



MINORITY AND WOMEN BUSINESS ENTERPRISE (MWBE) ORDINANCE

WHEREAS, the County of Durham commissioned a study to be performed in certain areas of purchasing and contracting in which the County of Durham is involved; and

WHEREAS, it is the policy of the County of Durham that purchasing by the County and contracts with the County be open to all people and be free of discrimination based on race or gender; and

WHEREAS, on January 14, 2008, the Board of County Commissioners adopted a Minority and Women Business Enterprise (MWBE) Ordinance; and

WHEREAS, on December 31, 2015, the adopted Ordinance expired;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH ORDAIN:

1. That Chapter 8 Article V of the Durham County Code of Ordinances hereby establishes a new Ordinance to read as follows:

ARTICLE V. MINORITY AND WOMEN BUSINESS ENTERPRISES

Sec. 8-131. Purpose

- (a) The County commissioned a disparity study completed by Griffin & Strong PC in January 2015 which concluded there is a compelling interest to remedy the on-going effects of discrimination in the marketplace that minority and women-owned firms continue to face. The study shows Durham County used race neutral measures to remediate the remnants of discrimination. The results of the program have not been sufficient to level the procurement and contracting playing field for minority and women-owned businesses. The study findings concluded there is a factual basis for Durham County to use both race and gender neutral and race and gender conscious remedies, along with aspirational goals to address the underutilization of minority and women-owned business firms in its procurement and contracting processes.
- (b) This article gives the County Manager or designee the authority to implement a MWBE Program Plan document that establishes the written policies and procedures for managing the County's MWBE Program and reaffirms the Board of County Commissioners' commitment to its policy of nondiscrimination through a positive and continuing business process of specific policies and practices designed to ensure equal opportunity in all of the County's contracting opportunities.
- (c) This article is enacted pursuant to authority provided by law, including G.S. 143-128, 153A-12, 153A-13, 153A-121, and 153A-134.

Sec. 8-132. Policy Statement

It is the policy of the County to provide minorities and women-owned businesses equal opportunities to participate in all aspects of the County's contracting programs, including, but not limited to construction, goods and services consistent with law. It is the policy of the County to prohibit discrimination against any business in pursuit of these opportunities on the basis of race, color, national origin, religion, sex, age, disability, or veteran's status. It is further the policy of the County to conduct its contracting programs so as to prevent such discrimination, correct present discrimination and to resolve claims of such discrimination.

Sec. 8-133. Administration

- (a) The County Manager, with the advisement of the Purchasing Director, shall implement this article. The County Manager is hereby authorized to take all usual and legal administrative actions necessary to implement this article.
- (b) This article applies to all bids and contracts for the purchase of construction, goods and services that the County enters into after the adoption hereof.
- (c) The County Manager and the Purchasing Director shall consider and implement program initiatives and outreach to assist local MWBE firms including, but not limited to, bonding assistance, building capacity and technical assistance.

Sec. 8-134. Goals

The County has determined to have an aspirational overall MWBE goal of 25% and to also set project specific goals, when deemed appropriate. The County Manager and Purchasing Director in consultation with the County Attorney's Office shall adjust the goals annually, or from time-to-time, upon review of the County's utilization of MWBE firms verses their availability.

Durham County hereby establishes the following aspirational goals, which may be adjusted from time to time as deemed necessary by the County Manager or designee.

| Categories | Construction | Architect/ Engineer | Services | Goods | MWBE Availability % <i>(Median Availability)</i> |
|--|--------------|------------------------|----------|-------|---|
| Black American | 14.6 | 9.8 | 10.9 | 2.8 | 10.4% |
| Asian American | 1.3 | 3.0 | 1.1 | .43 | 1.3% |
| Hispanic American | 4.2 | 1.8 | 1.1 | .43 | 1.5% |
| American Indian | .65 | .75 | 1.0 | .5 | .70% |
| White Female | 13.8 | 11.0 | 9.5 | 7.1 | 10.3% |
| Overall MWBE Participation Goal = | | | | | 25.0% |

Sec. 8-135. Certification of MWBEs

Minority businesses seeking to be counted toward Durham County's minority business participation goals are required to be certified under the North Carolina Department of Administration, Historically Underutilized Business (HUB) certification program or by another certifying agency of the State of North Carolina, such as the North Carolina Department of Transportation.

As a result of North Carolina's legislative Session Law 2007 Senate Bill 320, a new requirement has been created for the State Department of Administration to develop and administer a statewide uniform program for certification of Historically Underutilized Businesses (HUBs) for use by state and local agencies, and to create and maintain a statewide database of certified HUBs.

Sec. 8-136 Federal and State Requirements; Conflict Resolution

Where a federal or state grant agreement or any federal or state law or regulations prevent the full application of this article, this article shall apply to the extent permitted by the applicable agreement, laws, and regulations.

Sec. 8-136. - Effective Date

This article shall remain effective until which time it be deemed repealed by action of the County Commissioners. Unless otherwise provided by an Ordinance enacted by the County Commissioners or by a contract between the County and the other party of the contract, if a legal action is commenced before the repeal of this article to enforce any contractual provision which incorporates by reference any of this article, the rights of parties with respect to such contractual provision shall, for purposes of the legal action, continue in effect notwithstanding the repeal.

This article shall be effective on ratification.

This the 28th day of November, 2016.