

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL

6.01 – MINORITY BUSINESS OUTREACH

PURPOSE

The intent of this Plan and Guidelines is that NCEL, as awarding authority for lottery and lottery-related projects, and the Contractors and Sub-Contractors performing Contracts governed by this Plan and Guidelines, shall cooperate and in good faith do all things, legal, proper and reasonable to achieve the goal of ten percent (10%) for participation by Minority Businesses (as set forth in Article 8 of Chapter 143 of the General Statutes). To the greatest extent practical, this Plan and Guidelines shall apply to any Contracts in the discretion of the NCEL. In any case, NCEL will award its Contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition. Nothing in this Plan and Guidelines shall be construed to require Contractors or the NCEL to award Contracts, or to make purchases of Goods and/or Services from Minority Businesses, Contractors or Sub-Contractors, who do not submit bids that the NCEL, in its sole discretion determines to be responsible, responsive, in compliance with the bid or other requirements imposed by the NCEL or Act and that are deemed to be the best proposals that maximize the benefits to the NCEL and State of North Carolina. Once enacted, a copy of this Plan and Guidelines will be made available at NCEL headquarters and may also be posted on the NCEL website.

DEFINITIONS

- A. **“Act”** means the North Carolina State Lottery Act, as may be amended from time to time. (G.C. 18C-101 et. seq.)
- B. **“Contract”** means a mutually binding legal relationship obligating the Contractor selected by the NCEL to enter into a contract with the NCEL to furnish Goods and/or Services to the NCEL which the NCEL in its discretion determines to be governed by this Plan and Guidelines.
- C. **“Contractor”** means any person or entity, other than a person or entity selected to become a lottery retailer, who submits a bid, proposal or offer to provide Goods and/or Services under a Contract.
- D. **“Goods and/or Services”** means services, apparatuses, supplies, materials or equipment supplied to the NCEL pursuant to a Contract.
- E. **“Minority Business”** means a business:
 - 1. In which at least fifty-one percent (51%) is owned by one or more “Minority Persons” (as defined in Section 3.01F) or “Socially and Economically Disadvantaged Individuals” (as defined in Section 3.01H), or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more Minority Persons or Socially and Economically Disadvantaged Individuals; and

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2. Of which the management and daily business operations are controlled by one or more of the Minority Persons or Socially and Economically Disadvantaged Individuals who own it.
- F. **“Minority Person”** means a person who is a citizen or lawful permanent resident of the United States and who is:
1. Black, that is, a person having origins in any of the black racial groups in Africa;
 2. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central American, or the Caribbean Islands, regardless of race;
 3. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 4. American Indian, that is, a person having origins in any of the original peoples of North America;
 5. Female; or
 6. Disabled, that is, a person with a disability as defined in N.C.G.S. §168A-3.
- G. **“NCEL”** means the North Carolina Education Lottery.
- H. **“Socially and Economically Disadvantaged Individual”** means individuals who are:
1. **“Socially Disadvantaged Individuals”** who are those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities; and
 2. **“Economically Disadvantaged Individuals”** who are those Socially Disadvantaged Individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not Socially Disadvantaged Individuals. (see also 15 U.S.C. 637)
- I. **“Sub-Contractor”** means a firm under contract with the prime Contractor for supplying Goods and/or Services under a Contract.

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OUTREACH PLAN

Because it is neither effective nor practical to use every one of the following steps in the case of every Contract, the NCEL shall use such of the following actions or steps as it determines to be in the best interests of achieving the goals of this Plan and Guidelines on a case by case basis:

- A. Work with minority-focused and small business groups that support Minority Business inclusion in the solicitation of bids;
- B. Enhance the NCEL's website by dedicating a page for minority business information which shall include this Plan and Guidelines, listing good faith efforts, and creating links to either minority business resources or those who are supporting such efforts, and creating awareness of specific NCEL contracting and subcontracting opportunities;
- C. If bids are to be advertised, promptly post upcoming bid opportunities on available website(s) that reach Minority Businesses;
- D. Make documents related to bid opportunities available for inspection at a convenient and accessible location, including the NCEL's website;
- E. Provide information to Minority Businesses to register with the State's E-Procurement website in order to receive immediate notices of relevant bid opportunities;
- F. Work to make subcontracting opportunities more noticeable and more easily understood by potential Minority Businesses;
- G. Place more emphasis on the importance of soliciting Minority Business firms for subcontracting opportunities in bid documents, examine specifications to identify special subcontracting opportunities and encourage Contractors to solicit bids for subcontracts from Minority Business firms;
- H. Forward to applicable current NCEL Contractor(s) contact information for any Minority Businesses who have identified themselves, or have been identified by the NCEL, as being interested and capable of providing Goods and/or Services to the NCEL;
- I. Require Contractors to undertake good faith efforts as described herein;
- J. Make available, to minority-focused agencies who request it, a list of Contract opportunities when they are identified, and, to the extent it can be made public

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and available, provide to Minority Businesses that request it a list of known prime Contractors who have identified an intent to bid on any such Contract so that the Minority Business can contact them for subcontracting consideration;

- K. Be visible through participation in trade shows, business organizations or other events of interest to Minority Business firms, and from time to time provide information to the general public about the NCEL Minority Business outreach program, and continue outreach efforts to the business community;
- L. Participate in education opportunities throughout the community as they become available and, upon request, offer training sessions to share NCEL's Minority Business outreach plan with interested businesses and organizations;
- M. Build new business relationships through networking and continue networking with other North Carolina agencies to find out how their Minority Business program is working and sharing "best practices" and ideas to improve the program;
- N. Sponsor minority-focused agencies via paid advertisement and/or registration at various events held by such minority-focused agencies to show support of their endeavor and/or obtain information and networking opportunities; and/or
- O. Assess the effectiveness of the Minority Business program, and identify opportunities to enhance it, by evaluating Minority Business participation and compliance and reviewing the "good faith efforts" provided in bid packages.

