

BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM PROVISIONS GUIDE



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

BUSINESS DIVERSITY & INCLUSION (BDI) PROGRAM OVERVIEW

Mecklenburg County has made great strides to ensure we do business fairly and with diverse populations in our community, but more can be done. 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 and examine 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 chance to succeed in doing business with the County. (The full report and recommendation list can be found [here](#))

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 Mecklenburg County's business opportunities.

Mecklenburg County's BDI Program is committed to support the economic development of small business enterprises and the minority community. The BDI Program Provisions Guide requires Contractors and Subcontractors to take all necessary steps to ensure maximum opportunity for the participation of MWBE firms in its contracting activities with Mecklenburg County. It is further the intent of the program to widen opportunities for participation, increase competition, and ensure the proper and diligent use of public funds. The BDI Program Provisions Guide includes aspirational goals for MWBE utilization in proportion to the availability of qualified vendors in particular areas of procurement.

For assistance, contact the Office of Economic Development's BDI Program.

Mecklenburg County - Office of Economic Development

Business Diversity & Inclusion (BDI) Program

Charlotte-Mecklenburg Government Center

600 East 4th Street, Suite 226

Charlotte, North Carolina 28202

Email: BDI@mecknc.gov

Website: OED.MeckNC.gov/BDI

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SECTION-1 | PURPOSE AND DEFINITIONS

Mecklenburg County Government (hereinafter referred to as the “County”) procures supplies materials and equipment (“Goods”), construction, alteration and repair work of buildings (“Construction and Repair”), and other services (“Other Services”). In connection with such procurements, the County desires that MWBE firms have a fair and reasonable opportunity to participate, and the Business Diversity & Inclusion Program Office (“BDI Program Office”) will maintain an ongoing outreach effort to ensure that end. Participation shall be measured in terms of the actual dollars received by MWBE firms.

Bidder: Any individual, firm, corporation, or partnership submitting a Bid proposal of the Work contemplated.

Construction Contract: The fully executed Construction Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes prior negotiations, representations, or agreements, either written or oral, and consists of the Form of Construction Contract and the Contract Documents. The fully executed Construction Contract shall not be construed to create a contractual relationship of any kind (1) between the Consultant and the Contractor, (2) between the Owner and a Subcontractor or Sub-Subcontractor, (3) between the Owner and the Consultant or (4) between any persons or entities other than the Owner and the Contractor. The Construction Contract may also be referred to as the “Contract”.

Contract: The Construction Contract.

Contract Documents: The Contract Documents consist of all documents incorporated by reference into the “Form of Construction Contract” between the Owner and the Contractor as provided therein.

Contractor: Any person, firm, partnership, corporation, association, or joint venture which has been awarded a public contract or lease, to furnish materials, equipment, or provide services at a specified price, including every subcontract on such a contractual agreement with guaranteed warranties and insurance. Any individual, firm, corporation, or partnership, or his/her/their/its employees, agents, or assigns with whom a contract is made with the Owner for the construction of the total Project (including, but not limited to Plumbing, Mechanical, Electrical and Fire Protection work).

Discrimination: To distinguish, differentiate, separate or segregate solely on the basis of age, race, religion, color, sex, national origin, disability, or veteran's status.

Equipment: Includes machinery, apparatus, tools, and instruments used during the construction process to fulfill the contract.

Goal: A numerical objective.

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

Lessee: A business that leases, or is negotiating to lease, property from the County/Contractor or equipment or services to the County/Contractor, or to the public on County property.

Minority (Minority Business Enterprise - "MBE"): A person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black/African American - that is, a person having origins in any of the black racial groups of Africa;
- b. Hispanic American - that is, a person of Spanish or Portuguese culture with origins in Mexico, South America, or the Caribbean Islands, regardless of race;
- c. Asian American - that is, a person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, the Indian subcontinent, or the Pacific Islands;
- d. American Indian/Native American - that is, a person having origins in any of the original peoples of North America;

Minority Business Enterprise (MBE) and Women Business Enterprise (WBE):

A business which is at least fifty-one percent (51%) owned and controlled by minority group members or European American female(s). An MBE/WBE is bona fide only if the minority group or European American female ownership interests are real and continuing and not created solely to meet the MBE/WBE requirement. In addition, the MBE/WBE firm must perform satisfactory work or services to provide supplies under the Contract and not act as a mere conduit. In short, the contractual relationship must also be bona fide. Certification of minority and women businesses is provided by NC Department of Administration's Office of Historically Underutilized Businesses ("NCHUB").

