



ALBEMARLE
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Request For Qualifications

Brownfields Assessment Grant Program Consultant

City of Albemarle
Economic Development Department

RFQ Open Period: March 8, 2022
RFQ Submission Deadline: April 15, 2022



Submittal Due Date: 5:00 p.m., Friday, April 15, 2022

Contact

Keith Tunnell, Director

City of Albemarle Economic Development Department

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Albemarle, NC 28002

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It is the policy of the City of Albemarle to provide local, small and minorities equal opportunity for participating in all aspects of the City's contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchase, and professional and personal service contracts.

I. Introduction

The City of Albemarle Economic Development Department, through the City of Albemarle, North Carolina (www.Albemarlenc.gov) invites interested parties to submit statements of qualification and experience to provide environmental and engineering consulting services on a task order basis for the City's new Brownfields program over a five-year period of performance. The City is looking for firms with documented experience providing Brownfields (environmental) assessments and related services for local governments.

The City is also looking for the consultant to provide support in the identification of potential funding sources including identifying and assisting with EPA and state assessment and brownfield cleanup grants. The objectives of the City are to complete the following:

- Develop a successful Brownfields initiative by assisting the City with development, implementation, and management of the program.
- Identify and pursue Brownfields funding and resources including the research, writing, and submission of an EPA Brownfields Assessment Grant.
- Encourage community involvement in the Brownfields process.
- Provide an educational class to encourage community understanding of the Brownfield process and desired end results.

II. Scope of Work

The consultant will be expected to perform the following tasks on an as-needed basis:

1. **Grant Preparation and Administration:** The consultant will be asked to take the lead in grant application preparation with input and review by the City. Included in this task is the collection of data required in the grant application, manage all grant activities to ensure compliance with EPA requirements while achieving the City's objectives, meeting with existing community groups, and assistance in the identification of potential properties or areas to be included in the application. Once grants have been awarded, the consultant will, with the City's help and guidance, administer the grant.

2. **Property Identification and Inventory:** The consultant will be asked to work with the City to identify, develop and refine a database of potential Brownfield properties. Included in this work will be the development and implementation of a set of criteria to prioritize the identified properties for evaluation.
3. **Site Characterization and Assessment Activities:** As part of the work, the consultant may be asked to conduct Phase I Environmental Site Assessments (ESA) and Phase II ESAs as well as preparation of cleanup plans. Included in this task is development of the following plans:
 - Quality Assurance Project Plans (QAPP);
 - Site specific Sampling and Analysis Plans (SAPs);
 - Health and Safety Plans (HASP); and
 - Site investigation reports.

Documents are required to follow applicable state and industry standards including ASTM and All Appropriate Inquiry (AAI) standards for property transactional work.

4. **Community Involvement Assistance:** The consultant may be asked to support the City in public involvement and community outreach activities to ensure that the community concerns are considered and addressed in the assessment planning and execution process of the projects. The following activities may be included.
 - Develop a community engagement plan to detail a strategy for involving the community in Brownfield activities.
 - Conduct public meetings and hearings to solicit community interest and provide educational information.
 - Create and facilitate a Brownfield Task Force (BTF) to review and recommend sites to be assessed and characterized.
 - Develop and implement effective methods of communicating information about the Brownfield program to the public (website, information sheets, mails, etc.).
 - Consult with prospective private landowners and developers to encourage participation in the program.

5. **Cleanup and Development Planning:** The consultant may be asked to complete site-specific cleanup and redevelopment planning documents, including Analysis of Brownfield Cleanup Alternatives (ABCA's), site remediation Work Plans, conceptual redevelopment site plans, etc. In addition, Consultant may be asked to conduct community visioning sessions, charrettes, and/or workshops to solicit input and generate redevelopment options. The Consultant may also assist in the negotiation of voluntary cleanup with the North Carolina Department of Environment and Natural Resources (NCDENR).
6. **Cleanup and Remediation Activities:** The consultant may be asked to complete cleanup and remediation of selected Brownfield properties in accordance with the NCDENR Inactive Hazardous Sites Branch voluntary remediation program (IHSB) other agency requirements, and/or United States Environmental Protection Agency (USEPA) requirements. Activities may include the preparation of a Quality Assurance Project Plan (QAPP) and Health and Safety Plan (HASP), securing all approvals and permits, completing confirmation sampling activities, developing biddocumentation, coordinating, and overseeing site remediation activities, and/or completing the site remediation activities.
7. **Other Brownfield Related Duties:** Other duties that may be required for a successful program but that have not been anticipated in this call for services.

