



Addendum 2

April 22, 2026

**KINGS BRANCH AT ARROWOOD ROAD STREAM RESTORATION  
PHASE 2A  
MECKLENBURG COUNTY, NORTH CAROLINA**

BID DATE: May 13, 2026, 11:00 AM

---

**ESTABLISHMENT OF MWBE GOALS**

The established Minority-owned or Women-owned Business Enterprises (MWBE) achievement goals for this project are:

Minority Business Enterprise Goal: 3%

Women Business Enterprise Goal: 3%

Attachments:

- Updated Business Diversity & Inclusion (BDI) Program Provisions Guide

---

This addendum **must** be acknowledged as Addendum No.2 on the Execution of Bid/Proposal Signature Page.

A handwritten signature in black ink that reads "Claire Paulino".

Claire Paulino, P.E.  
Kimley-Horn and Associates, Inc.



**MECKLENBURG COUNTY  
BUSINESS DIVERSITY & INCLUSION (BDI)  
PROGRAM PROVISIONS GUIDE**

## **BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM OVERVIEW**

Mecklenburg County has made great strides to ensure business is conducted fairly and with diverse populations in our community. Mecklenburg County’s Office of Economic Development engaged Griffin & Strong, P.C. (GSPC) to conduct a disparity study on the availability and utilization of minority and women-owned business enterprises by the County and to examine the relevant evidence of race – or gender – based discrimination in the County’s contracting process.

The [2020 Mecklenburg County Disparity Study](#) revealed areas for improvement, for which GSPC made recommendations to assist the County in remediating the disparities to ensure that all qualified firms within the relevant market are given equal opportunity to succeed in doing business with the County. The full report and recommendation list can be found on the Mecklenburg County website.

Because the implementation of the Disparity Study recommendations will impact internal and external stakeholders, the County has decided on a phased transitional approach to implement the objectives.

Mecklenburg County Government will provide Minority-owned, Women-owned, and Small Business Enterprises (collectively “MWSBE”) as well as other responsible vendors with fair and reasonable opportunity to participate in conducting business with Mecklenburg County.

**The BDI Program Provisions Guide requires Contractors and Subcontractors to take all reasonably necessary steps to ensure maximum inclusion opportunity for the participation of Minority Business Enterprises and Women Business Enterprises certified through NC Historically Underutilized Businesses (NCHUB), herein referred to as MBE, WBE or MWBE firms in its contracting activities with Mecklenburg County.** Businesses that are not certified MBE or WBE as previously mentioned, will be herein referred to as non-certified. It is further the intent of the Program to broaden opportunities for the participation, increase competition, and to ensure the proper and diligent use of public funds. The BDI Program Provisions Guide includes Contract-by-Contract and Achievement goals for MWBE utilization in proportion to the availability of qualified vendors in particular areas of procurement.

### **1. Program Statement.**

It is the practice of the Mecklenburg County’s Business Diversity and Inclusion Program (the “BDI Program”), in conjunction with the County Procurement Division, to foster greater competition, increase opportunities for participation by all segments of the business community, and maximize value for the taxpayers’ dollars through efficient use of public funds. The BDI Program accordingly is intended to promote full and equal business opportunities for all businesses contracting with Mecklenburg County by increasing the opportunity for purchase of goods and services from minority-owned and women-owned enterprises.

Consistent with the Mecklenburg County Solicitation Terms & Conditions, which encourage Bidders and Contractors to take all reasonably necessary and responsible steps to ensure that minority, women, and small business enterprises have the maximum opportunity to participate in County contracts, it is the practice of the BDI Program to encourage Contractors to actively seek MWBE participation to the greatest

extent possible, and to monitor compliance.

**2. Promotion of Equal Opportunity.**

The BDI Program seeks to ensure that firms desiring to participate in contracting and procurement activities with the County are not prevented from doing so based on the race, color, national origin, or gender of their owners. It is the intent of the BDI program that no firm, business enterprise, or person shall be denied the benefit of, or otherwise be discriminated against, on the grounds of race, color, national origin, or gender in connection with the award or performance of any contract paid for, in whole or in part, with funding from Mecklenburg County.

**3. Program Objectives.**

The objectives of the Mecklenburg County BDI Program are to promote and encourage full and open competition in all County contracting and purchasing; to encourage all County personnel involved in procurement and contracting activities to utilize appropriate procedures to identify and remedy any participation by the County in unintended unlawful discrimination (active or passive).

Mecklenburg County engaged a consultant, Griffin & Strong P.C. (“GSPC” or the “consultant”), to conduct a Disparity Study assessing County purchasing, contracting and the MWSBE Program. The consultant produced its Study Report to the County in 2020, and the BDI Program has the objective of implementing recommendations included in the Study. For example, the consultant found that there is a factual predicate for the continuation of the MWSBE (now BDI) Program. Moreover, the results of the study confirmed that the race and gender-neutral policies and program elements thus far employed by the County have proven insufficient to remedy the present effects of past discrimination in purchasing/contracting in the relevant market. The consultant therefore recommended implementation of certain race conscious and gender conscious elements as part of the Program.

**4. Commitment to Program Objectives.**

In the 2020 Disparity Study, GSPC recommended that Mecklenburg County increase staffing to facilitate recommendations relating to supportive services, monitoring and compliance, forecasting, and goal-setting. The County is committed to achieving the BDI Program objectives and, accordingly, to providing the necessary budgetary, staffing, and support resources necessary for the success of the BDI Program.

For assistance, contact the Office of Economic Development’s BDI Team.

Mecklenburg County - Office of Economic Development  
**Business Diversity & Inclusion (BDI) Program**  
Charlotte-Mecklenburg Government Center  
600 East 4th Street Charlotte, North Carolina 28202

Phone: 980.314.2945  
Email: [BDI@mecknc.gov](mailto:BDI@mecknc.gov)  
Website: [oed.mecknc.gov/BDI](http://oed.mecknc.gov/BDI)

**BDI SOLICITATION COVERSHEET**

The County maintains a strong commitment to the inclusion of MWBEs in the County’s contracting and procurement process. Accordingly, BDI provides information and forms that Bidders will supply to be considered for the Program.

Bidders are expected to review the entire BDI Program Provisions Guide and this BDI Solicitation Coversheet as they are planning to submit the BDI form(s) with their Bid/Proposal. The Bid/Proposal should outline any supplies and/or services to be provided by Subcontractors, including each certified Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) for the Contract. Submittals (forms) and time frames can be referenced in Section-4.

**PROJECT NAME:** Phase2A Kings Branch at Arrowood Rd. Stream Restoration

**INDUSTRY CATEGORY**

Architect & Engineering  Construction  Professional Services  Other Services  Goods

Review the established participation goal type selected with the  below for this specific solicitation.

**PARTICIPATION GOAL TYPES**

**A. CONTRACT-BY-CONTRACT GOALS**  
THE ESTABLISHED **SUBCONTRACTOR** PARTICIPATION GOALS FOR THIS PROJECT ARE:

3% MBE 3% WBE  
*\*Note: the goals must be achieved independently and not in combination*

Required Bid forms associated with this participation goal type are:

- [Form A] Listing of Good Faith Efforts (GFE)
- [Form B] Identification of Subcontractor Participation
- Joint Ventures Documentation (include when  is selected)

**ALL PRIME CONTRACTORS MUST DEMONSTRATE GOOD FAITH EFFORTS IN SOLICITING CERTIFIED NCHUB MBE & WBE SUBCONTRACTORS TO ACHIEVE THE SUBCONTRACTING GOALS NOTED ABOVE.**

Reference: A. Contract-by-contract goals stated above cannot be fulfilled by Prime.

## TABLE OF CONTENTS

BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM OVERVIEW ..... 2

BDI SOLICITATION COVERSHEET ..... 4

SECTION-1 | FORMAL AND INFORMAL PURCHASING ..... 6

SECTION-2 | PARTICIPATION GOALS..... 6

SECTION-3 | THE BIDDING PROCESS AND RESPONSIBILITIES ..... 10

SECTION-4 | SUBMITTALS AND TIME FRAME..... 15

SECTION-5 | GOOD FAITH EFFORTS (GFE) POINTS SYSTEM ..... 16

SECTION-6 | REQUIRED FORMS ..... 21

    Form A – Listing of Good Faith Efforts (GFE) ..... 22

    Form B – Identification of Subcontractor Participation ..... 24

    Form B1 – Identification of Subcontractor Participation - ALTERNATES ..... 26

    Form C – Statement of Intent to Perform Contract with OWN Workforce..... 28

    Form D – MWBE Inclusion Plan ..... 29

    Form E – Subcontractor Commitment ..... 30

    Form E1 – Tier 2 Subcontractor Commitment (Special Projects Only)..... 31

    Form F – Certificate of MWBE Unavailability ..... 32

    Form G – Prime Contractor / Project Identification Form..... 33

    Form H – Statement of Payments to Subcontractors (Suppliers/Subconsultants)..... 34

SECTION-7 | PROMPT PAYMENT ..... 36

SECTION-8 | ADDITIONAL RACE AND GENDER-NEUTRAL PROGRAM ELEMENTS..... 36

SECTION-9 | PROGRAM COMPLIANCE & GRIEVANCE PROCEDURES ..... 37

SECTION-10 | APPENDIX ..... 40

    1. Definitions ..... 40

    2. Websites..... 45

**SECTION-1 | FORMAL AND INFORMAL PURCHASING**

The BDI Program Team applies the [general purchasing procurement policies and procedures](#) as required by law and enacted by Mecklenburg County, including all applicable purchasing thresholds and approval requirements, as if fully set forth herein.<sup>1</sup> Mecklenburg County’s Procurement Policies are incorporated in this document by reference, and can be found on the Mecklenburg County website noted in Section-10(2).

**SECTION-2 | PARTICIPATION GOALS**

**1. Achievement Goals**

Achievement Goals may be included only in those County solicitations that **do not contain contract-by-contract goal-setting** for specific MWBE goals, and when included, shall be advisory, and must also be accompanied by the full definition of the term in such solicitations as stated in this Program Provisions Guide.

Achievement Goals for MWBE participation in County contracts in the categories of Construction (including Construction-related Professional Services), Architecture and Engineering, non-construction Professional Services, Other Services, and Goods are established as follows and are based upon the MBE and WBE Availability by industry / commodity in accordance with the findings of the 2020 Disparity Study.

<b>Industry Category</b>	<b>MBE Goal</b>	<b>WBE Goal</b>
Construction	8%	8%
Architecture & Engineering	14%	4%
Professional Services	10%	4%
Other Services	11%	4%
Goods	5%	4%

*\*Note: the goals must be achieved independently and not in combination*

**2. MWBE Inclusion Plan**

*(submitted with Bid/Proposal, when selected in the BDI Solicitation Coversheet)*

**Purpose:**

Create defined metrics of success, by creating a MWBE Inclusion Plan

**MWBE Inclusion Plan:**

Create a detailed description of the strategies and actions the Bidder/Participant will take to outreach fairly and equitably, to support, and to contract with MWBEs.