Owned and Controlled: A business which is (1) a sole proprietorship legitimately owned by an individual who is a minority or European American female; (2) a partnership or joint venture controlled by minorities or European American females, and in which at least fifty-one percent (51%) of the beneficial ownership interests legitimately are held by minorities or European American females; or (3) a corporation or other entity controlled by minorities or European American females, and in which at least fifty-one percent (51%) of the voting interests and fifty-one percent (51%) of the beneficial ownership interests are legitimately held by minorities or European American females. In addition, these persons must control the management and operation of the business on a day to day basis.

Owner: The Owner, as referred to in these documents is Mecklenburg County. The consultant is hired by the Owner, a person lawfully licensed to practice Architecture or Engineering or Landscape Architecture, or an entity lawfully practicing Architecture or Engineering or Landscape Architecture which is referred to throughout the contract documents as if singular in number. The "Consultant" is a duly authorized representative of the Owner.

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Project: The Project is the total construction of which the Work performed under the contract documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

Significant Material Suppliers: Any aggregation of material, equipment or supplies provided by a single person or business for utilization in a County construction Project, the total value of which is ten percent (10%) or more of the value of the contract or \$2,000, whichever is less.

Sub-bids: Any quote for labor and/or material made by a subcontractor (regardless of tier) to another subcontractor or to a prime contractor.

Subcontractor: A subcontractor is a person or entity who has a direct contractual relationship with the Prime Contractor to perform a portion of the Work. The term "subcontractor" is referred to throughout the contract documents as if singular in number and means a subcontractor or an authorized representative of the subcontractor.

Sub-Subcontractor: A sub-subcontractor is a person or entity who has a direct contractual relationship with a subcontractor to perform a portion of the work. The term "Sub-Subcontractor" is referred to throughout the contract documents as if singular in number and means a sub-subcontractor or an authorized representative of the sub-subcontractor.

Woman (Women Business Enterprise – “WBE”): European American female that does not have origins in any of the groups listed under Minority.

Work: The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the contractor to fulfill the contractor's obligations. The Work may constitute the whole or a part of the Project. The Work also includes providing supplementary or miscellaneous items, appurtenances, and devices incidental to or necessary for a sound, secure, complete, and functional installation.

SECTION-2 | PARTICIPATION GOALS

The aspiration of goals for participation by Minority and Women Business Enterprises as subcontractors on this Project has been set as follows:

**Recommended Goals for Each Business Category
by Race/Ethnic/Gender Classification**

Category	MBE Goal	WBE Goal
Construction	10%	6%
Architecture & Engineering	4%	7%
Professional Services	9%	9%
Other Services (other than Architecture & Engineering and other Professional Services)	5%	4%
Goods	3%	3%

*Note: *The goals must be achieved independently, and not in combination of any category

SECTION-3 | "GOOD FAITH EFFORTS" REQUIREMENTS

The Contractor will consider all competitive sub-bids and quotes received from MWBE firms. When a subcontract is not awarded to the MWBE firm submitting the lowest, responsive and responsible bid, the Contractor must document the reason(s) award was not made and substantiate that documentation in writing. If the Contractor terminates an agreement and/or subcontract with an MWBE firm, the Contractor will be required to adhere to these provisions of "**Good Faith Efforts**" in the selection of the replacement for that MWBE firm.

SECTION-4 | SUBMITTALS AND TIME FRAME

The Contractor is required to submit the following completed forms with the bid:

1. "Statement of Intent for MWBE Utilization" (Form I)

This form illustrates the areas in which the Contractor has identified potential MBE and WBE subcontracting opportunities, the dollar value and percentage in which the Contractor proposes to attain in MBE and WBE utilization.

The purpose of this document is to measure the Contractor's "**Good Faith Efforts**" in the pre-bid stage. It is not the intent of this document to require the Contractor to subcontract only with MBE and WBE firms. However, this document does not preclude the Contractor from negotiating with MBE and WBE firms for subcontracting opportunities in other areas.

OR

2. "Statement of Intent of Performing Work Without Subcontracting" (Form II)

This form must be submitted if the bidder is self-performing 100% of the labor. The Bidder agrees to make a Good Faith Effort and submit Good Faith Effort documentation to utilize MBE or WBE suppliers where possible.

