

WESTERN WAKE PARTNERS

Report to the Policy Advisory Committee (PAC11-03)

Date: August 26, 2010
To: Policy Advisory Committee
From: Lead Agency
Prepared By: Alexandra Jones, P.E., Town of Cary, Project Manager
Subject: Strategies for Utilization of Minority- and Women-Owned Business Enterprises

Discussion

The attached *Strategies for Utilization of Minority- and Women-Owned Business Enterprises* was developed in consultation with the individual Partners and is consistent with similar policies where such policies have been adopted by the Partners.

Requested Action: This report is for information only. No action is requested.

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Date: June 8, 2010
To: Western Wake Partners Technical Advisory Committee (TAC)
From: Brown and Caldwell
Subject: Western Wake Regional Wastewater Management Facilities
Strategies for Utilization of Minority- and Women-Owned Business Enterprises
(MWBE)

Objective

The objective of this memorandum is to document current Partner communities' policies relating to outreach to minority- and women-owned business enterprises (MWBE) and evaluate/propose specific strategies to create a strong utilization of MWBE firms to construct project facilities.

Partners' Commitment to MWBE Utilization Documented in the Final Environmental Impact Statement

Section 4.14.4.2 of the Final Environmental Impact Statement (EIS) for the Western Wake Regional Wastewater Management Facilities (WWMF) document anticipates one of the potential benefits of the proposed Project on the minority community would be economic opportunities, including for small and disadvantaged businesses.

In Appendix H, Section B.2 of the Final EIS for the Western Wake Regional WWMF project, the US Army Corps of Engineers (USACE) anticipates the project will provide opportunities for community employment both during construction of the WRF and pipelines and in the long term for facility operations, maintenance and management. The Partners will set a goal for the general contractor to provide a percentage of the total subcontracting work to small and disadvantaged businesses. As stated previously, operation of the WRF will require 25 to 35 employees.

Partners' Individual Existing MWBE Outreach Plans / Policies

The current policies or plans for utilization of MWBE contractors are summarized in the following sections. The individual policies/plans are included with this memorandum in Attachment A.

Town of Apex

The Town of Apex does not currently have a standing MWBE utilization/outreach policy. However, Apex regularly establishes project-specific MWBE utilization goals as a part of projects receiving state or federal funding, such as the State Revolving Fund (SRF).

Town of Cary

Town of Cary purchasing and contracting policies require the Town to make a good faith effort to solicit minority business participation in accordance with North Carolina General Statute (GS) 143-128. The Town's adopted minority participation

goal for building construction or repair projects in the formal and informal range, and in the selection of architects, engineers, surveyors and construction management at risk service providers is 10 percent of the total project value.

Town of Holly Springs

The Town of Holly Springs adopted a “Minority Business Participation Outreach Plan” in September 2009 to assist the Town in reaching a 10 percent goal for minority business participation in all construction contracts. The Plan states that it is not the Town’s intent to take additional steps beyond those required by GS 143-128.2, but through the Plan to establish procedures to comply with the statute, defining the good faith efforts that the Town will take to meet the Plan objectives. Among the “good faith efforts” defined in the plan:

- Education, recruitment and interaction between MWBE firms, non-MWBE firms, and the Town.
- Efforts to require bidders to reach out to MWBE firms.
- Pre-bid conferences for interested historically underutilized business (HUB) subcontractors
- Maintain a solicitation list of HUB subcontractors.
- Town will directly solicit HUBs in the solicitation list.
- Widely advertise opportunities, including in newspapers and websites serving the minority business enterprises in the Holly Springs area.
- Monitoring actual MWBE utilization on awarded construction projects.

Town of Morrisville

In 2004, Morrisville adopted a goal of 10 percent minority participation in building construction projects meeting the GS 143-128 threshold of \$300,000, and for consulting and professional services related to these building construction projects. Like Holly Springs, Morrisville developed an outreach plan to HUBs to support the minority business participation goal. Morrisville’s most recent revision of its HUB outreach program was in July 2009. Among the Town’s specific responsibilities under the HUB outreach plan are:

- Examine project specifications to identify subcontracting opportunities for HUBs, and strongly encourage prime contractors to solicit bids for subcontracts from HUBs.
- Meet with majority contractors to educate them on GS 143-128 and GS 143-129, the Guidelines for Recruitment and Selection of Historically Underutilized Businesses, and ensure that solicitations contain the clauses and goals required by the Morrisville program.
- Explain Morrisville’s HUB participation requirements at pre-bid conferences.
- Target certified HUB firms and small businesses that have expressed an interest in Town of Morrisville projects.
- Make a list of subcontracting opportunities available to minority-focused agencies and a list of prime bidders that subcontractors may wish to contact for consideration, at least 10 days prior to bid opening.
- Participate in education opportunities throughout the community and offer training sessions to share the HUB outreach program with interested businesses and organizations.
- All bid notices for construction projects over \$500,000 will be advertised in a daily newspaper having general circulation. The Town will ensure that bid notices are made available to HUB trade associations, minority economic development groups and HUBs with capabilities relevant to the bid notices. In addition, the Town will advertise in minority-focused media, if available.

The plan provides for the ongoing assessment and improvement of the HUB outreach program, and for reporting on program effectiveness to the NC Department of Administration.

The HUB plan includes a compliance requirements document, and a form to be submitted with bids for Town projects for the bidder to demonstrate their “good faith efforts” toward MWBE utilization. The “good faith efforts” form assigns points to specific efforts; at least 50 points (out of a total 155 points possible) must be earned from the efforts listed in the form to meet the Town of Morrisville’s “good faith efforts” requirement.