The following are elements to incorporate into the MWBE Inclusion Plan to help collaborate with MWBEs by addressing any of the following, but not limited to:

- the firms you contacted, when, and how you made contact, and their contact information;
- the outreach strategy used to meet this Contract’s MWBE achievement goals;

<sup>1</sup> See Mecklenburg County, North Carolina Procurement Policy, ¶¶ 7-8, 10-11. Phase2A Kings Branch at Arrowood Rd. Stream Restoration

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

- the specific resources and resource contacts utilized to locate MWBE firms for this Contract, when, and how you made contact, and their contact information;
- the plan for building a connection with MWBEs and developing a project team;
- the plan to strengthen business relationships;
- the methods that will be used to improve lines of communication;
- the approach(es) that will be taken to resolve disputes;
- detailed description of the supportive services and activities that will be established for business development and how the plan will be executed;
- the mentorship opportunities that will be made available and how those opportunities will be executed; and
- the efforts that will be made available for capacity building and how those efforts will be executed.

### **Resources:**

To assist in locating MWBEs, the Bidder/Participant may utilize an MWBE Diversity consultant and/or contact Certification Agencies, Advocacy Groups, Business Resource Agencies, Regional and Diversity Chamber of Commerce Organizations, Industry/Trade Associations, Mecklenburg County's Procurement Department, and the BDI Program Office, etc.

Some Resources: Metrolina Minority Contractors Association, Hispanic Contractors Association of the Carolinas, The Institute, and the HUB Office or hire a diversity consultant.

### **3. Goal-Setting Committee**

The Goal-Setting Committee (GSC) is to be chaired by the BDI Director (or designee) with consultation from the County Attorney's Office when applicable. The GSC shall also include, at a minimum, the BDI Compliance Officer assigned to the solicitation (or designee), the Procurement Director (or designee), the Director of the Originating Department(s) (or designee) including the respective BDI liaison, a member from the Mecklenburg County business community, and, if the goal is for a Construction or Architecture & Engineering contract, the project manager or engineer assigned to the solicitation, all without duplication of designees. Any of these committee members may, on an as-needed basis, also designate a subject matter expert to participate in the goal-setting for the particular contract(s) at issue.

The GSC establishes BDI Program goals (e.g., contract-by-contract subcontracting goals) based upon Industry Categories (or commodity codes), vendor availability, and contract-specific characteristics.

At the BDI Director's discretion, additional personnel from the Originating Department(s) and/or industry experts in relevant fields can be appointed, and one or more GSCs may be appointed to serve in this capacity simultaneously if it serves the County's best interests in efficiently processing Bid solicitations and applying Program elements to them. At a minimum, the GSC shall:

- a) Meet as often as it deems necessary to accomplish its duties as outlined in this Program Provisions Guide, but not less than once monthly;

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

- b) Review in advance proposed contract bid specifications to ensure that they are not unnecessarily restrictive and do not adversely affect the ability of MWBE firms to competitively bid without adequate business justification;
- c) Formulate and recommend to the County Manager (or designee), and implement additional rules and procedures for BDI Program goal-setting and other aspects of its duties in selecting and applying specific Program elements to County contracts in an efficient and effective manner; and
- d) Support the implementation and efforts of the BDI Program.

#### 4. Contract-by-Contract Goals

The Goal-Setting Committee (GSC) will set specific percentage-based MWBE Subcontracting goals on a contract-by-contract basis for Contracts valued in excess of \$300,000 and shall have the authority to establish such goals based upon the type of Contract, the type of subcontracting work that will be required, and the availability of MWBEs to perform the work for that specific Contract.

The GSC shall not establish Subcontracting Goals on contracts where (a) there are no subcontracting opportunities identified for the contract; or (b) there are not at least three MBE and/or WBE firms that are available and capable to perform a Commercially Useful Function for the overall subcontracting opportunities on the contract. This process is determined by the BDI Program Office.

All subcontracting goals authorized under the BDI Program are intended to be established by the GSC and implemented only on a contract-by-contract basis. It is intended that such goal-setting will be based upon careful analysis of the availability of Commercially Useful subcontracting opportunities within a given contract and the relative availability of MWBE firms to perform required tasks on such subcontracting opportunities. Contract-by-contract goal-setting shall be based upon reasonably reliable MWBE Subcontractor availability data. Compliance with contract-specific subcontracting goals shall also require compliance with Good Faith Efforts as established in this Program Provisions Guide.

The GSC shall not establish a Subcontracting goal for a contract where there are no subcontracting opportunities identified for the contract or there is insufficient availability of MBEs or WBEs (as applicable) to perform scopes of work or provide products or services that the GSC regards as realistic opportunities for subcontracting. Accordingly, in establishing Contract Goals, the GSC shall:

- a) Review in advance proposed contract bid specifications to ensure that they are not unnecessarily restrictive and do not adversely affect the ability of MWBE firms to competitively bid;
- b) Formulate, recommend to the BDI Director (or designee), then implement additional rules and procedures for MWBE goal-setting and other aspects of its duties in selecting and applying specific Program elements to contracts with Mecklenburg County in an efficient and effective manner; and
- c) Monitor and support the implementation of the contract-by-contract goals aspect of the BDI Program.

**Special Projects**

For qualifications-based selections for Construction Manager at Risk (CM@R), Public Private Partnerships (P3), Master Developers, Design Build, and other Alternative Build Methods, the County’s overall goals for the project are based upon the Availability of firms in the Industry Categories of Construction and Architecture & Engineering. The overall goals will be included in the solicitation that the Participant(s) will agree to make Good Faith Efforts to meet the goals. At the time of qualification submittals, Participant(s) should submit an ‘MWBE Inclusion Plan’ that represents how the Participant(s) intends to meet or exceed the goal. As construction bid requests or packages are issued by the selected Contractor(s) and Developer(s), they shall include the BDI Provisions Guide, Good Faith Efforts, and the MWBE Participation Goals for each contract and the requirement for its tiered subcontractors.

Industry Category	MBE Goal	WBE Goal
Construction	15%	8%
Architecture & Engineering	15%	8%

**5. Program Waiver**

Should the BDI Program Office determine after consideration of all relevant documents and other information that there are no subcontracting opportunities identified for a particular contract or there is insufficient availability of MBEs or WBEs (as applicable) to perform scopes of work or provide products or services that identifies realistic opportunities for subcontracting, no subcontracting goal shall be assigned to such contract and a Program Waiver notification shall be issued. As defined herein, a Program Waiver applies to “[a] particular solicitation for which goals are not required and is therefore waived.”<sup>2</sup> This is not the same as a “Waiver based on Good Faith Efforts.”

**6. Joint Ventures**

Based upon the scope of work and market availability, the County Manager (or designee) shall determine if a joint venture for a construction project is required with input from the BDI Program Team and the Originating Department. Utilization efforts to form a joint venture shall be required for such project. Only Construction projects valued over \$5,000,000 are eligible for consideration under this section.

On such projects in which utilization efforts to form a joint venture relationship is required, no Bid shall be accepted unless submitted by a joint venture, unless the BDI Program Team determines that in its discretion and judgement sufficient utilization efforts to enter into a joint venture have been demonstrated based on a careful review of relevant facts, documents, and circumstances.

Also, on such eligible projects, the joint venture member businesses/partners must have different race ownership, different gender ownership, or both. MWBE members of the joint venture must be certified as such (as required by the BDI Program Office), and the joint venture team shall include in its Bid submittal the proof of MWBE Certification of each MWBE joint venture member. A Bid submitted by a joint venture comprised of Bidders with both the same race and gender ownership shall be deemed non-responsive and rejected.

<sup>2</sup> See Definitions, *infra*.  
Phase2A Kings Branch at Arrowood Rd. Stream Restoration

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

As to each joint venture under this section, a written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the BDI Program Office as set forth in Bid documents or otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the Contract.

The BDI Program Team shall review and approve all contractual agreements (with consultation from the County Attorney's Office when applicable) regarding the terms and provisions of each joint venture relationship prior to the award of a contract on eligible projects. The joint venture agreements should at a minimum include the following information:

- the initial capital investment of each venture partner;
- the proportional allocation of profits and losses to each venture partner;
- the sharing of the right to control the ownership and management of the joint venture;
- actual participation of the venture partners on the project;
- the method of and responsibility for accounting;
- the method by which disputes are resolved; and
- any additional or further information required by the office of contract compliance as set forth in Bid documents or otherwise.

The joint venture, and each member of the joint venture, shall provide the BDI Program Team access to review all records pertaining to joint venture agreements before and after the award of a contract in order to reasonably assess compliance with this subdivision.

A Bid submitted by a joint venture that does not include a satisfactory written joint venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

### SECTION-3 | THE BIDDING PROCESS AND RESPONSIBILITIES

The formal and informal bidding process is governed by state law and the relevant provisions of the Mecklenburg County, North Carolina Procurement Policy.<sup>3</sup> The following outlines or underscores relevant steps and processes that most often arise in the context of the BDI Program.

The RFP/RFQ process is set out in the County's policies and the BDI Provisions adopt the County's policies and clarify unique BDI requirements.

All parties listed below (1-5) must adhere to the BDI Program Provisions Guide.

---

<sup>3</sup> See N.C.G.S. §§ 143.128, 143.129; Mecklenburg County, North Carolina Procurement Policy, ¶ 11.  
Phase2A Kings Branch at Arrowood Rd. Stream Restoration

**a) Bidder/Participant Responsibilities****a) Time of Bid**

In adherence to the Bid due date, along with the Bid documents, the Bidder is required to fully complete and submit the appropriate BDI Program Form(s) relating to potential MWBE utilization on the project. The specific forms to be utilized are noted on the Bid Solicitation Information Coversheet per the Participation Goal Type.

- Form A – Listing of Good Faith Efforts (GFE)
- Form B – Identification of Subcontractor Participation
- Form C - Statement of Intent to Perform Contract with Own Workforce
- [Form D] MWBE Inclusion Plan
- Joint Venture Documentation (if applicable)

Descriptions of the aforementioned forms are included in Section-4.

Bid responses will be reviewed and validated for compliance by the County.

**b) Time of Intent to Award**

The Bidder that is determined to be the lowest responsible and responsive Bidder (construction) or the best value responsible and responsive Bidder (procurement) is required to submit the appropriate BDI Program Form(s) relating to confirmed MWBE utilization and Good Faith Efforts accomplished (if applicable).

- Form B1 - Identification of Subcontractor Participation – Alternates (Construction Only)
- Form E - Subcontractor Utilization Commitment
- Form E1 – Tier 2 Subcontractor Utilization Commitment (Special Projects Only)
- Form F – Certificate of MWBE Unavailability
- Good Faith Efforts (GFE) Documentation (if applicable)

Descriptions of the aforementioned forms are included in Section-4.

**c) During Contract Period**

The apparent lowest responsible and responsive Bidder/Participant (construction) or the apparent best value responsible and responsive Bidder/Participant (procurement) is required to complete and submit the appropriate BDI Program Form(s), any additional documentation requested, and attend and participate in communication efforts and meetings relating to MWBE utilization on the project, compliance efforts, and dispute resolution(s). The Bidder/Participant should also engage in ongoing communication with the project team (inclusive of Subcontractors/suppliers). After award of fully executed Contract, the contractor is required to utilize the contract compliance solution system when applicable/directed.

- Form E - Subcontractor Utilization Commitment

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

- Form E1 – Tier 2 Subcontractor Utilization Commitment (Special Projects Only)
- Form G – Prime Contractor/Project Identification
- Form H – Statement of Payments to Subcontractors/Suppliers

Descriptions of the aforementioned forms are included in Section-4.

