Project has a known substitution, but no supporting documentation | 2 | 2 | 100% |
| Unable to determine subcontractors on said project - no Affidavit C or D, Appendix E, or other supporting documentation | 7 | 10 | 70% |

Through interviews, Public Works confirmed they have not requested documentation on substitution of subcontractors and did not have any substitution documentation regarding our testing sample or any contracts. When required documents are not verified to have been submitted or we lack documentation of their existence, confusion and discrepancies arise, along with the inability to verify which subcontractors perform work.

* Please note while interpretation of the statute could apply to all subcontractors and not just MWBE ones, for the purposes of this audit, we are focusing on MWBE subcontractors, only.



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

This lack of documentation and overall misunderstanding on Public Works and prime contractors' behalves to understand and follow what is prescribed in state statutes represents a lack of control over project management. Failing to understand what is required documentation and required approval, and their appropriate responsive submission timeframes leads to non-compliance with state statutes. Additionally, when subcontractors are unknown there is a potential loss of MWBE participation and requirements, including GFE, which is required for most substitutions.

FINDING #3

RECOMMENDATIONS:

Public Works should create policies, procedures, and a checklist to (but not limited to):

- Ensure proper subcontractor documentation is submitted within proper timeframe following bid award
- Ensure all appropriate documentation and approval is satisfied if any substitutions of subcontractors occur
- Reconcile any discrepancies with subcontractors noted on any HUB forms or subcontractor documentation

FINDING #3

PUBLIC WORKS' RESPONSE:

We agree.

FINDING #3

PUBLIC WORKS' ACTION PLAN:

- Beginning no later than October 31, 2021, Public Works will develop a standard template for notifying a general contractor that they are the apparent low bidder. This template will state a date and time when follow up documentation (Affidavit C or D and GFE supporting documentation) is due. If the follow up documentation is not received by the County within the appropriate time, the bid may be considered non-responsive.
 - Contact: Public Works Director
- Public Works will inform all general contractors that if a subcontractor substitution is necessary, they must identify the substitution and inform the County of its good faith efforts pursuant to State Statute. The County will review the GFE and approve the substitution, prior to the new subcontractor performing work. Documentation will be kept related to any subcontractor substitutions. This process will begin no later than October 31, 2021.
 - Contact: Public Works Director



Minority Business Participation in Construction Audit **FINDINGS & RECOMMENDATIONS**

PUBLIC WORKS' ACTION PLAN, Continued:

- As part of the pay application verification form/checklist that will be in use no later than October 31, 2021, any HUB subcontractor discrepancies will be documented as well as the steps taken by the general contractor to rectify those discrepancies. The pay application will not be approved for payment until all discrepancies are rectified to the satisfaction of the County.
 - Contact: Public Works Director



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

FINDING #4

INCOMPLETE REPORTING

NC General Statutes 143-128.3 and 143-131 require public entities to report specific information to the NC DOA's HUB Office for each building project, formal and informal. The format and data required in the reports are prescribed by NC DOA. At a minimum, the following is to be reported for each project:

- The project's verifiable percentage goal
- Type and total dollar value of the project
- MWBE participation by MWBE category
- Applicable GFE or rules used to recruit minority businesses, and the GFE documentation accepted by the entity from the selected bidder
- Utilization of various minority businesses under various construction methods

NC DOA's system for reporting is known as HUBSCO. System logins are required and may be obtained through NC DOA. Gaston County's Public Works Department is the primary County department responsible for overseeing a building construction project/contract process. There are times when another department, such as Economic Development Commission (EDC) or Parks and Recreation, may oversee their own related projects/contracts. Through interviews, auditors determined departments outside of Public Works were not aware of the reporting requirement and internally in Public Works, while one (1) employee was deemed responsible for reporting and had HUBSCO access, there were no internal policies or procedures to that effect, nor were there any additional employees in the County trained or had HUBSCO access. Thus, a lack of oversight regarding the process, including reporting.

NC DOA requires reports be filed for each project on a quarterly basis, regardless of completion status. Until a project is complete, reports are simply filed with basic information and 0/\$0 in other specific categories unknown until completion. Once the project is completed, the quarterly report is to be filed with accurate information and final numbers in the requested fields.

For this audit, auditors reviewed a sample of 10 total construction projects from FYs 2016 to present. Of the 10, five (5) contracts were completed prior to the audit and should have had completed reports filed with NC DOA; of those five (5), only (1) had a report filed with NC DOA. Public Works confirmed this is an oversight on their behalf. Thus, at the time of the audit, auditors determined:





Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

For the one (1) report that was filed,* auditors identified discrepancies with total dollar value of project and monies paid to MWBE firms, creating an inconsistency with the verifiable percentage goal reported. The County has a verifiable goal of 10% for minority business participation in construction-related projects/contracts. Reviewing HUB forms to assess an expected participation percentage is important during both the bid phase and reporting phase following project completion. Note that our 10% goal is aspirational, only - per UNC SOG February 2013 Bulletin regarding HUB Participation, "the level of minority participation indicated in bidders' bids does not affect the contract award decision."