North Carolina General Statutes Governing Minority Business Participation

Of the communities with current MWBE utilization plans/policies, all cite an objective to comply with the standards of North Carolina General Statute (GS) 143-128. The requirements of GS 143-128 are summarized below, and the full statute is included as Attachment B to this memorandum.

- The statute established, for State building projects and for local government building projects when the local government entity receives state funding for a building project, a verifiable 10% goal for participation by minority businesses in the total value of the project work.
- With some exceptions, the MWBE utilization goal applies to projects over \$100,000 in value.
- Each public entity required to have percentage MWBE utilization goals shall make a good faith effort to recruit minority participation, and shall require contractors to make a good faith effort, in accordance with either GS 143-128 or GS 143-131(b). The difference between coverage under the two statutes is project value. GS 143-131(b) applies for projects in the range of \$100,000-\$300,000.
- Paperwork is required with contractor bids (1) identifying the MWBE subcontractors to be utilized and the value of the work for which MWBE subcontractors will be utilized, (2) an affidavit listing the good faith efforts made to comply with GS 143-128.
- Before awarding a contract, a public entity must:
 - 1) Develop an MWBE participation plan, identifying the minority businesses that can perform on building projects, and outreach efforts to encourage minority participation in the type of work including in the project.
 - 2) Attend the pre-bid conference.
 - 3) At least 10 days prior to bid, notify minority businesses that have requested notices about the project.
 - 4) Utilize other media as required to inform potential MWBE firms of the bid being sought.
- In addition to the requirements on public entities, GS 143-128 places requirements on bidders of projects above the regulatory threshold to undertake good faith efforts to solicit MWBE participation, including:
 - 1) Contact minority businesses that reasonably could be expected to submit a quote and that were known to the contractor or available on State/local-maintained lists at least 10 days prior to the bid date.
 - 2) Make the construction documents available for review by prospective MWBE firms, at least 10 days before bids are due.
 - 3) Breaking down or combining the work into economically feasible units to facilitate minority participation.
 - 4) Working with minority trade, community, or contractor organizations identified by the state Office of Historically Underutilized Businesses that provide assistance in the recruitment of minority businesses.
 - 5) Attending any pre-bid meetings scheduled by the Owner.
 - 6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding/insurance for subcontractors.
 - 7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons.
 - 8) Provide 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.
 - 9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation in public construction projects.
 - 10) Providing quick-pay arrangements and policies to enable minority contractors and suppliers to meet cash flow demands.
- The statute does not require contractors and awarding authorities to award contracts/subcontracts to make purchases of materials or equipment from MWBE contractors who do not submit the lowest responsible, responsive bids.

Western Wake Regional WWMF MWBE Utilization Goals

The proposed MWBE utilization goal for the Western Wake Regional Wastewater Management Facilities will be based upon meeting the requirements of GS 143-128, and will be consistent with established policies of the Towns of Cary, Holly Springs and Morrisville; it will also be consistent with the project-specific policies adopted in the past by the Town of Apex. Since all Western Wake projects exceed the \$300,000 value threshold, the requirements of GS 143-128 will apply to each project. The elements of the MWBE Utilization Policy include:

- Establish a 10% goal for participation by minority businesses in the total value of the project construction value.
- The Partners will make a good faith effort to recruit minority participation, and shall require contractors to make a good faith effort, in accordance with GS 143-128.
- The Partners will include documentation with the Contract Documents requiring Bidders to include with their bid (1) a list of MWBE subcontractors to be utilized and the value of the work for which MWBE subcontractors will be utilized, and (2) an affidavit listing the good faith efforts made to comply with GS 143-128.
- The Partners will develop an MWBE participation plan for each Western Wake Regional Wastewater Management Facilities construction project, identifying the minority businesses that can perform on building projects, and outreach efforts to encourage minority participation in the type of work including in the project.
- Maintain a solicitation list of MWBE subcontractors.
- Partners will directly solicit MWBE subcontractors in the solicitation list.
- Participate in education opportunities throughout the community and offer training sessions to share the MWBE outreach program with interested businesses and organizations.
- Attend the pre-bid conference and discuss the MWBE Utilization Plan with potential bidders.
- Make a list of subcontracting opportunities available to minority-focused agencies and a list of potential bidders that subcontractors may wish to contact, at least 10 days prior to bid opening.
- All bid notices for construction projects will be advertised in a daily newspaper having general circulation. The Partners will make bid notices available to MWBE trade associations, minority economic development groups and MWBE firms with capabilities relevant to the bid notices. In addition, the Partners will advertise in minority-focused media, if available.
- The Partners will require bidders of Western Wake Regional Wastewater Management Facilities projects to undertake good faith efforts to solicit MWBE participation, including:
 - 1) Contact minority businesses that reasonably could be expected to submit a quote and that were known to the contractor or available on State/local-maintained lists at least 10 days prior to the bid date.
 - 2) Make the construction documents available for review by prospective MWBE firms, at least 10 days before bids are due.
 - 3) Breaking down or combining the subcontractor work into economically feasible units to facilitate minority participation.
 - 4) Working with minority trade, community, or contractor organizations identified by the state Office of Historically Underutilized Businesses that provide assistance in the recruitment of minority businesses.
 - 5) Attending any pre-bid meetings scheduled by the Owner.
 - 6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding/insurance for subcontractors.
 - 7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons.
 - 8) Provide 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.
 - 9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation in public construction projects.
 - 10) Providing quick-pay arrangements and policies to enable minority contractors and suppliers to meet cash flow demands.
- Monitor actual MWBE utilization on awarded construction projects.