### b) BDI Program Office Responsibilities

- a) At the time of advertisement for Bids, the BDI Program Team will notify certified Minority and Women Business Enterprise firms of the opportunities available to them and will provide them with a list of potential prime Bidders upon request or within 72-hours. The BDI Program Team will provide the Bidders/Participants with an updated list of certified MWBE firms that may be able to provide sub-bids and/or quotes for scopes of service and/or goods upon request or within 72-hours.
- b) The Originating Department and the BDI Program Team shall review and validate the Bid information and forms.
- c) The BDI Program Team will also collect and review all required BDI program forms and documentation submitted by Bidders/Participants, and any additional documents required, in its discretion, to evaluate the compliance and sufficiency of the GFEs claimed.
- d) The BDI Team will conduct meetings and engage in communication efforts with Contractors (prime/sub) prior to and throughout the contract period. The BDI Program Team will utilize the Contract Compliance Solution System when applicable.
- e) BDI Program Team encourages utilization of MWBEs for Contracts and business opportunities under \$30,000 and for any dollar amount when formal advertisement and Bidding requirements are not applicable.
- f) The [Office of Economic Development](#) provides supportive services to all businesses.

### c) County Department Responsibilities

As set forth in the Mecklenburg County, North Carolina Procurement Policy, Department Directors are required to adhere to certain procedures regarding Bids and awards.<sup>4</sup>

It shall further be the responsibility of each Department to ensure that solicitations emanating from the Department adhere to the procedures and provisions set forth in this BDI Program Provisions Guide:

- (a) The Department Director (or designee) shall assume primary responsibility for achieving the objectives of this BDI Program Provisions Guide within the Department and shall review, on a continuing basis, all aspects of the Program's operations to assure that the purpose is being achieved.

<sup>4</sup> Mecklenburg County North Carolina Procurement Policy, ¶ 17.  
Phase2A Kings Branch at Arrowood Rd. Stream Restoration

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

- (b) Departments shall provide copies of the pre-bid attendance list within two (2) business days of the session ending.
  - (c) Departments shall provide copies of the interested bidders list upon request and/or within two (2) business days following the pre-bid meeting.
  - (d) Departments shall provide copies of the BDI forms submitted with the Bid from all the Bidders within 24 hours of the Bid opening/Bid due date to the BDI Office.
  - (e) Departments and the BDI Program Team shall review and validate the Bid information and forms.
  - (f) Departments shall communicate the selected apparent lowest responsible and responsive Bidder/Participant (construction) or the apparent best value responsible and responsive Bidder/Participant (procurement).
  - (g) Departments shall maintain accurate records for each contract awarded, including unsuccessful Bidders, dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts it employed to solicit responses from MWBEs, and all subcontracts awarded by the Prime Contractor identifying for each its dollar value, the nature of the goods or services provided and the name of the Subcontractor(s).<sup>5</sup> Departments will utilize the Contract Compliance Solution System when applicable/directed.
- d) BDI Program Team encourages utilization of MWBEs for Contracts and business opportunities under \$30,000 and for any dollar amount when formal advertisement and bidding requirements are not applicable.

### d) MWBE Responsibilities

It is the responsibility of the MWBE firm to contact the BDI Program Team for Contract opportunities, to provide quotes, and/or sub-bids when requested. The MWBE will also be responsible for completing Form E, the Subcontractor Commitment Form, in a timely manner and return it to the Prime Contractor.

**This paragraph only applies to Achievement Goals. This does not apply to Contract-by-Contract Goals.** The MWBE firm must be certified by the NC Office of Historically Underutilized Businesses (MWBE) for their Contract dollar amounts to be counted as MWBE participation. If the MWBE firm is not certified at the time, the firm commits to provide services, the MWBE should apply for the approved Certification designation with the County's approved Certification agency within thirty (30) business days. If the MWBE firm fails to submit an application for Certification within the specified time frame or if the MWBE firm is not certified, the non-certified firm's Contract dollar amount will not be counted as MWBE participation. The Prime Contractor must complete efforts to fulfill the committed MWBE participation goal(s).

MWBE firms who are contacted by Owners or Bidders/Participants must respond promptly whether or not they wish to submit a Bid (or sub-bid).

---

<sup>5</sup> See N.C.G.S. § 143-128.2(i); N.C.G.S. § 132-1.  
Phase2A Kings Branch at Arrowood Rd. Stream Restoration

Lastly, the MWBE firm is required to complete and submit the appropriate BDI Program Form(s), any additional documentation requested, and may be asked to attend and participate in communication efforts and meetings relating to MWBE utilization on the project, compliance efforts, and dispute resolution(s). The MWBE firm may also be asked to submit additional documentation when requested.

**e) Contract Compliance Solution System**

When applicable, the BDI Office, the Prime Contractor(s), and Mecklenburg County designees will utilize the web-based Contract Compliance Solution System to document, monitor, and track the project/contract information (including payments), and compliance efforts. Training and supportive services will be provided by the Procurement Department, with the BDI Office serving as their backup, to assist with use of the system.

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**SECTION-4 | SUBMITTALS AND TIME FRAME**

The specific forms to be utilized are noted on the Bid Solicitation Coversheet per the Participation Goal Type.

“Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the Bid.” NCGS 143-128.2(c)

Form Name/Description	Submission Requirements	Required Form #
<p><b>Listing of Good Faith Efforts (GFE)</b>                      Completed by Bidder(s). Identifies the statutory Good Faith Efforts undertaken to recruit and solicit MWBEs to meet or exceed the participation goal for this Contract  <b>SEE BDI SOLICITATION COVERSHEET FOR ESTABLISHED SUBCONTRACTING GOALS</b></p>	<p><b>Due with Bid/Proposal</b>                      when noted on Bid Solicitation Information  <i>(if subcontracting)</i></p>	Form A
<p><b>Identification of Subcontractor Participation</b>                      Completed by Bidder(s). Identifies MWBEs and non-certified firms (their scope of work and dollar value) that are anticipated to receive a subcontract for this Contract.</p>	<p><b>Due with Bid/Proposal</b>  <i>(if subcontracting)</i></p>	Form B
<p><b>Identification of Subcontractor Participation - Alternates</b>                      Completed by Bidder(s)/Participant(s). Identifies certified NCHUB MWBEs and non-NCHUB MWBEs that are anticipated to receive a subcontract for this Contract in the event Construction Alternates are selected by the County.</p>	<p>Due within three (3) business days after receiving a request from the County  <i>(if subcontracting)</i></p>	Form B1
<p><b>Statement of Intent to Perform Contract with Own Workforce</b>  <del>Completed by Bidder(s). Indicates that the Bidder does not customarily subcontract elements of this type of project, normally performs, has the capability to perform, and will perform ALL elements of the work on this Contract with its own current workforce AND will not purchase any material or supplies for the project in the performance of this Contract.</del></p>	<p><del><b>Due with Bid/Proposal</b>                      (if self-performing)</del></p>	Form C
<p><del><b>MWBE Inclusion Plan</b>                      Completed by Bidder(s)/Submitter(s). A detailed description of the strategies and actions the Bidder/submitter will take to outreach fairly and equitably, support, and contract with MWBEs.</del></p>	<p><del><b>Due with Bid/Proposal</b>                      when noted on Bid Solicitation Information Coversheet                      (if subcontracting)</del></p>	Form D
<p><b>Subcontractor Commitment</b>                      Completed by Prime Contractor(s) and ALL of the Subcontractors (Suppliers/Subconsultants). This document shall not serve in a manner as an actual subcontract between the two parties. A separate binding agreement will describe in detail the contractual obligation of the Prime Contractor and the Subcontractor conditioned upon the execution of a contract with Mecklenburg County.</p>	<p>Due within three (3) business days after receiving a request from the County  <i>(if subcontracting)</i></p>	Form E
<p><b>Tier 2 Subcontractor Commitment (Special Projects Only)</b>                      Completed by Tier 1 Subcontractor and ALL of the Tier 2 Subcontractors (Suppliers/Subconsultants). This document shall not serve in a manner as an actual subcontract between the two parties. A separate binding agreement will describe in detail the contractual obligation of the Tier 1 Firm conditioned upon the execution of a contract with the Prime and Mecklenburg County and Tier 1 Firm and the Prime.</p>	<p>Due within three (3) business days after receiving a request from the County  <i>(if subcontracting–Tier 2)</i></p>	Form E1
<p><b>Certificate of MWBE Unavailability</b>                      Completed by Bidder(s)/Participant(s). This document identifies the MWBE firms that were originally committed to Subcontract in good faith but became unavailable prior to signing a formal Agreement/Contract.</p>	<p>Due with the Subcontractor Commitment Form (Forms E/E1)</p>	Form F
<p><b>Prime Contractor / Project Identification</b>                      Completed by Prime Contractor. Identifies the Prime Contractor and Project information.</p>	<p>Due within three (3) business days after receipt of fully executed County Contract</p>	Form G
<p><b>Statement of Payments to Subcontractors/Suppliers</b>                      Completed by Prime Contractor(s) (and Tier 1 Subcontractors when applicable). Prime Contractors must submit this form with each request for payment showing work that has been approved and completed for all Subcontractors (suppliers, manufacturers, brokers, and/or members of a joint venture) in connection with the Contract.</p>	<p>Due with Pay Applications</p>	Form H
<p><b>Good Faith Efforts (GFE) Documentation</b>                      Completed by Bidder(s). If the established MBE and WBE goals are not achieved at the time of Bid, the Bidder shall provide the backup documentation using the GFE Points System as a guide for documentation submission to support the Good Faith Efforts selected on Form A.</p>	<p>Due upon the time specified by the County, if not specified then within three (3) business days after the bid due date</p>	Backup Documentation using the GFE Points System
<p><b>Joint Venture Documentation</b>                      Completed by Prime Contractor(s). Documentation that acknowledges a joint venture, the terms, and percentage breakdown.</p>	<p><b>Due with Bid/Proposal</b>                      when noted on Bid Solicitation Information Coversheet                      (if subcontracting)</p>	Backup Documentation

## SECTION-5 | GOOD FAITH EFFORTS (GFE) POINTS SYSTEM

North Carolina law (N.C.G.S. § 143.128.2(f)) permits local governments some level of discretion in setting and applying the Good Faith Efforts (GFE) point system for MWBE inclusion, but a local government cannot require a Bidder to earn more than fifty (50) points. “Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the Bid” as being non-responsive. N.C.G.S. § 143-128.2(c) Id. Accordingly, the County has established the following GFE point system:

- The County will evaluate all efforts made by the Bidder/Participant to determine compliance with good faith efforts categories. The BDI Program Team will assess whether the efforts employed by the Bidder are those a Prime Contractor would reasonably be expected to take if they were actively and aggressively trying to meet each Goal established for the Contract. The assessment will be made on a case-by-case basis taking all available facts into account, including documentation provided by the Bidder/Participant.
- The BDI Program Team (or designee) may take into account the performance of other Bidders/Participants in meeting the established Goals. Mere *pro forma* efforts will not be sufficient. The focus will be on the likely effectiveness of steps taken.
- To avoid any impression of unfair Bid practices, all actions necessary to earn the GFE points must be undertaken prior to the Bid opening/Bid due date. For each subcontracting Goal that is unmet, the Bidder/Participant must earn at least fifty (50) GFE points (the “Minimum GFE Points”) from the GFE categories described below to be considered responsive and responsible.
  - a) **Subcontractor Solicitation - (15 pts)** Bidder/Participant solicited Bids from MWBEs that would meet the Goals stated for the respective Contract, that reasonably could have been expected to submit a quote, and that were known to the Bidder/Participant or available on State or local government-maintained lists, at least **ten (10) Business Days** before the Bid Opening/Bid due date and notified them of the nature and scope of the work to be performed.