III. Response Format/Evaluation Criteria

One (1) electronic copy, one (1) original and two (2) hard copies of the statements of qualifications and experience shall be submitted. The submittal shall be no longer than 10-pages and shall include the information outlined below. To ensure fair and equitable evaluation, proposals must be organized into the following separate sections with clearly marked headers.

1. ***Experience and Capacity***

The response shall include a summary of the following:

- History of the firm's experience providing Brownfields services as described herein.
- Brownfields grant application and administration experience/capacity.
- Brownfields project experience.

- Description of the firm’s organizational structure and the names and experience of key individuals including professional registrations, site investigation, and experience working with the USEPA and NCDENR.
- Disclosure of any potential conflicts of interest.

2. References

The response shall include at least three (3) references for similar services that have been provided by your firm and the dates of service. Please include the reference name, company, and phone number. Also include a description of the services and key personnel that were involved in the project.

3. Proposed Methodology

The response shall include an organization chart in addition to a description of how the firm will complete the scope of work described herein. Include a description of the relevant services provided by your firm. Finally, included a concise statement of why your firm should be selected by the City.

IV. Selection Criteria

The responding firms will be evaluated on the following criteria.

- Experience and ability to complete the work in accordance with applicable Federal, State, and local laws, regulations, policies and guidelines.
- Demonstrated Brownfields experience including successful grant writing and administration along with a demonstrated ability to work with USEPA and NCDEQ.
- Approach and understanding of the scope of work.
- Proven track record of community engagement.
- Environmental assessment experience.
- Quality of performance on similar projects.
- Participation of small, minority, woman, and veteran-owned businesses.

Oral presentations to the City may be requested. The request for an oral presentation shall in no way constitute acceptance or imply that an agreement is pending. The City reserves the right to award this opportunity based on the initial RFQ response without oral presentations. The City also reserves the right to request additional information from any consultant submitting under this RFQ if the City deems such information is necessary to further evaluate the consultant's qualifications.

V. **Submission and Deadline**

The City reserves the right, in its sole discretion, to reject all submissions, reissue a subsequent RFQ, terminate, restructure, or amend this procurement process at any time. In the event the City elects to negotiate a contract with a selected consultant, the City reserves the right to negotiate such terms and conditions of the contract including, but not limited to, scope, role, price, and staffing which may be in the best interests of the City.

All submittals shall become property of the City of Albemarle and the information therein will be subject to release pursuant to the North Carolina Freedom of Information Act (FOIA) or judicial process. Firms not selected will be notified in writing by the City. Consultants shall be responsible for all costs associated with their drafting and submittal. **Submittals must be received no later than 5:00 PM ET on Friday, April 15, 2022.** Late submittals will not be accepted

Responses to this RFQ shall be delivered to the address below:

City of Albemarle
Economic Development Department
Attn: Keith Tunnell, Director
PO Box 990 | 144 N. 2nd St.
Albemarle, NC 28002

Electronic qualification statements shall be submitted electronically in PDF format to:

ktunnell@albemarlenc.gov

The e-mail subject line must be as follows:

"Qualifications Statement – Professional Consulting Services Brownfields Initiative".

All questions must be directed in writing to: **Keith Tunnell, City of Albemarle Economic Development Director** no later than **5:00 PM ET on Friday, April 8, 2022** by US Mail or by email to: ktunnell@albemarlenc.gov.

**Submissions must be received at the listed address
no later than 5:00 pm, Friday, April 15, 2022**



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Historically Underutilized Business (HUB) Program

&

**Mediated
Settlement Conferences for Construction Projects**

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INTRODUCTION

The City Council adopted the June 1989 General Assembly provisions for Senate Bill 308 which amended Chapter 480 and Section 74.17 of Chapter 770, thereby rewriting G.S. 143-128 on May 7, 1990, which allowed all public owners to advertise for bids for public building projects using single contract (single prime) system as an alternative to the traditional separate (multi-prime) contracts system. Included in the amendments adopted by the General Assembly was the requirement that each public owner adopt and implement a Minority and Women's Business Enterprise (M/WBE) Plan that would include specific conditions to be met for each public building project constructed under the provisions of G.S. 143-128.

The intent of these amendments was and still is to increase the opportunities for M/WBEs to become involved in public building projects let to contract in North Carolina. Within the guidelines of Senate Bill 308 was the requirement that each public body adopt an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for which a contract or contracts are awarded.

Each local government was given the responsibility for ascertaining an appropriate verifiable percentage goal(s). The City of Albemarle City Council adopted a verifiable goal of ten percent (10%) for minority participation in building construction contracts awarded.

Senate Law 2001-496, Senate Bill 914 became effective January 1, 2002, revising G.S. 143-128.2 to enhance and improve good faith efforts to recruit and select minority businesses for participation in public construction contracts.