Auditors reviewed the testing sample for comparison of actual percentage attained vs goal. Only one (1) project had a HUBSCO report completed for us to use existing documentation to determine final participation percentage and there was a discrepancy with the calculations. For the remaining projects, auditors looked through the incomplete documentation that existed, but ultimately had to contact both contractors and subcontractors to compile the approximate numbers. Our efforts yielded the following actual or project-to-date MWBE participation percentages below for our testing sample. They demonstrate that the County has not met its aspirational goal of 10%. One contract exceeded the goal (13.9%), but the average participation of these contracts is only 2.6%:

TABLE 4: MWBE PARTICIPATION BY PROJECT

| Project # and Name | Contract Amount | Expected MWBE \$ | Expected MWBE % | Verified/Projected MWBE \$ | Actual/PTD MWBE % | Change |
|----------------------------------|-----------------|------------------|-----------------|----------------------------|-------------------|-----------|
| 2019-110 / Jail Infill | \$10,770,000 | \$1,576,226 | 14.6% | \$1,491,919 | 13.9% | - 0.8% |
| 2018-151 / ACE Facility | \$5,474,721 | \$250,237 | 4.6% | \$75,886 | 1.4% | - 3.2% |
| 2020-316 / Landfill Unit I, Ph2 | \$4,769,975 | \$48,838 | 0.9% | \$45,000 | 0.9% | No Change |
| 2016-395 / Landfill Unit II, Ph2 | \$3,760,341 | - | 0.0% | - | 0.0% | No Change |
| 2018-190 / Dallas Park, Ph2 | \$1,707,750 | \$145,552 | 8.5% | \$4,381 | 0.3% | - 8.3% |
| 2020-336 / Health Pavement | \$1,222,433 | - | 0.0% | - | 0.0% | No Change |
| 2020-334-1 / Park Renovations | \$654,225 | - | 0.0% | - | 0.0% | No Change |
| 2020-134 / Other Pavement | \$624,606 | \$57,280 | 8.4% | \$60,548 | 9.7% | + 1.3% |
| 2020-067 / Poston Park ADA | \$621,000 | - | 0.0% | - | 0.0% | No Change |
| 2019-476 / Camp Sertoma ADA | \$380,900 | \$16,500 | 4.3% | - | 0.0% | - 4.3% |

* It is important to note that HUBSCO reporting requirements extend beyond building construction-related contracts and apply to professional services and design. While that is not the focus of this audit, Public Works expressed they were unaware of these additional areas of requirements.



Minority Business Participation in Construction Audit

FINDINGS & RECOMMENDATIONS

FINDING #4

RECOMMENDATIONS:

- File/submit all required and recommended HUBSCO reports per NC DOA
- Public Works should create internal policies and procedures to outline responsibilities for and timing of reporting and create a checklist for each project, including reporting
- Public Works should train at least one backup within the department and also one employee from each department outside of Public Works that manages their own construction contracts.

Note - NC DOA provides training and users may request that training [HERE](#) and that [same SITE](#) also has a link for a user manual available to download.

FINDING #4

PUBLIC WORKS' RESPONSE:

We agree.

FINDING #4

PUBLIC WORKS' ACTION PLAN:

- Beginning immediately, Public Works will file/submit all required HUBSCO reports quarterly per the North Carolina Department of Administration (NC DOA).
 - Contact: Public Works Administrative Assistant
- No later than October 31, 2021, Public Works will develop an internal policy and checklist for each project. Included on this checklist will be a section where each Project Coordinator/Project Manager will verify that quarterly HUBSCO reporting has been completed.
 - Contact: Public Works Director
- No later than October 31, 2021, Public Works will designate and train a backup within the Department for quarterly HUBSCO reporting. The Public Works Administrative Assistant currently has a step-by-step HUBSCO manual for entering reports. In an emergency situation, this manual could be used by any Public Works employee for entering their project data into HUBSCO. Public Works will train a member of Economic Development how to enter data into HUBSCO, but, quarterly reporting will remain the responsibility of Economic Development.
 - Contact: Public Works Administrative Assistant



Minority Business Participation in Construction Audit CONCLUSION

The County has not been in compliance with several Board-established requirements or state statutes related to minority participation in construction projects. Establishing a formal minority participation program will enable the County to ensure compliance as well as increase its efforts to achieve the established participation goal of 10%.



Minority Business Participation in Construction Audit DISTRIBUTION OF REPORT

This report is intended for the use of the County Manager's Office, Board of County Commissioners, and any County departments involved in construction-related contracts. Following issuance, audit reports are sent to the Board of County Commissioners and subsequently posted to the Internal Audit [website](#).