Factors considered for these points may include, but are not limited to:

- Providing a contact log (telephone and/or email) of initial communication to, responses from, and follow-up communication to and from each firm solicited.
  - the Bidder’s/Participant’s solicitation of Bids from MWBE Subcontractors, while also considering total number of available MWBE firms that would meet the Goals stated in the respective Contract;
  - whether the Bidder/Participant solicited Bids from MWBEs listed as performing scopes of work sufficient to meet each Goal;
  - whether the solicitations were made at least **ten (10) Business Days** before Bid opening/Bid due date;
  - how the solicitations occurred and whether they were documented in a verifiable way (and in compliance with any forms provided by the County);

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

- whether the substance of the Bidder's/Participant's solicitation was reasonably sufficient to generate a response from MWBEs;
- whether the Bidder/Participant promptly and adequately responded to inquiries received from MWBEs; and
- whether the Bidder/Participant initiated follow-up communications to MWBEs that did not respond to the Bidder's/Participant's initial solicitation.

- b) **Plan Availability – (10 pts)** The Bidder/Participant made the Project Documents (e.g., project descriptions, scopes of work, construction plans, specifications, and/or requirements) available for review by prospective MWBE Subcontractors or provided these documents to them at least **ten (10) Business Days** before the Bids are due. **A Bidder/Participant may receive credit for this GFE only if the Bidder/Participant receives credit for the above Subcontractor Solicitation GFE (subsection (a)) and it responds promptly to any request(s) made for access to the project documents.**

The ways a Bidder/Participant made Project Documents available for these points include:

- providing a telephone number or email address for MWBE firms to request copies of the Project Documents via email, fax, regular mail, or other means of document transfer, at no cost; and/or
- providing an address within the Charlotte-Concord-Gastonia MSA where MWBEs can physically access/review the Project Documents at no cost; and/or
- posting the Project Documents on a website that MWBEs can access at no cost.

- c) **Breaking Down Work – (10 pts)** The Bidder/Participant separated or combined elements of work into economically feasible units to facilitate MWBE participation. **A Bidder/Participant may receive credit for this GFE only if the Bidder/Participant receives credit for the above Subcontractor Solicitation GFE (subsection (a)).**

In deciding whether to award points for this GFE, the BDI Program Team will consider:

- the number and dollar value of the scopes of work the Bidder/Participant listed in its written invitation to Bid for MWBE participation,
- whether those scopes would be sufficient to meet the contract subcontracting Goals and how the Bidder/Participant notified MWBEs of its willingness to break down the work into such units.

Simply restating the County's subcontracting scopes as listed in the solicitation documents may not be sufficient to earn this GFE; the Bidder/Participant should provide written documentation to demonstrate negotiations with MWBEs after having proposed broken-down or combined elements of work.

- d) **Working with an MWBE Assistance Organization – (10 pts)** The Bidder/Participant must document it worked with MWBE trade, community, or

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

contractor organizations identified by the BDI Program Team, the NC Office of Historically Underutilized Businesses, and/or included in the Bid documents that provide assistance in recruitment of MWBE businesses, at least **fifteen (15) Business Days** before Bids are due. **A Bidder/Participant may receive credit for this GFE only if the Bidder/Participant receives credit for the above Subcontractor Solicitation GFE (subsection (a)).**

The Bidder/Participant must document that it worked with an MWBE assistance organization to provide assistance in recruiting MWBEs for the Contract for which Bids are sought. In deciding whether to award points for this GFE, the BDI Program Team will consider:

- the timing and nature of how the Bidder/Participant worked with the MWBE organization, and;
- whether such efforts were reasonably likely to result in significant MWBE participation for the Contract for which Bids are sought.

- e) **Attending Pre-Bid – (10 pts)** The Bidder/Participant attended any pre-Bid meetings scheduled by the public owner.
- f) **Bonding or Insurance Assistance – (10 pts) After the Bidder/Participant received a Bid from an MWBE Subcontractor**, the Bidder/Participant committed to providing assistance to the MWBE in obtaining required bonding or insurance or provided alternatives to bonding or insurance. **Mere willingness to offer such assistance in the absence of some MWBE Subcontractor participation will not result in credit for these points.**

To document satisfaction of this GFE, the Bidder/Participant must submit:

- the name and contact information of the MWBE;
- a description of the assistance the Bidder/Participant will provide;
- the date the Bidder/Participant will provide the assistance;
- the name of a contact person with the MWBE who can verify that the Bidder/Participant committed to providing the assistance; and
- any additional information requested by the County.

No credit will be given for assistance provided to an Affiliate of the Bidder/Participant or assistance provided that is required by law.

In deciding whether to award points for this GFE, the BDI Program Team will consider how significant and meaningful the assistance was, how many MWBEs the assistance was offered to, and what impact it likely had on the Bidder's/Participant's efforts to recruit MWBEs for the project.

- g) **Negotiating in Good Faith with MWBEs- (20 pts)** The Bidder/Participant must demonstrate that the Bidder/Participant negotiated in good faith with interested MWBE businesses (which, at a minimum, means showing some back-and-forth negotiations between the Bidder/Participant and prospective MWBEs), and did not reject any MWBEs as unqualified without sound reasons based on their capabilities

and shall document in writing the reasons for rejecting any MWBEs for lack of qualifications.

The County will determine if the rejection is valid based on the following information to be provided by the Bidder/Participant:

- copies of all Subcontractor proposals/responses received from each MWBE firm responding to the Bidder's/Participant's solicitation;
- letter from Bidder/Participant detailing reasons for rejecting MWBEs due to lack of qualifications;
- for subcontracts where a MWBE firm is not considered the lowest responsible Subcontractor, copies of proposals/responses received from all firms submitting proposals for that particular scope of work;
- if the rejection is due to self-performance of a specified work area, Bidder/Participant must submit Bidder's/Participant's own estimate for the scope of work.

The Bidder/Participant must not alter any dollar amounts and/or scopes of work. If a revision is required a revised proposal must be submitted. All telephone proposals must be followed up with a written proposal. All proposals must be received prior to Bid opening/Bid due date.

**h) Financial Assistance – (15 pts) After the Bidder/Participant received a Bid from an MWBE Subcontractor**, the Bidder/Participant committed to providing one of the following types of assistance to an MWBE in connection with the Contract, once awarded:

- assistance in obtaining equipment, a loan, capital, lines of credit, joint pay agreements or guaranties to secure loans, the purchase of supplies, or letters of credit, including waiving credit that is ordinarily required, or
- assistance in obtaining the same unit pricing with the Bidder's/Participant's suppliers as the Bidder/Participant.

To receive credit for this GFE, Bidders/Participants must provide:

- language in the Bidder's/Participant's solicitation letter and publication advertisement stating the Prime Contractor's Financial Assistance Policy;
- the name and contact information of the MWBE;
- the description of the assistance to be provided by the Bidder/Participant;
- the date the Bidder/Participant will provide the assistance; and
- the name of a contact person with the MWBE firm who can verify that the Bidder/Participant committed to providing the assistance.

In deciding whether to award points for this GFE, the BDI Program Team will consider how significant and meaningful the assistance was, how many MWBEs assistance was offered to, and what impact the assistance likely had on the Bidder's/Participant's efforts to recruit MWBEs for the project. **Mere willingness**

**to offer such assistance in the absence of some MWBE Subcontractor participation will not result in credit for these points.** No credit will be given for assistance provided to an Affiliate of the Bidder/Participants.

- i) **Joint Venture Arrangement – (20 pts)** The Bidder/Participant must demonstrate that the Bidder/Participant negotiated joint venture/partnership/association arrangements with MWBE in order to increase opportunities for MWBE participation on this project.
- To receive credit for this GFE, Bidders/Participants must provide:
    - the name and contact information of the MWBE;
    - a copy of the Joint Venture agreement or other formal business arrangement;
    - evidence of the date the MWBE entered into the agreement; and
    - the name of a contact person with the MWBE firm who can verify the existence of the agreement.

No credit will be given for a Joint Venture with an Affiliate of the Bidder/Participant. **Mere willingness to offer such arrangement in the absence of some MWBE Subcontractor participation will not result in credit for these points.**

- j) **Quick Payment Commitment – (10 pts)** After the Bidder/Participant received a Bid/Proposal from an MWBE Subcontractor, the Bidder/Participant committed to providing quick pay agreements and policies to enable such MWBE Subcontractor(s) and/or supplier(s) to meet cash-flow demands. **Mere willingness to offer such agreement in the absence of some MWBE Subcontractor participation will not result in credit for these points.**
- Quick Pay Agreements are defined herein at Section-10(1) (Definitions).
  - To receive credit for this GFE, Bidders must provide the BDI Program Team with:
    - language in the Bidder's/Participant's solicitation letter and publication advertisement stating the Prime Contractor's Quick Pay Policy;
    - a copy of the Bidder's Quick Pay Commitment related to the specific Contract;
    - documentation indicating that all MWBEs notified under the above Subcontractor Solicitation GFE (subsection (a)) have received a written copy of the Bidder's Quick Pay Commitment prior to the Bid opening/Bid due date.

### GFE Documentation

To demonstrate GFE compliance, a Bidder/Participant must submit the GFE Supporting Documentation within the time specified by the BDI Program Office. If the BDI Program does not specify a time, the Bidder/Participant must submit GFE Supporting Documentation within **three (3) Business Days** after the Bid due date. The BDI Program Office may request GFE Supporting Documentation from other Bidders in order to evaluate the MWBE participation achievement and the GFEs of the apparent low/best value Bidder relative to others.

Regardless of when the GFE Supporting Documentation is due, **all actions necessary to earn the GFE points must be undertaken and dated prior to Bid opening/Bid due date.**

**Consistent with the NC general statute**, “Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the Bid.” N.C.G.S. § 143-128.2(c).

**MWBE Good Faith Efforts Appeal Process**

If a Bid/Proposal is rejected because the BDI Program Office determined after reviewing all relevant information that the submitted documentation was inadequate to establish sufficient Good Faith Efforts, the Bidder/Participant may request a review of this determination in accordance with the following process: The Bidder/Participant who wishes to dispute the Good Faith Efforts decision of the BDI Program Office may have that decision reviewed by the Hearing Committee provided the Bidder/Participant submits a request for review in writing to the Originating Department within five (5) business days of the date of the decision to reject the proposal. The request shall contain specific reasons and any supporting documentation for why the Bidder/Participant believes that the Good Faith Efforts decision was in error.

The Originating Department shall refer the matter to the Hearing Committee (send a copy to the BDI Program Office). A hearing shall be scheduled within fifteen (15) business days of the receipt of the review request. The Hearing Committee will be provided all relevant documents in possession of the BDI Program Team. The Hearing Committee, upon its discretion, may seek review of the Good Faith Efforts decision with the Bidder and/or its representative and the BDI Director (or designee). The Hearing Committee shall make a decision and notify the Bidder in writing within five (5) business days following the hearing. The Hearing Committee may affirm, reverse, or modify the Good Faith Efforts decision of the BDI Program Office. The decision of the Hearing Committee shall be final.