NCEL RESPONSIBILITIES

Before awarding a Contract that is made subject to this Plan and Guidelines, the NCEL shall do the following:

- A. Provide the following information to Minority Businesses that have requested notices of Contract work and Minority Businesses that the Office of Historically Underutilized Businesses has identified to the NCEL as having an interest and ability to provide the Goods and/or Services of the type being bid:
 - 1. A description of the work for which the bid is being solicited;
 - 2. The date, time, and location where bids are to be submitted;
 - 3. The name of the individual within the NCEL who will be available to answer questions about the project;
 - 4. Where bid documents may be reviewed;

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5. Any special requirements that may exist.
- B. Utilize other media, as appropriate, likely to inform potential Minority Businesses of the bid being sought.

CONTRACTOR RESPONSIBILITIES

- A. Each Contractor that is made subject to this Plan and Guidelines, shall:
1. Identify in its bid the Minority Businesses that it will use on the project and an affidavit listing the good faith efforts it has made and the total dollar value of the bid that will be performed by the Minority Businesses. A Contractor that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this Section 3.05A1.
 2. The Contractor selected by the NCEL shall also provide the following:
 - a. Within the time specified in the bid documents, either:
 - i. An affidavit that includes a description of the portion of work to be executed by Minority Businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal (an affidavit under this Section shall give rise to a presumption that the Contractor has made the required good faith effort); or
 - ii. Documentation of its good faith effort to meet the goal. The documentation must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of Minority Businesses for participation in the contract.
 - b. A list of all identified Minority Business Sub-Contractors that the Contractor will use on the project.
- B. Failure to file a required affidavit or documentation that demonstrates that the Contractor made the required good faith effort may be grounds for rejection of the bid.
- C. Unless the applicable bid issued by the NCEL provides a different standard, no Minority Business Sub-Contractor who is identified and listed by a Contractor in

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its winning bid may be replaced with a different non-Minority Business Sub-Contractor except:

1. If the Minority Business Sub-Contractor's bid is later determined by the Contractor to be non-responsible or non-responsive, or the listed Minority Business Sub-Contractor fails to satisfy the requirements of any required background checks or refuses to enter into a contract for the complete performance of the bid work; or
 2. With the approval of the NCEL.
- D. Make good faith efforts as described herein to identify and enter into subcontracts with qualified Minority Businesses and inform the NCEL of its good faith efforts in that regard.

MINORITY BUSINESS RESPONSIBILITIES

The NCEL does not certify historically underutilized businesses. Based upon 2007 legislation, the State of North Carolina implemented a statewide certification program for certification of historically underutilized businesses. Any business which desires to participate as a Minority Business will be required to complete and submit for certification documents required by the North Carolina Administration Department, Office for Historically Underutilized Business (HUB Office). Only those firms holding current certification through the HUB Office will be considered eligible for inclusion in meeting the Minority Business participation percentage goals.

GOOD FAITH EFFORTS

Non-Minority Business Contractors that are made subject to this Plan and Guidelines are required to undertake the following good faith efforts and must earn at least fifty (50) points based on the following established point system. NCEL may require that additional good faith efforts be taken, as indicated in bid specifications. In determining whether a Contractor has made good faith efforts, NCEL will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. Failure to file a required affidavit or documentation that demonstrates that the Contractor made the required good faith effort may be grounds for rejection of the bid.

- A - (10 points) Contacting Minority Businesses that reasonably could have been expected to submit a quote and that were known to the Contractor or available on State or local government maintained lists before the bid or proposal date and notifying them of the nature and scope of the work to be performed;
- B - (10 points) Making the plans, specifications and requirements available for review by prospective Minority Businesses, or providing these documents to them before the bid or proposals are due;

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- C - (15 points) Breaking down or combining elements of work in economically feasible units to facilitate minority participation;
- D - (10 points) Working with minority trade, community, or vendor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of Minority Businesses;
- E - (10 points) Attending any pre-bid meetings scheduled by the NCEL;
- F - (20 points) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for Minority Business Sub-Contractors;
- G - (15 points) Negotiating in good faith with interested Minority Businesses and not rejecting them as unqualified without sound reasons based on their capabilities (any rejection of a Minority Business based on lack of qualification should have the reasons documented in writing);
- H - (25 points) Providing assistance to an otherwise qualified Minority Business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required, and assist Minority Businesses in obtaining the same unit pricing with the Contractor's suppliers in order to help Minority Businesses in establishing credit;
- I - (20 points) Negotiating joint venture and partnership arrangements with Minority Businesses in order to increase opportunities for Minority Business participation on Contract project when possible; and
- J- (20 points) Providing quick pay agreements and policies to enable Minority Business Contractors to meet cash-flow demands.

AMENDMENT

This Plan and Guidelines may be amended from time to time by the NCEL. Minority Businesses, Contractors seeking to enter into Contracts with the NCEL and other interested individuals or entities should obtain and review the latest version of this Plan and Guidelines.