The bidder must certify on Form II this has been a typical practice on Projects of similar scope and dollar value.

By submittal of Form II, the Contractor is certifying that:

- (1) They will not subcontract any labor for the duration of the Project, and if they do decide to subcontract any portion of the work they will:
 - (a) Notify the Owner immediately of the decision to subcontract.
 - (b) Adhere to the "**Good Faith Efforts**" provisions in filling the subcontract opportunity.
- (2) They do not typically subcontract on Projects of similar scope and dollar value.

The BDI Program Office may request the apparent low bidder to provide additional information to clarify the bidder's responsiveness. Failure to submit the completed form(s) will deem the bid as non-responsive.

Upon receipt of the Letter of Intent to Award/Letter of Award, the apparent low bidder will be requested to attend a pre-construction conference at which time he/she will be required to submit the following MWBE Documentation:

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- A. If MBE and WBE participation equals or exceeds overall County goals:
 - (1) Minority and Women Business Enterprise Utilization Commitment (Form III).
 - (2) Letter of Intent to Perform as a Subcontractor and/or Provide Supplies or Services (Form IV) for each MWBE firm or copy of the Subcontract agreement(s).

- B. If MBE and WBE participation does not equal or exceed the overall County goals:
 - (1) Documentation showing solicitation of bids and material quotes from MBE's and WBE's, and the Certificate of MWBE Unavailability (Form V), or if no response was received from an MBE and/or WBE.
 - (2) Documentation showing the reasons a subcontract or significant material purchase was not awarded to an MBE and/or WBE.
 - (3) MWBE Utilization Commitment (Form III).
 - (4) Letter of Intent to Perform as a Subcontractor and/or provide Supplies or Services (Form IV) for each MWBE Subcontractor/supplier.
 - (5) The BDI Program Office may require the Contractor to submit additional information to verify his (her) "**Good Faith Efforts**".

- C. If no subcontractors are used:
 - (1) The list of equipment owned or leased for the previous Project(s) of similar scope and dollar value or a list of equipment owned or leased to be used on this Project.
 - (2) A schedule of major Project items with tentative beginning and completion dates.

The MWBE documentation will be received by the Owner at the pre-construction conference and forwarded to the BDI Program Office within three (3) working days for a determination of compliance. The BDI Program Office will make a determination of compliance within ten (10) working days from receipt of the documentation from the Department. If the Contractor does not submit the MWBE documentation at the pre- construction conference the Contractor will be deemed not in compliance with the "**Good Faith Efforts**". The BDI Program Office will notify the Contractor of the determination of compliance or non-compliance and forward a copy of the notification to the Department.

The penalty for non-compliance as stated in Section VI will be applied against the Contract until the contractor is determined to be in compliance with the "**Good Faith Efforts**".

Prior to approval of the final request for payment and after completion of the Work, the contractor shall submit a Statement of Payments to MWBE Subcontractors and Suppliers (Form VI). Final payment will not be released until a completed Form VI is received by the Owner.

SECTION-5 | RESPONSIBILITIES DURING THE BIDDING PROCESS

The Contractor is required to submit the following completed forms with the bid. Failure to do so will render the bid as non-responsive:

1. "Statement of Intent for MWBE Utilization" (Form I)

This form will illustrate the areas in which the Contractor has identified potential MBE and WBE Subcontracting opportunities, the dollar value, and percentage in which the Contractor proposes to attain in MBE and WBE utilization.

Business Diversity & Inclusion (BDI) Program Office

At the time of advertisement for bids, the BDI Program Office 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. The BDI Program Office will provide the Bidders with a list of certified MWBE firms that can provide sub-bids and/or quotes for scopes of services upon request.

Prime Contractor

The Prime Contractor will be required to solicit quotations from certified MWBE firms and provide the same information and details to MWBE firms as they do non-MWBE firms.

If the Contractor elects to use a MWBE firm that is not certified by the NC Department of Administration's Office of Historically Underutilized Businesses ("NCHUB") Certification process, it is the Contractor's responsibility to notify that firm that the MWBE firm should submit an application for certification within thirty (30) days of signing the letter of intent (Form IV). If the firm does not submit an application within the specified time frame or fails to meet the certification criteria that contract will not be considered as MWBE participation.

MBE and WBE Firms

It is the responsibility of the MWBE firm to contact the BDI Program Office for contracting opportunities, to provide quotes, and/or sub-bids when requested. The MWBE firm is also responsible for completing the letter of intent (Form IV) in a timely manner and returning it to the Prime Contractor.