**SECTION-6 | REQUIRED FORMS**

Listed below.

BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

Form A – Listing of Good Faith Efforts (GFE)

[Submit with Bid]

Name of Bidder:

(Company Name)

Project Name:

Solicitation #:

\*\*\*Prior to submission, review your documents for accuracy and ensure all items are complete\*\*\*

I have reviewed and made a good faith effort to comply with Section-5 Good Faith Efforts (GFE) Points System and have marked the following by selecting the checkbox(es) [X] below and totaling the final points attained.

Bidders must earn at least fifty (50) points from the good faith efforts listed for their Bid to be considered responsive. (1 NC Administrative Code 30 I.0101). The Bidder agrees to provide any additional information and/or documentation per Section-5 Good Faith Efforts (GFE) Points System requested by the Owner in support of the Bidder's good faith efforts.

NOTE: All actions necessary to earn GFE Points must be undertaken prior to Bid opening/Bid due date.

- (a) - 15 pts Subcontractor Solicitation: Bidder/Participant solicited Bids from MWBEs that would meet the Goals stated for the respective project, that reasonably could have been expected to submit a quote, and that were known to the Bidder/Participant or available on State or local government-maintained lists, at least ten (10) Business Days before the Bid date and notified them of the nature and scope of the work to be performed.
(b) - 10 pts Plan Availability: The Bidder/Participant made the Project Documents (e.g., project descriptions, construction plans, specifications, and/or requirements) available for review by prospective MWBE Subcontractors or provided these documents to them at least ten (10) Business Days before the Bids are due. A Bidder/Participant may receive credit for this GFE only if the Bidder/Participant receives credit for the above Subcontractor Solicitation GFE (subsection (a)) and it responds promptly to any request(s) made for access to the project documents.
(c) - 10 pts Breaking Down Work: The Bidder/Participant separated or combined elements of work into economically feasible units to facilitate MWBE participation. A Bidder/Participant may receive credit for this GFE only if the Bidder/Participant receives credit for the above Subcontractor Solicitation GFE (subsection (a)).
(d) - (10 pts) Working with an MWBE Assistance Organization: The Bidder/Participant must document it worked with MWBE trade, community, or contractor organizations identified by the BDI Program Team, the state Office of Historically Underutilized Businesses, and/or included in the Bid documents that provide assistance in recruitment of MWBE businesses, at least fifteen (15) Business Days before Bids are due. A Bidder/Participant may receive credit for this GFE only if the Bidder/Participant receives credit for the above Subcontractor Solicitation GFE (subsection (a)).
(e) - (10 pts) Attending Pre-Bid: The Bidder/Participant attended any pre-Bid meetings scheduled by the Owner.
(f) - (10 pts) Bonding or Insurance Assistance: After the Bidder/Participant received a Bid/Proposal from an MWBE Subcontractor, the Bidder/Participant committed to providing assistance to the MWBE in obtaining required bonding or insurance

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

or provided alternatives to bonding or insurance. **Mere willingness to offer such assistance in the absence of some MWBE Subcontractor participation will not result in credit for these points.**

(g) – (20 pts) **Negotiating in Good Faith with MWBEs:** The Bidder/Participant must demonstrate that the Bidder/Participant negotiated in good faith with interested MWBE businesses (which, at a minimum, means showing some back-and-forth negotiations between the Bidder/Participant and prospective MWBEs), and did not reject any MWBEs as unqualified without sound reasons based on their capabilities and shall document in writing the reasons for rejecting any MWBEs for lack of qualifications.

(h) – (15 pts) **Financial Assistance: After the Bidder/Participant received a Bid/Proposal from an MWBE Subcontractor,** the Bidder/Participant committed to providing one of the following types of assistance to an MWBE in connection with the Contract, once awarded:

- assistance in obtaining equipment, a loan, capital, lines of credit, joint pay agreements or guaranties to secure loans, the purchase of supplies, or letters of credit, including waiving credit that is ordinarily required, or
- assistance in obtaining the same unit pricing with the Bidder's/Participant's suppliers as the Bidder/Participant.

(i) – (20 pts) **Joint Venture Arrangement:** The Bidder/Participant must demonstrate that the Bidder/Participant negotiated joint venture/partnership/association arrangements with MWBE in order to increase opportunities for MWBE participation on this project.

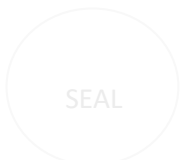
(j) - (10 pts) **Quick Payment Commitment: After the Bidder/Participant received a Bid / proposal from an MWBE Subcontractor,** the Bidder/Participant committed to providing quick pay agreements and policies to enable such MWBE Subcontractor(s) and/or Supplier(s) to meet cash-flow demands. **Mere willingness to offer such agreement in the absence of some MWBE Subcontractor participation will not result in credit for these points.**

The undersigned will enter into a formal agreement with the firms listed on the Identification of Subcontractor Participation Form (Form B), conditional upon the 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, giving rise to all contract and/or statutory remedies, including but not limited to cancellation of the contract.

The undersigned hereby certifies that he or she has read the terms of the BDI Program Provisions Guide and the formal agreement with the firms listed on Form B and is authorized to bind the Bidder/Participant to the commitment herein set forth.

**Total GFE Points** \_\_\_\_\_ (Calculate the total GFE points selected with  above)  
For each Participation Goal (MBE and WBE) that is unmet, the Bidder must earn at least fifty (50) GFE points (the "Minimum GFE Points") to be considered responsive. Be prepared to submit the documentation following the Bid opening/Bid Due date.

Date: \_\_\_\_\_ Name of Authorized Person: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_



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

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**Form B – Identification of Subcontractor Participation**

[Submit with Bid]

SEE BDI SOLICITATION COVERSHEET FOR ESTABLISHED SUBCONTRACTING GOALS

The County maintains a strong commitment to the inclusion of MWBEs in the County’s contracting and procurement process when there are viable subcontracting opportunities. Bidders must submit this form with their Bid/Proposal outlining any supplies and/or services to be provided by all Subcontractors, including each MBE, WBE, and non-certified firms for the Contract.

\*\*\*Prior to submission, review your documents for accuracy and ensure all items are complete\*\*\*

**Name of Bidder:** \_\_\_\_\_ **Certification Status**  MBE  WBE  NCSBE  
 (Company Name) (check all that apply):  CBI-SBE  NCDOT-DBE

**Project Name:** \_\_\_\_\_ **Solicitation #:** \_\_\_\_\_ **Total Bid Amount:** \_\_\_\_\_

**Authorized Person:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

I, the Authorized Person, do hereby certify that on this Contract, we intend to use the following certified **MWBEs** and non-certified firms as Subcontractors (subconsultants, vendors, suppliers, and/or providers of professional and/or other services). We intend to expend the amounts/percentages below of the total dollar amount of the contract with the businesses listed

**\*\*MBE and WBE Certification with the NCHUB Office is required to be counted toward participation goals.**

Total Utilization Amount	Total Utilization Percentage	Total MBE Amount	Total MBE Percentage	Total WBE Amount	Total WBE Percentage	Total Non-Certified Amount	Total Non-Certified Percentage

#	Firm Name / Contact Person	Telephone / Email	County / State	Scope of Work	MBE Amount	WBE Amount	Non-Certified Amount
1							
2							
3							
4							
5							
6							

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

Mecklenburg County Government

Formal Documents

7							
8							
9							
10							
11							
12							
13							
14							
15							

*(add additional sheets if needed)*

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with the firms listed on this form, conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract, giving rise to all contract and/or statutory remedies, including but not limited to cancellation of the contract.

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

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**Form B1 – Identification of Subcontractor Participation - ALTERNATES**

[Do not submit with Bid – Due within three (3) business days after receiving a request from the County]

In the event Construction Alternates are selected by the County, the established Subcontracting goal(s) for this Contract will apply to the total contract amount, including contingency and the selected Alternates (“Total Contract Amount”). In such an instance, Bidders/Participants must identify additional MWBE commitments and submit Form B1 showing all commitments made after Bid Opening.

The County maintains a strong commitment to the inclusion of MWBEs in the County’s contracting and procurement process when there are viable subcontracting opportunities. Bidders must submit this form outlining any supplies and/or services to be provided by all Subcontractors, including each MBE, WBE, and non-certified firms for the Contract.

\*\*\*Prior to submission, review your documents for accuracy and ensure all items are complete\*\*\*

**Name of Bidder**

(Company Name): \_\_\_\_\_

**Total Contract Amount:** \_\_\_\_\_

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

**Solicitation #:** \_\_\_\_\_

**Authorized Officer Title:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

I, the Authorized Person, do hereby certify that on this Contract, we intend to use the following certified **MWBEs** and non-certified firms as Subcontractors (subconsultants, vendors, suppliers, and/or providers of professional and/or other services). We intend to expend the amounts/percentages below of the total dollar amount of the contract with the businesses listed

**\*\*MBE and WBE Certification with the NCHUB Office is required to be counted toward participation goals.**

Total Utilization Amount	Total Utilization Percentage	Total MBE Amount	Total MBE Percentage	Total WBE Amount	Total WBE Percentage	Total Non-Certified Amount	Total Non-Certified Percentage

#	Firm Name / Contact Person	Telephone / Email	County / State	Scope of Work	MBE Amount	WBE Amount	Non-Certified Amount
1							
2							
3							
4							

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

Mecklenburg County Government

Formal Documents

5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							

*(add additional sheets if needed)*

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with the firms listed on this form, conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract, giving rise to all contract and/or statutory remedies, including but not limited to cancellation of the contract.

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

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**Form C – Statement of Intent to Perform Contract with OWN Workforce**

[Submit with Bid]

\*\*\*Prior to submission, review your documents for accuracy and ensure all items are complete\*\*\*

**Name of Bidder:** \_\_\_\_\_ **Certification**  MBE  WBE  NCSBE  
(Company Name) \_\_\_\_\_ **Status:**  CBI-SBE  NCDOT-DBE  
**Telephone:** \_\_\_\_\_ **Emails:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_ **Solicitation #:** \_\_\_\_\_

**Total Bid Amount:** \_\_\_\_\_

I hereby certify that it is our intent to perform 100% of the contract required for this Contract.

- 1. In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type of project, normally performs, has the capability to perform, and will perform **all elements of the work** (labor) on this project with his/her own current workforces – including any aggregation of material, equipment or supplies required for the project provided by the Bidder's company for utilization on a County Project, with the total value of which is ten percent (10%) or more of the value of the contract or \$2,000, whichever is less; and

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

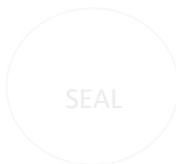
- 2. If it should become necessary to subcontract some portion of the work at a later date, the Bidder will comply with all "Good Faith Efforts" requirements in providing equal opportunity to MWBE firms to subcontract the Work. The BDI Program Office should be notified immediately and approved, and respective BDI Program Provisions and Forms should be adhered to.

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

Date: \_\_\_\_\_ Name of Authorized Person: \_\_\_\_\_

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

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



State of \_\_\_\_\_, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public Name/Signature \_\_\_\_\_

My commission expires \_\_\_\_\_

**Form D – MWBE Inclusion Plan**

[Submit with Bid/Submission, when selected in the BDI Solicitation Coversheet]

Create a detailed description of the strategies and actions the Bidder will take to outreach fairly and equitably, support, and contract with MWBEs.