Minority Business Participation in Construction Audit

APPENDIX I - REFERENCES & LINKS

Links to Relevant NC General Statutes:

[143-128.2](#)

[143-128.3](#)

[143-128.4](#)

[143-129](#)

[143-131](#)

Links to Relevant Gaston County Resolutions and Plans:

[Gaston County BOCC Resolution 2021-099](#)

[Gaston County Outreach Plan](#) (Adopted 2021)

For access to Gaston County BOCC Resolution 1990-121, please contact Gaston County Clerk to the Board's Office at 704-866-3196.



Minority Business Participation in Construction Audit

APPENDIX II - NC HUB FORMS

Copy of HUB ID Form:

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

Identification of HUB Certified/ Minority Business Participation

I, _____
(Name of Bidder)

do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #

Work Type

*Minority Category

**HUB Certified (Y/N)

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*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

** HUB Certification with the state HUB Office required to be counted toward state participation goals.

The total value of minority business contracting will be (\$)_____.



Minority Business Participation in Construction Audit

APPENDIX II - NC HUB FORMS

Copy of HUB Affidavit A:

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of _____

(Name of Bidder)

Affidavit of _____

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- ☐ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ **2 – (10 pts)** 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 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ **4 – (10 pts)** 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 businesses.
- ☐ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ **7 – (15 pts)** 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 – (25 pts)** 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 – (20 pts)** 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 – (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) 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 _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

MBForms 2002-Revised July 2010



Minority Business Participation in Construction Audit

APPENDIX II - NC HUB FORMS

Copy of HUB Affidavit B:

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State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract with Own Workforce.

County of _____

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 Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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 _____, County of _____

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public _____

My commission expires _____



Minority Business Participation in Construction Audit

APPENDIX II - NC HUB FORMS

Copy of HUB Affidavit C:

Do not submit with bid Do not submit with bid Do not submit with bid Do not submit with bid

State of North Carolina - AFFIDAVIT C - Portion of the Work to be Performed by HUB Certified/Minority Businesses

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.

This affidavit shall be provided by the apparent lowest responsible, responsive bidder within 72 hours after notification of being low bidder.

Affidavit of _____ I do hereby certify that on the _____
(Name of Bidder)

(Project Name)

Project ID# _____ Amount of Bid \$ _____

I will expend a minimum of _____ % of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. Attach additional sheets if required

| Name and Phone Number | *Minority Category | **HUB Certified Y/N | Work Description | Dollar Value |
|-----------------------|--------------------|---------------------|------------------|--------------|
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| | | | | |
| | | | | |
| | | | | |
| | | | | |

*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

** HUB Certification with the state HUB Office required to be counted toward state participation goals.

Pursuant to GS143-128.2(d), 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 Owner. 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 Authorized Officer: _____



Signature: _____

Title: _____

State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____ 20____

Notary Public _____

My commission expires _____

MBForms 2002-Revised July 2010



Minority Business Participation in Construction Audit APPENDIX II - NC HUB FORMS

Copy of HUB Affidavit D, page 1:

Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid

State of North Carolina AFFIDAVIT D – Good Faith Efforts

County of _____

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by HUB Certified/ minority business is not achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of _____ I do hereby certify that on the
(Name of Bidder)

(Project Name)
Project ID# _____ Amount of Bid \$ _____

I will expend a minimum of _____ % of the total dollar amount of the contract with HUB certified/ minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

| Name and Phone Number | *Minority Category | **HUB Certified Y/N | Work Description | Dollar Value |
|-----------------------|--------------------|---------------------|------------------|--------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

** HUB Certification with the state HUB Office required to be counted toward state participation goals.

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- Copies of quotes or responses received from each firm responding to the solicitation.
- A telephone log of follow-up calls to each firm sent a solicitation.
- For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- Copy of pre-bid roster
- Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- Letter detailing reasons for rejection of minority business due to lack of qualification.
- Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Pursuant to GS143-128.2(d), 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 Owner. Failure to fulfill this commitment may constitute a breach of the contract.



Minority Business Participation in Construction Audit

APPENDIX II - NC HUB FORMS

Copy of HUB Affidavit D, page 2:

Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid

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 Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public _____

My commission expires _____

MBForms 2002-Revised May 2010



Minority Business Participation in Construction Audit

APPENDIX III - NC APPENDIX E FORM

Copy of NC HUB FORM Appendix E:

APPENDIX E

MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

SCO Project ID: _____

Pay Application #: _____ Period: _____

The following is a list of payments made to Minority Business Enterprises on this project for the above-mentioned period.

| MBE FIRM NAME | * TYPE OF MBE | AMOUNT PAID THIS MONTH (With This Pay App) | TOTAL PAYMENTS TO DATE | TOTAL AMOUNT COMMITTED |
|---------------|---------------|---|------------------------|------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

*Minority categories: Black (B), Hispanic (H), Asian American (AA), American Indian (AI), White Female (WF), Socially and Economically Disadvantaged (SED)

Approved/Certified By:

Name

Title

Date

Signature

SUBMIT WITH EACH PAY REQUEST - FINAL PAYMENT - FINAL REPORT