The City of Albemarle adopted its first Historically Underutilized Business (HUB) Program on November 18, 2002, to include redefined goals:

- 1) 10% HUB overall participation in construction and consulting expenditures, and
- 2) 10% HUB overall participation in procurement and professional expenditures.
- 3) The overall program participation percentage goal will be reviewed annually or on a project by basis as soon as relevant data becomes available.
- 4) Historically Underutilized Businesses will have an opportunity to receive technical assistance in licensing, bonding, certification, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing City contracts.

The services of the City of Albemarle's Underutilized Business Program are not designed to provide in-depth business management, estimating or other technical assistance to participants in bid preparation and contract negotiations.

OUTREACH PLAN AND GUIDELINES

FOR RECRUITMENT AND SELECTION OF HISTORICALLY UNDERUTILIZED BUSINESSES FOR PARTICIPATION IN THE CITY OF ALBEMARLE'S BUILDING CONSTRUCTION CONTRACTS

In accordance with G.S. 143-128.2, effective January 1, 2002, these guidelines establish goals for Historically Underutilized Business (HUB) participation in single-prime bidding, separate-prime bidding, dual bidding, construction manager-at-risk, and alternative contracting methods on City of Albemarle building construction projects in the amount of \$300,000 or more. The Outreach Plan shall also be applicable to the selection process of architectural, engineering and construction manager-at-risk services.

The City of Albemarle has a verifiable ten percent (10%) goal for Historically Underutilized Business (HUB) participation by HUB businesses in the total value of work for each project for which a contract or contracts are awarded for public building construction. The overall goal will be reviewed annually or as soon as relevant data is available.

POLICY STATEMENT

To broaden opportunities for participation, increase competition, and ensure the proper diligent use of public funds, it is the intent of the City of Albemarle to provide minorities and women equal opportunity to participate in all aspects of the City of Albemarle's contracting and purchasing programs. Opportunities include, but are not limited to, participation in procurement contracts for commodities and services, as well as for construction and construction renovation projects, and lease agreements as they relate to requirements established by federal, state, and local governments.

The City of Albemarle is committed to economic development of small business enterprises and the minority community and prohibiting discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, national origin, age, disability, or veteran status.

The City of Albemarle's Historically Underutilized Business Program (HUB) is not a set-aside as it relates to contracting; it is a voluntary goal program. Competitive bidding is required for all contractors, subcontractors, suppliers and distributors. The HUB program encourages contractors to actively and aggressively seek HUB participation.

Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from HUB contractors or HUB subcontractors who do not submit the lowest responsible responsive bid or bids.

It is further the intent of these guidelines that the City of Albemarle, as awarding authority for construction projects, and the contractors and subcontractors performing the construction contracts awarded, shall cooperate, and in good faith do all things, legal, proper and reasonable to achieve participation by HUB in each construction project as mandated by N.C.G.S. 143-128.2.

OBJECTIVES

The primary objective of the City of Albemarle Historically Underutilized Business Program will be to focus on full utilization of minority and women businesses in the City's construction and procurement activities; the assurance of a Good Faith Effort Program that benefits contractors, subcontractors and vendors alike; and early conflict intervention of general and discriminatory concerns in addition to the following areas of assistance:

- ◆ Maintain and promote minority-owned and women-owned business utilization.
- ◆ Increase the City of Albemarle's knowledge of minority and women owned business firms and become familiar with their product line.
- ◆ Up-to-date information on City bidding opportunities.
- ◆ Management and technical assistance guidance and support throughout the process to ensure significant minority and female business participation.
- ◆ HUBs will have an opportunity to receive technical assistance in licensing, bonding, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing City contracts.
- ◆ On-going communications program to sponsor special seminars and training programs to assist minorities and women in becoming actively involved in procurement and construction contract projects.
- ◆ Provide and administer procedures for reporting and monitoring compliance of contract activity, subject to the provisions of the HUB requirements of the City of Albemarle.
- ◆ Provide and administer procedures for resolving complaints of discrimination made against businesses holding construction or equipment and service contracts with the City of Albemarle.

DEFINITIONS

- **Bidder**

Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

- **Certification**

To qualify for certification, a firm must meet the definition of a minority person, as outlined in accordance with N.C.G.S. 143-128, and/or be socially and economically disadvantaged as defined in 15 U.S. C. 637 of the Federal Code.

Any person having a current 8(a) certification from the Small Business Administration is considered socially and economically disadvantaged.

- **Contract**

A mutually binding legal relationship, or any modification thereof, obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.