\*\*\*Prior to submission, review your documents for accuracy and ensure all items are complete\*\*\*

The following are elements to incorporate into the MWBE Inclusion Plan to help collaborate with MWBEs by addressing the following, but not be limited to:

- the firms you contacted, when, and how you made contact, and their contact information
- the outreach strategy used to meet this Contract’s MWBE achievement goals;
- the specific resources and resource contacts utilized to locate MWBE firms for this Contract;
- the plan for building a connection with MWBEs and developing a project team;
- the plan to strengthen business relationships;
- the methods that will be used to improve lines of communication;
- the approach(es) that will be taken to resolve disputes;
- detailed description of the supportive services and activities that will be established for business development and how the plan will be executed;
- the mentorship opportunities that will be made available and how those opportunities will be executed; and
- the efforts that will be made available for capacity building and how those efforts will be executed.

*(add additional sheets if needed)*

DO NOT SUBMIT WITH BID

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**Form E – Subcontractor Commitment**

[Do not submit with Bid – Due within three (3) business days after receiving a request from the County]

This document standing alone shall not be considered an actual subcontract between the two parties. A separate binding agreement will describe in detail the contractual obligation of the Prime Contractor and the Subcontractor. The undersigned will enter into a formal agreement for the scope of work mentioned, conditioned upon the execution of a contract with Mecklenburg County. Breach of this commitment constitutes breach of Bidder's/Participant's contract if awarded. **If subcontracting with MBE/WBE Firms, any changes in this commitment must be approved in advance by the BDI Office.**

<b>To be completed by the Prime Contractor</b>			
Project Name:		Solicitation Number:	
Company Name:			
Authorized Person:		Title:	
Email:		Telephone:	
Reason for Out-of-State Sub Selection (if applicable):			

If the Prime Contractor has entered into a Quick Pay Agreement, in association with this Commitment, attach a copy of the executed Agreement with the undersigned business.

Upon execution of a Prime Contract with the County for the above referenced project, the Bidder/Participant certifies that it intends to utilize the business listed below, and that the description, cost of work to be performed by the business as described below is accurate. Both parties have or will enter into a formal agreement conditioned upon the execution of a Contract with Mecklenburg County.

Signature of Authorized Person (Prime Contractor) \_\_\_\_\_ Date \_\_\_\_\_

<b>To be completed by the Subcontractor (Supplier/Subconsultant)</b>			
Company Name:			
Authorized Person:		Title:	
Telephone:		Email:	
Address, City, St, Zip:			
County:		Ownership is Minority Female:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Source of Ownership Category:	** Please Select **	Ownership Category:	** Please Select **
Contract Date:		Attended the Pre-Bid:	<input type="checkbox"/> Yes <input type="checkbox"/> No

Identify in complete detail the scope of work to be performed and/or item(s) to be supplied with projected start and end timeframe. The undersigned intends to and is prepared to perform the work and/or provide the supplies (described below) in connection with the above project at the following Price (\$): \_\_\_\_\_

NIGP Code	Scope of Work	Projected Start Date	Projected End Date

The subcontracting firm certifies that it has read the BDI DBE Program Guide and agreed to provide such work/supplies for the amount stated above. Both parties have or will enter into a formal agreement conditioned upon the execution of a Contract with Mecklenburg County.

Signature of Authorized Person (Subcontractor/Supplier) \_\_\_\_\_ Date \_\_\_\_\_

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**Form E1 – Tier 2 Subcontractor Commitment (Special Projects Only)**

[Do not submit with Bid – Due within three (3) business days after receiving a request from the County]

This document standing alone shall not be considered an actual subcontract between the two parties. A separate binding agreement will describe in detail the contractual obligation of the Tier 1 Subcontractor and the Tier 2 Subcontractor. The undersigned will enter into a formal agreement for the scope of work mentioned, conditioned upon the execution of a contract between the Prime Contractor with Mecklenburg County and with the Prime Contractor and the Tier 1 Subcontractor. **If subcontracting with MBE/WBE Firms, any changes in this commitment must be approved in advance by the BDI Office.**

<b>To be completed by the Tier 1 Subcontractor</b>			
Project Name:			
Company Name:			
Authorized Person:		Title:	
Email:		Telephone:	
Reason for Out-of-State Sub Selection (if applicable):			

If the Subcontractor has entered into a Quick Pay Agreement, in association with this Commitment, attach a copy of the executed Agreement with the undersigned business.

Upon execution of the above-mentioned executed Contracts, the Tier 1 Subcontractor certifies that it intends to utilize the business listed below, and that the description, cost of work to be performed by the business as described below is accurate. Both parties have or will enter into a formal agreement conditioned upon the above-mentioned executed Contracts.

Signature of Authorized Person (Tier 1 Subcontractor) \_\_\_\_\_ Date \_\_\_\_\_

<b>To be completed by the Subcontractor (Supplier/Subconsultant)</b>			
Company Name:			
Authorized Person:		Title:	
Telephone:		Email:	
Address, City, St, Zip:			
County:		Ownership is Minority Female:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Source of Ownership Category:	** Please Select **	Ownership Category:	** Please Select **
Contract Date:		Attended the Pre-Bid:	<input type="checkbox"/> Yes <input type="checkbox"/> No

Identify in complete detail the scope of work to be performed and/or item(s) to be supplied with projected start and end timeframe. The undersigned intends to and is prepared to perform the work and/or provide the supplies (described below) in connection with the above project at the following Price (\$): \_\_\_\_\_

NIGP Code	Scope of Work	Projected Start Date	Projected End Date

The subcontracting firm certifies that it has read the BDI DBE Program Guide and agreed to provide such work/supplies for the amount stated above. Both parties have or will enter into a formal agreement conditioned upon the above-mentioned executed Contracts.

Signature of Authorized Person (Tier 2 Subcontractor/Supplier) \_\_\_\_\_ Date \_\_\_\_\_

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**Form F – Certificate of MWBE Unavailability**

[Do not submit with Bid – Due within three (3) business days after receiving a request from the County]

This document identifies the MWBE firm that was originally committed to Subcontract in good faith but became unavailable prior to providing the work/supplies, originally agreed upon for this project.

To be completed by the Prime Contractor			
Project Name:		Solicitation Number:	
Company Name:			
Authorized Person:		Title:	
Email:		Telephone:	
Reason for Out-of-State Sub Selection (if applicable):			

The undersigned certifies that the below MWBE was contacted in “**Good Faith**” and agreed to participate on the Project mentioned above with the stated price and scope of work but is now unavailable per the reason they have stated below.

Signature of Authorized Person (Prime Contractor)

Date

To be completed by the Subcontractor (Supplier/Subconsultant)			
Company Name:			
Authorized Person:		Title:	
Telephone:		Email:	
Address, City, St, Zip:			
County:		Ownership is Minority Female:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Source of Ownership Category:	** Please Select **	Ownership Category:	** Please Select **
Contract Date:		Attended the Pre-Bid:	<input type="checkbox"/> Yes <input type="checkbox"/> No

Price (\$)	Scope of Work	Reason for Unavailability

The firm certifies that it is no longer available to provide such work/supplies for the amount stated above, per the reason stated.

Signature of Authorized Person (Subcontractor/Supplier)

Date

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

Mecklenburg County Government

Formal Documents

**Form G – Prime Contractor / Project Identification Form**

[Do not submit with Bid – Due within three (3) business days after receipt of fully executed County contract]

<b>To be completed by the Prime Contractor</b>			
Project Name:		Solicitation #:	
Company Name:			
Owner Name:		Owner Email/Telephone:	
Authorized Person:		Title:	
Email		Telephone:	
Address, City, County, State, Zip:			
Bid Opening Date:		Self-Performing:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contract Date:		Contract #:	
Original Contract Value:		Current Certification(s):	
Primary Type of Work for this Contract <i>(Construction)</i>	**Please Select**	Primary Discipline for this Contract <i>(Construction)</i>	**Please Select**
Construction Method <i>(Construction)</i>	**Please Select**	Type of Service <i>(Construction)</i>	**Please Select**
Scope of Work <i>(Services/Goods)</i>			
Ownership Category	** Please Select **	Ownership is Minority Female	<input type="checkbox"/> Yes <input type="checkbox"/> No
Source of Ownership Category	** Please Select **		

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Date

**BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE**

**Form H – Statement of Payments to Subcontractors (Suppliers/Subconsultants)**

[Do not submit with Bid – Due with pay applications]

Prime Contractors (Tier 1 Subcontractors when applicable) must submit this form or when applicable, input this information into the Contract Compliance Solution System with each request for payment showing work that has been approved and completed for all Subcontractors (suppliers, manufacturers, brokers, and/or members of a joint venture) in connection with the Contract.

*Copy this form as needed.*

Project Name:		Contract Number:	
Company Name:			
Authorized Person:		Title:	
Email:		Telephone:	
Address, City, County, State, Zip:			
Payment Period <i>(dates – from/to):</i>		Payment/Invoice #:	
Invoice Amount:		County Project Manager Name:	
Notes:			

**FINAL PAYMENT:**  Check this box only when submitting with the Final Pay Request    **Final Contract Total Value:** \_\_\_\_\_

No Payments: Certify that no Subcontractors (suppliers/subconsultants) were used in performing the Contract for the payment period indicated above.

**PAYMENTS TO ALL SUBCONTRACTORS**

Complete the fields below for all Subcontractors (suppliers/subconsultants) on the contract for the above-mentioned period regardless of dollar amount.

Firm's Name	Cert.	Scope of Work	NIGP	Amount to be Paid from this pay request	Total Payments to Date	Total Amount Committed
	**Select**					
	**Select**					
	**Select**					
	**Select**					
	**Select**					
	**Select**					
	**Select**					
	**Select**					
	**Select**					
	**Select**					



## SECTION-7 | PROMPT PAYMENT

Prompt payment of Prime Contractors and Subcontractors.<sup>6</sup>

The County shall pay the Prime Contractor in compliance with N.C.G.S. § 143 - 134.1(a), which mandates payment within forty-five (45) days of a complete and satisfactory invoice/demand.

Upon payment to the Prime Contractor by the County, the Prime Contractors shall thereafter ensure the prompt and full payment of any Subcontractors working on the contract. **Prime Contractors shall pay Subcontractors within seven (7) days of the Prime Contractor's receipt of payment, in compliance with N.C.G.S. § 143 - 134.1(b).**

Every contract with the County for the performance of work shall contain a provision requiring the Prime Contractor to certify in writing that all Subcontractors and suppliers have been paid promptly for work and materials from previous progress payments received (less any retainage) by the Prime Contractor prior to receipt of any further progress payments. A Prime Contractor is required to pay Subcontractors or suppliers funds due from progress payments within seven (7) days of receipt of payment from the County (see § 143 - 134.1(b) above).

During the contract and upon completion of the contract, the County may request documentation to certify payment to Subcontractors or suppliers. This subsection in no way creates any contractual relationship between any Subcontractor and the County or any liability on the County for a Prime Contractor's failure to make timely payment to the Subcontractor.