The MWBE firm must be certified by the NCHUB's Certification Process in order for the 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 certification with the NCHUB's Certification Committee within thirty (30) 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 by the NCHUB's Certification Committee, that MWBE firm's contracting dollar amount will not be counted as MWBE participation.

SECTION-6 | PENALTIES

A penalty of five percent (5%) of the contract payment amount will be imposed against Prime Contractors who fail to meet the "**Good Faith Efforts**" requirements as documented herein.

All documents and information submitted by the Contractor will become a legal and binding part of the contract documents.

A finding by the Owner that any of the information submitted is deliberately or intentionally inaccurate, false or incomplete will be considered a fraudulent document and constitute grounds for non-compliance, resulting in a penalty of five percent (5%) of the contract payment amount applied, or non responsive.

If the contractor is found to be continuously in non-compliance, with these provisions or in direct contention, such actions may be considered by the Owner as a basis for not being responsible and not awarding future contracts.

SECTION-7 | GRIEVANCE PROCEDURE

The Grievance (internal complaint resolution) procedure is a resource available to all contractors, subcontractors, and vendors doing business with Mecklenburg County under the BDI Program. Grievances related to the administration of the BDI Program Provisions will be processed by the County's BDI Program Office as follows:

1. The grievance must be reported in writing to the Mecklenburg County BDI Program Office, Charlotte-Mecklenburg Government Center, 600 East 4th Street, Suite 226, Charlotte, North Carolina 28202.
2. The BDI Program Office and other designated Owner representatives will review the basis and the issues of the complaint and may request supporting evidence. Processing of a grievance will be completed within fifteen (15) working days unless circumstances mandate otherwise.
3. Any Contractor who desires to appeal the decision or ruling of the BDI Program Office may request an appeal to the County Manager.
4. The final decision will be rendered by the County Manager based upon a review of the record.

Any complainant not satisfied by the County Manager's decision may seek any available remedy under the law.

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**FORM I
STATEMENT OF INTENT OF
MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION
(TO BE SUBMITTED WITH THE BID)**

We, _____, do certify that on
(Bidder)

the _____
(Project Name)

(_____)
(Dollar Amount of Bid)

we anticipate expending a minimum of _____% of the total dollar amount on the bid with minority business enterprises and _____% with women business enterprises. MBE/WBE's may be employed as construction Subcontractors, vendors, suppliers, or professional services. The bidder indicates that he (she) will utilize MBE/WBE in the following areas:

Description of Work	MBE Amount	WBE Amount
TOTALS		

The undersigned will make every effort to enter into formal agreements with NCHUB certified Minority or Women Business firms for the work listed in this schedule conditional upon execution of a contract with Mecklenburg County.

The undersigned understands that they are permitted to negotiate with additional MBE/WBE firms for other materials and services not listed in the above schedule.

Submitted by: _____ Date: _____
(Authorized Representative)

Print Name: _____

TITLE: _____

ADDRESS: _____

TELEPHONE #: _____

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**FORM II
STATEMENT OF INTENT TO
PERFORM WORK WITHOUT SUBCONTRACTING
(TO BE SUBMITTED WITH THE BID)**

We, _____, hereby certify that it is our intent
(Bidder)

to perform 100% of the work required for the

_____ Contract
(Name of Project)

In making this certification, the Bidder states the following:

- 1. That it is a normal business practice of the bidder to perform all elements of this type contract with its own work forces without the use of subcontracts,

AND

- 2. That 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 undersigned hereby certifies that he or she has read the terms of this statement and is authorized to bind the bidder as herein set forth.

Signature and title of authorized official of the company and the date must be properly executed on this document and a list of previous Projects of similar scope and dollar value as stated in Section II attached or the bid may be deemed non-responsive.

Date: _____ Company Name: _____

Submitted By: _____
(Authorized Representative)

Print Name: _____

TITLE: _____

ADDRESS: _____

CITY/STATE/ZIP CODE: _____

TELEPHONE NO.: _____

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**FORM III
MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION COMMITMENT**

We, _____, do certify that on the _____,
(Prime Contractor)

_____ (Project Name)

_____ (Dollar Amount of Bid)

has committed a minimum of _____% of the total dollar amount of the contract with minority business enterprises and _____% with women business enterprises.