A Prime Contractor who fails to ensure the prompt and full payment of Subcontractors for goods or services delivered and accepted shall be subject to the penalties set forth in (N.C.G.S. § 143 - 134.1(b)).

## SECTION-8 | ADDITIONAL RACE AND GENDER-NEUTRAL PROGRAM ELEMENTS

### 1. Vendor Rotation

For certain contracts in Construction, Architectural & Engineering, Professional Services, and Other Services that have the respective contract values listed below and are of a fairly routine nature, the BDI Program Office in conjunction with the Originating Department may reserve such contracts for award to an on-call list or pre-qualified panel of firms on a rotating basis. In determining whether the Vendor Rotation Program should be considered for a particular contract, the BDI Program Team and Department shall consider: a) whether there are at least three (3) firms that are available and capable to perform as Prime on such contracts; and b) whether the anticipated frequency of such contract opportunities will warrant multiple awards on a rotating basis.

- Professional Services and Other Services: contracts valued at \$30,000 or over, may be required to have additional review by the BDI Director (or designee) with consultation from the County Manager (or designee) when applicable;

---

<sup>6</sup> Subcontractor payments are monitored and tracked by the BDI Program Office, as appropriate.  
Phase2A Kings Branch at Arrowood Rd. Stream Restoration

- Construction: contracts valued at \$30,000 or over, may be required to have additional review by the BDI Director (or designee) with consultation from the County Manager (or designee) when applicable;
- Architectural & Engineering: contracts valued at \$50,000 or over, may be required to have additional review by the BDI Director (or designee) with consultation from the County Manager (or designee) when applicable;

## **SECTION-9 | PROGRAM COMPLIANCE & GRIEVANCE PROCEDURES**

### **1. Prime Contractor and Subcontractor Non-Compliance**

The BDI Director, along with contracting staff of each County user Department, shall monitor compliance with these BDI Program requirements by Prime Contractors and Subcontractors during the term of the contract. If it is determined there is cause to believe a Prime Contractor or Subcontractor has failed to comply with any of the requirements of this Program, or with the contract provisions pertaining to MWBE utilization, the BDI Director (or designee) shall so notify the Director of the Originating Department, Procurement and the Contractor or Subcontractor in writing.

The BDI Director (or designee) may require such reports, information, and documentation from Prime Contractors, Subcontractors, and/or the Director of any County Department, division or office as are reasonably necessary to determine compliance with the Program requirements, within fifteen (15) business days after the notice of non-compliance.

If the requested materials are not received within fifteen (15) business days, then a finding of non-compliance is determined and appropriate penalties and sanctions will apply as stated in Section-9(3) of this Provisions Guide, set forth below.

It is the joint responsibility of the BDI Director (or designee) and the Director of the Originating Department (or designee) to attempt to resolve the non-compliance with the requirements of this Program, or the contract provisions pertaining to MWBE utilization, within thirty (30) business days.

If non-compliance cannot be resolved within the thirty (30) business days, the BDI Director (or designee) and the Director of the Originating Department (or designee) shall submit written recommendations to the County Manager (or designee) and/or the County Attorney (or designee) and if the County Manager and/or County Attorney (or respective designee) concurs with the finding, such sanctions as stated in Section-9(3) of this Provisions Guide shall be imposed.

### **2. Other Prime Contractor or Subcontractor Program Violations**

It shall be a material violation of the BDI Program to:

- fraudulently obtain, retain, or attempt to obtain/retain (or aid another in fraudulently obtaining, retaining, or attempting to obtain/retain) Certification status as an MBE, WBE, or SBE for purposes of this Program;
- willfully falsify, conceal, or cover up by a trick, scheme, or device, a material fact pertaining to the provisions of this Program;

- knowingly make any false, fictitious, or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or representation pertaining to the provisions of this Program;
- willfully obstruct, impede, or attempt to obstruct/impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an MBE, WBE, or SBE;
- fraudulently obtain, attempt to obtain (or aid another person fraudulently obtaining or attempting to obtain) public monies to which the person is not entitled under the provisions of this Program; or
- make a false statement to any business entity or government representative that another entity is or is not certified as an MBE, WBE, or SBE for purposes of this Program;
- any person who violates the provisions of this section shall be subject to the penalties and sanctions set forth in Section-9(3) of this Provisions Guide, as well as any other remedies available under law up to the maximum penalty provided by law.

### **3. Penalties and Sanctions for Non-Compliance**

Upon determination and recommendation of sanctions by the County Manager and/or County Attorney (or their respective designee) regarding the failure of a contractor, vendor, or other business representative to comply with any portion of the BDI Program, the non-complying party shall be subject to any or all of the following penalties:

- withholding of up to ten percent (10%) of all future invoiced payments for the eligible project until the BDI Program Office determines that the contractor is in compliance with the Program;
- withholding of all future payments under the eligible project until the BDI Program Office determines that the contractor is in compliance with the Program;
- rescission of the contract based upon a material breach of contract pertaining to BDI Program compliance;
- refusal to accept a Bid, proposal or response; and
- disqualification of the contractor, vendor, or other business from eligibility for Bidding Construction projects, providing goods or services (Professional or otherwise) to the County for a period not to exceed two (2) years.

### **4. Mediation of Disputes between Prime Contractors and Subcontractors; Joint Venture Partners**

If, after the award of a contract, pursuant to the BDI Program, a dispute arises between the Prime Contractor and a Subcontractor regarding performance of work or provision of

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

services or supplies on the eligible project, then such Prime Contractor or Subcontractor may seek review and mediation of the issue before the BDI Director (or designee). The request for review must be made in writing.

Within twenty (20) business days of receipt of a request for review, if the dispute has not already been resolved informally among the parties, the BDI Director (or designee) shall set a mediation date and shall provide written notice of the mediation date to each of the interested parties.

The BDI Director (or designee) shall have authority to make recommendations in an attempt to resolve the dispute.

In the event that the mediation with the BDI Director (or designee) does not resolve all disputes, the BDI Director (or designee) shall have the option of referring mediation proceedings to a qualified outside mediator, contingent upon the consent and at the expense of the interested parties.

However, any actions taken by the BDI Program Office to resolve contractor disputes or to ensure the fair and equitable treatment of Subcontractors (or joint venture partners) working on County contracts are done pursuant to the BDI Program Provisions Guide or general non-discrimination policy and shall not be construed as the County taking a position as to the merits of the dispute nor creating any privity of contract between the County and any contractor or Subcontractor. Further, no contractor working on a County contract shall have any claim against Mecklenburg County for any actions taken to ensure the fair and equitable treatment of Subcontractors (or joint venture partners) working on County contracts.

## SECTION-10 | APPENDIX

## 1. Definitions

**Affiliate(s):** Two entities are affiliates of one another when: (a) one controls or has the power to control the other; (b) a third-party controls, or has the power to control, both; or (c) there is a significant relationship between the two entities based on common ownership, management or employees, shared equipment, assets, or facilities, physical proximity, percentage of revenue derived from the other entity, or loans, leases, contributions, and contracts.

**Achievement Goal(s):** An aspirational participation percentage applied on each contract for MBE and WBE Subcontractor participation for Construction, Professional Services, Goods and Other Services. The Achievement Goals are based upon the availability in the Relevant Market as determined by the disparity study which is conducted every five (5) years by the County.

**Availability: In accordance with the most recent Disparity Study** Means being qualified, ready, willing, and able to perform work for the County on a Contract. This means that the Bidder/Participant does business within an industry group from which the County or its Contractors make certain purchases; the firm's owner has taken steps to do business with the County and qualified itself to do such business by registering with the County as a vendor and/or being certified, as appropriate; and the firm is located within a relevant geographical area such that it can do business with the County.

**Authorized Person:** The authority of a person or business owner to legally sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business, and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Award:** The final selection or approval of a Respondent for a specified (Prime) Contract.

**Best Value Contracting:** A purchasing solicitation process which may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable solicitation.

**BDI:** Business Diversity and Inclusion

**BDI Director:** The staff member that is primarily responsible for the management of the BDI Program with the County and ultimately responsible for oversight, tracking, monitoring, compliance, administration, implementation, and reporting of the MWSBE elements within the BDI Program. The BDI Director is also responsible for enforcement of contractor and vendor compliance with contract participation requirements and ensuring that overall Program goals and objectives are met.

**BDI Program:** The combination of race- and gender-neutral and race- and gender-conscious remedies, policies, procurement reforms, and Program Elements that are provided herein for the purpose of enhancing the ability of MWSBE firms to fairly compete for County contract opportunities, and for the purpose of establishing a broader marketplace environment that is less susceptible to the ongoing effects of discrimination.

**BDI Program Team or Office:** A group of staff members or designated representatives who work collectively and individually under the direction of the BDI Director. The team is responsible for executing the work of the BDI Program.

**Bid:** A quote, proposal, or offer to perform work or provide labor, materials, supplies, or services for Mecklenburg County for a price.

**Bid Due:** The date and time specified that Bids, Proposals, or other submittals are due.

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

**Bid Opening:** The process of opening Bids conducted at the time and place specified in the Invitation to Bid and/or the advertisement. For Contracts that are subject to formal Bidding requirements under the North Carolina Bid statutes (N.C.G.S. § 143-128 and § 143-129), the Bid Opening shall be the date and time that Bids are opened by the County.

**Bidder/Participant:** Any person, firm, company, partnership, corporation, association, or joint venture seeking to be awarded a contract by the County on a project by submitting a Bid.

**Business Days:** Days on which the administrative offices of Mecklenburg County are open to the public for business.

**Charlotte – Concord – Gastonia MSA:** The Charlotte-Concord-Gastonia Metropolitan Statistical Area in effect as of 2013, consisting of: (a) the North Carolina counties of Mecklenburg, Union, Gaston, Cabarrus, Iredell, Rowan, and Lincoln Counties; and (b) the South Carolina counties of York, Chester and Lancaster.

**Commercially Useful Function:** An MWSBE firm performs a Commercially Useful Function when it is responsible for executing the contracted work and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the MWSBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an MWSBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the MWSBE firm is to be paid under the contract is commensurate with the work it is actually performing and the MWSBE credit claimed for its performance of the work, and other relevant factors. An MWSBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful MWSBE participation, when in similar transactions in which MWSBE firms do not participate, there is no such role performed.

**Contract:** A legally binding agreement through which Mecklenburg County agrees to procure goods or services and a vendor or contractor agrees to provide goods or services for agreed upon consideration.

**Contract Documents:** All documents that constitute the agreement between the County, the Owner and/or the Contractor or Vendor, including documents incorporated by reference into the agreement.

**County:** Mecklenburg County, North Carolina.

**Days:** Any reference to “days” in this Program shall mean calendar days unless it is specifically indicated to be Business Days.

**Disadvantaged Business Enterprise (DBE):** For-profit small business concerns where socially and economically disadvantaged individuals own at least a fifty-one percent (51%) interest and also control management and daily business operations.

African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals may also qualify as socially and economically disadvantaged on a case-by-case basis.

**Formal Solicitations:** An invitation to Bid (ITB), request for proposal (RFP), request for qualifications (RFQ), or other solicitation document issued by a County Department for a Contract that requires formal advertisement in accordance with the procurement rules adopted by the County Manager (or designee) and/or pursuant to statutory requirements (i.e., N.C.G.S. § 143.129). [Mecklenburg County's Procurement Policies](#)

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

**Goal:** A numerical objective.

**Goal-Setting Committee (GSC):** Means a committee tasked with setting contract-by-contract goals for the MWBE elements within the BDI Program.

**Good Faith Efforts (GFE):** The activities of Bidders/Participants for County projects designed specifically to obtain participation of MWBE Subcontractors on their projects. Such activities shall be documented and verified when MWBE goals for a County project are not achieved. Actions and efforts taken by the Bidder/Participant in furtherance of meeting any MWBE goals, as further defined and outlined in N.C.G.S. § 143.128.2 and in Section-4 herein.

**Good Faith Efforts Documentation:** All forms and documentation as may be required by the County, including pursuant to N.C.G.S. § 143.128.2, described/listed in Form A, or otherwise requested or required by the County at its discretion, relating to the Good Faith Efforts taken by a Bidder/Participant to meet a Goal.

**Good Faith Negotiations:** The actions and efforts taken by the Bidders/Participants to show that they held discussions with MWBEs aimed at reaching an agreement with honesty or sincerity of intention to comply with Bid requirements.

**Independently Owned and Operated:** Ownership of an MWSBE firm may be by individuals and/or by other businesses provided the ownership interests in the MWSBE firm can satisfy the MWSBE eligibility requirements for ownership and Control as specified herein. The MWSBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary or captive Affiliate of another firm that does not itself (and in combination with the certified MWSBE firm) satisfy the eligibility requirements for MWSBE Certification.

**Industry Categories:** Procurement groupings for the County inclusive of Architect & Engineering, Construction, Professional Services, Goods and Other Services (e.g., manufacturing, wholesale, and retail distribution of commodities, and non-professional services). This term may sometimes be referred to as “business categories.”

**Informal Solicitations:** Solicitations for contracts that do not require Formal Bid Solicitations requirements. (See, N.C.G.S. § 143.129 and § 143.131). It is the policy of the County to obtain at least three (3) quotes. [Mecklenburg County's Procurement Policies](#)

**Hearing Committee:** A committee composed of three or more individuals, which shall review and make decisions on MWBE Good Faith Effort appeals.

**Joint Venture:** An association of two or more businesses to carry out a single business enterprise for profit, for which they combine their property, capital, efforts, skills, and knowledge.

**Minority Business Enterprise (MBE):** A legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is Certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or provide services that are purchased by Mecklenburg County. An MBE is a bona fide MBE only if the minority group ownership interests are real and continuing and not created solely to meet an MBE participation requirement. The MBE must also perform a Commercially Useful Function to be a bona fide MBE for Program purposes. Unless otherwise stated, the term “MBE” as used in this Program are not inclusive of non-minority women-owned business enterprises (WBEs).

**Minority Group Members:** African Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

- African American/Black: Persons having origins in any of the black racial groups of Africa.

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

- Hispanic American: Person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands regardless of race.
- Asian American: Person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- American Indian/Native American: Person having no less than 1/16<sup>th</sup> percentage origin in any of the American Indian/Native American Tribes of North America as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.
- Woman: female of any of the above listed minority groups
- See N.C.G.S. § 143.128.2(g) for additional definitional guidance.

**MWSBE Certification:** The process by which a firm is determined to be a bona fide minority-owned, women-owned, or small business enterprise.

**MWSBE Directory:** A listing of minority-owned, women-owned, and small businesses that have been certified as eligible to participate in, and benefit from, the application of the County's MWSBE elements within the BDI Program

**NIGP:** National Institute of Governmental Purchasing (NIGP) codes used to describe commodities purchased by governmental agencies.

**Originating Department:** The County Department or authorized representative of the County which issues a solicitation, or for which a solicitation is issued on behalf of, for the purchase of goods or services.

**Owner:** Mecklenburg County.

**Payment Affidavit:** A document detailing the total dollars paid by the Contractor to all Subcontractors and suppliers receiving payment in connection with a Contract. Payment Affidavits shall be in the format specified by the County.

**Points:** The numeric assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Professional Services, and Other Services contracts to meet Bid requirements (e.g., up to 10 points out of a total of 100 points assigned for the degree of MWBE participation of a Respondent/Bidder team).

**Prime Contractor:** The vendor or contractor to whom a purchase order or contract is issued by Mecklenburg County for purposes of providing goods or services to, or on behalf of, the County.

**Program Elements:** Refers to various race- and gender-neutral and race- and gender-conscious BDI Program tools that are used to encourage greater Prime and Subcontractor participation by MWBE firms, including, but not limited to, evaluation preferences, goals, and supportive services.

**Program Waiver:** A particular procurement solicitation for which goals are not required and is therefore waived. This is not the same as a "Waiver based on Good Faith Efforts."

**Quick Pay Commitment:** An agreement or commitment that a Prime Contractor makes to pay all Subcontractors participating in a Contract within twenty (20) days after the Prime Contractor confirms that the subcontracted work has been properly performed and properly completed. Such agreement or commitment exists outside of the State's Prompt Pay Act requirements, meaning that payment to the Subcontractors pursuant to such agreement is not contingent on the Prime Contractor receiving payment from the County.

**Race-Conscious / Gender-Conscious Program Element(s):** Any business classification or Program element which is defined by the race or gender of the business owner.

## BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

**Race-Neutral / Gender-Neutral:** Any business classification or Program element wherein the race or gender of the business owner(s) is not taken into consideration.

**Relevant Market:** The Relevant Market encompasses the geographical area where Mecklenburg County awards at least seventy-five percent (75%) of its dollars.

**Respondent:** A vendor or Bidder/Participant submitting a Bid, statement of qualifications, or proposal in response to a solicitation issued by the County.

**Responsible:** A firm that is capable in all respects to fully perform the contract requirements and has the integrity, means, reputation and reliability which will assure performance of contract specifications within the required time.

**Responsive:** A firm's submittal (Bid, response, or proposal) that conforms in all material aspects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with BDI Program requirements.

**Services Contract:** A Contract for a business enterprise to provide an act or a variety of work for an agreed upon payment, and not otherwise defined by statute. Examples include, but not limited to, contracts for architectural, engineering, surveying, or construction management services, accounting or auditing services, computer (IT) consulting, janitorial services, etc.

**Significant Business Presence:** A business enterprise must have its headquarters or an established place of business in the Charlotte-Concord-Gastonia MSA, and from which at least twenty-five percent (25%) of its total full-time, part-time, and contract employees are regularly based. A location utilized solely as a post office box, mail drop, or telephone message center, or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE):** A business enterprise shall be eligible for Certification as a "Small Business Enterprise" (SBE) only if it meets the eligibility requirements for the NC Historically Underutilized Business Small Business Certification (NCSBE) or the City of Charlotte-Charlotte Business Inclusion Small Business Certification (CBI-SBE).

**Special Projects:** Construction Manager at Risk (CM@R), Public Private Partnerships (P3), Design Build, and other Alternative Build Methods.

**State HUB Office:** The Office of Historically Underutilized Businesses in the Department of Administration for the State of North Carolina.

**Subcontracting Goal:** The MBE goal and WBE goal established by the County.

**Subcontractor:** Any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the County. A Subcontractor may be either a first, second, or third-tier Subcontractor. A first-tier Subcontractor provides good or services directly to the Prime Contractor. A second-tier contractor is hired by a first-tier Subcontractor within the same contract or purchase order to provide a portion of the good and/or services the first-tier Subcontractor is obligated to provide under its subcontract to the Prime Contractor. A third-tier Subcontractor is hired by the second-tier Subcontractor within the same contract or purchase order to provide a portion of the goods and/or services it is obligated to provide under the second-tier Subcontractor's subcontract with the first-tier Subcontractor.

**Utilization Documentation:** A provision within the contract which includes the name of all Subcontractors to be utilized in the contract, specifying the MWBE Certification category for each, as approved by the BDI Program Office. This information is provided by the Bidder/Participant in Form B/Form B1.

# BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE

**Waiver based on Good Faith Efforts:** An exception provided to the lowest responsive and responsible Bidder or best value Bidder who did not meet or exceed the MWBE goals on a specific project/contract but who satisfactorily provided Good Faith Efforts documentation.

**Women Business Enterprises (WBEs):** A legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is Certified as being at least fifty-one percent (51%) owned, managed, and controlled by one or more non-Minority females, and that is ready, willing and able to sell goods or services that are purchased by the County. A WBE is a bona-fide WBE only if the non-Minority female ownership interest(s) is real and continuing and not created solely to meet a WBE participation requirement. The WBE must also perform a Commercially Useful Function to be a bona-fide WBE for Program purposes. Unless otherwise stated, the term “WBE” as used in this Program is not inclusive of MBEs.

**Work:** (sometimes referred as Scope of Work): The construction and/or services required by the Contract Documents, including all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations under the Contract.

## 2. Websites

(last updated per the revised date of this Document)

- **Mecklenburg County:** [www.mecknc.gov](http://www.mecknc.gov)
  - **Office of Economic Development:** [oed.mecknc.gov](http://oed.mecknc.gov)
    - Business Diversity & Inclusion (BDI): [oed.mecknc.gov/BDI](http://oed.mecknc.gov/BDI)
    - 2020 Disparity Study Full Report: [oed.mecknc.gov/BDI](http://oed.mecknc.gov/BDI)
  - **Procurement Department:** [www.mecknc.gov/finance/procurement/Pages/default.aspx](http://www.mecknc.gov/finance/procurement/Pages/default.aspx)
    - Procurement Policies: [www.mecknc.gov/Finance/Procurement/Pages/policies.aspx](http://www.mecknc.gov/Finance/Procurement/Pages/policies.aspx)
    - MeckProcure (Vendor Registration/Solicitation Search): [meckprocure.com](http://meckprocure.com)
- **State of North Carolina**
  - **NC Department of Administration:** [ncadmin.nc.gov](http://ncadmin.nc.gov)
    - NC Interactive Purchasing System (Vendor Registration/Solicitation Search): [www.ips.state.nc.us/vendor/VendorPubMain.aspx](http://www.ips.state.nc.us/vendor/VendorPubMain.aspx)
  - **NC Historically Underutilized Businesses (NCHUB):** [ncadmin.nc.gov/businesses/historically-underutilized-businesses-hub](http://ncadmin.nc.gov/businesses/historically-underutilized-businesses-hub)
    - NCHUB/NCSBE Certifications: [ncadmin.nc.gov/businesses/hub/hub-certification](http://ncadmin.nc.gov/businesses/hub/hub-certification)
    - Vendor Directory: [www.ips.state.nc.us/vendor/searchvendor.aspx?t=h](http://www.ips.state.nc.us/vendor/searchvendor.aspx?t=h)
  - **NC General Statutes:** [ncleg.gov/Laws/GeneralStatutesTOC](http://ncleg.gov/Laws/GeneralStatutesTOC)
- **City of Charlotte**
  - **Charlotte Business Inclusion (CBI):** [CharlotteBusinessInclusion.com](http://CharlotteBusinessInclusion.com)
    - Small Business Enterprise (SBE) Certification: [charlottenc.gov/GS/procurement/cbi/Pages/getting-started.aspx](http://charlottenc.gov/GS/procurement/cbi/Pages/getting-started.aspx)
    - Vendor Directory: [charlottenc.gov/GS/procurement/cbi/Pages/vendors.aspx](http://charlottenc.gov/GS/procurement/cbi/Pages/vendors.aspx)