Name of Firm	MBE	WBE	Contact Person	Type of Work To Be Performed	Dollar Value

The Contractor has also furnished a Letter of Intent (Form IV).

The undersigned has or will enter into a formal agreement with the Minority or Women firms for Work listed in this schedule.

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

Signature and title of authorized official of the company and the date must be properly executed on this document.

Submitted by: _____ Date: _____
(Authorized Representative)

Print Name: _____

TITLE: _____

ADDRESS: _____

TELEPHONE #: _____

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**FORM IV
MINORITY AND WOMEN BUSINESS ENTERPRISE
LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR OR PROVIDE SUPPLIES OR SERVICES**

Project Name: _____

TO: _____ ADDRESS: _____
(Prime Contractor)

CONTACT PERSON: _____ TELEPHONE #: _____

The undersigned intends to provide supplies or services in connection with the above bid request as a Minority or Women Business Enterprise.

Check all that apply: Black/African American; Hispanic American;
 Asian American; American Indian;
 European American Female;

The undersigned is prepared to perform the following described Work in connection with the above Project. (Specify in detail particular Work items or parts thereof to be performed):

at the following price: \$ _____

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

Items

Signature: _____

Print Name: _____

has or will enter into a formal agreement with you for the above supplies or services conditioned upon your execution of a contract with Mecklenburg County.

Date: _____, 20____ _____
(Name of Minority or Women Business Enterprise)

CONTACT PERSON: _____

TITLE: _____

ADDRESS: _____

TELEPHONE #: _____

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**FORM VI
STATEMENT OF PAYMENTS TO MWBE SUBCONTRACTORS & SUPPLIERS
(TO BE SUBMITTED WITH FINAL PAYMENT REQUEST)**

Project: _____ Contract #: _____

Contractor's Name: _____

MBE	WBE	Name of Firm / Address & Phone #	Total Amount	Contact Person

Total Contract Cost: _____

Total % MWBE: _____

I hereby certify that this statement is true and that above payments have been made.

Contractor: _____

Address: _____

By: _____
Contractor Title

PRINT NAME: _____

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

Notary Public: _____

My Commission Expires: _____

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**"GOOD FAITH EFFORTS" FORM
(ATTACH TO BID)**

County of _____

Affidavit of _____
(Name of Bidder)

I have made the following good faith efforts to comply under the areas as checked:

(A minimum of 50 points is required to have achieved a "good faith efforts" standing)

(Y/N)

____(1) Contacting Minority and Women Businesses that reasonably could have been expected to submit a quote and that were known to the Contractor or available on State or local government maintained lists at least 10 days before the Bid proposal date and notifying them of the nature and scope of the Work to be performed. Value = 10 points

____(2) Making the construction plans, specifications and requirements available for review by prospective Minority and Women Businesses or providing these documents to them at least 10 days before a Bid proposal is due. Value = 10 points

____(3) Breaking down or combining elements of Work into economically feasible units to facilitate Minority and or Women Business participation. Value = 10 points

____(4) Working with Minority and Women trade, community, or Contractor organizations identified by the Office of Historically Underutilized Businesses and include in the Bid Documents that provide assistance in recruitment of Minority and Women businesses. Value = 10 points.

____(5) Attending any pre-bid meetings scheduled by the public Owner. Value = 10 points.

____(6) Providing assistance in getting required bonding or insurance, or providing alternatives to bonding or insurance for Subcontractors. Value = 20 points.

____(7) Negotiating in good faith with interested Minority and Women Businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of Minority and/or Women Businesses based on lack of qualification should have the reasons documented in writing. Value = 15 points.

____(8) Providing assistance to an otherwise qualified Minority and Women 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. Assisting Minority and Women Businesses in obtaining the same unit pricing with the Bidder's suppliers in order to help Minority and Women Businesses in establishing credit. Value = 25 points.

____(9) Negotiating joint venture and partnership arrangements with Minority and Women Businesses in order to increase opportunities for Minority and Women Business participation on a public construction or repair Project when possible. Value = 20 points.

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____(10) Providing quick pay agreements and policies to enable Minority and Women Business Contractors and suppliers to meet cash-flow demands. Value = 20 points.

In accordance with GS143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority and Women Business Participation schedule conditional upon execution of a Contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the Contract.

The undersigned hereby certified that he or she has read the terms of the Minority and Women Business commitment and is authorized to bind the Bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina, County of _____

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

Notary Public _____

My commission expires _____