- **Contractor**

Any person, firm, partnership, corporation, association, or joint venture which has contracted with City of Albemarle to perform construction work or repair.

- **Designer**

Any person, firm, partnership, or corporation, which has contracted with City of Albemarle to perform architectural or engineering work.

- **Minority**

A person who is a citizen or lawful permanent resident of the United States and who is:

- a. American Indian, that is, a person having origins in any of the original peoples of North America
- b. 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
- c. Black, that is, a person having origins in any of the black racial groups in Africa
- d. Female
- e. 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
- f. Persons qualifying as socially or economically disadvantaged

- **Minority Business**

- a. A business in which at least fifty-one percent (51%) is owned by one or more minority persons, 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
- b. 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.

- **Socially and economically disadvantaged individual**

Means the same as defined in 15 U.S.C. 637 of the Federal Code. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regards to their individual qualities.

Economically disadvantaged individuals 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.

- **Owned and Controlled**

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

- **Owner**

City of Albemarle.

- **Public Entity**

State and all public subdivisions and local government units.

- **Subcontractor**

A firm under contract with the prime contractor or Construction Manager-at-Risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in the subcontract.

- **Verifiable Goal**

The City of Albemarle has adopted written guidelines specifying the actions that will be taken to ensure a Good Faith Effort in the recruitment and selection of female and minority businesses for participation in contracts awarded.

PROGRAM ADMINISTRATION

Responsibilities of the Owner

1. Develop, implement, manage, and monitor for compliance, the City of Albemarle's Historically Underutilized Business (HUB) Outreach Plan, as contained herein, in accordance with federal, state, and local government requirements.
2. Work with minority-focused and small business groups that support Historically Underutilized Business and small business inclusion in the solicitation of bids.
3. Place more emphasis on the importance of soliciting certified Historically Underutilized Business firms and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from HUB firms.
4. Hold meetings with the majority contractors to provide detailed information concerning the Guidelines for Recruitment and Selection of Historically Underutilized Business, information on G.S. 143-128 and G.S. 143-129, and to ensure that solicitations contain the clauses and goals required by the program.
5. Explain the City of Albemarle's Historically Underutilized Business participation requirements at pre-bid conferences.
6. Assess the effectiveness of the HUB Program, and identify opportunities to enhance it, by evaluating HUB participation and compliance and reviewing the "Good Faith Efforts" provided in bid packages.
7. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified HUB firms and small businesses that have expressed an interest in City of Albemarle projects.
8. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration no later than **10-days** prior to the bid opening.
 - a. A description of the work for which the bid is being solicited.
 - b. The date, time and location where bids are to be submitted.
 - c. The name of a representative of the Owner who will be available to answer questions about the Project.
 - d. Where bid documents may be received.
 - e. Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.
9. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how their Outreach Program and HUB program is working and sharing "*best practices and ideas*" to improve the program.
10. Participate in education opportunities throughout the community as they become available and offer training sessions to share the City of Albemarle's Outreach Plan with interested businesses and organizations.
11. Be visible through participation in trade shows and business organizations of interest to HUB firms, majority contractors and small businesses, and provide information to the general public about the HUB Program, and continue outreach efforts to the business community.
12. On-going Communications Program.

Upon request, the City of Albemarle will make available complete information on the City's construction programs and projects and a brief description of each to HUBs, HUB associations, assistance agencies, and training resources. A copy of this list will be maintained in the office of HUB Program Coordinator.

All bid notices for construction projects over \$100,000 will be advertised in a daily newspaper having general circulation in the area for which bids are requested. The City 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 as identified by the HUB Source Listing.

The City will periodically conduct workshops, seminars, or training sessions designed to acquaint HUBs with the City's contracting procedures. Historically Underutilized Businesses will have an opportunity to receive technical assistance in licensing, bonding, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing City contracts. The HUB Program Coordinator shall be responsible for achieving this goal.

13. Advertise upcoming bid opportunities in minority-focused media, if available.
14. Work with architects, consultants, and engineers to ensure that subcontracting opportunities are more noticeable, that specific opportunities are identified and easily understood by potential contractors and subcontractors.
15. Reporting, quarterly, to the North Carolina State Department of Administration, minority participation, as contained herein.

Designer

Under the single-prime bidding, separate prime bidding, dual bidding, construction manager-at-risk, or alternative contracting method, the designer must do all of the following:

1. Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contacts, correspondence, or conversations with minority business firms made in an attempt to meet the goals.
4. Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) – (i.e. bidder's proposal for identification of the minority businesses that will be utilized with corresponding dollar value of the bid and Affidavit Listing Good Faith Efforts or Affidavit of Self-Performance of Work, if the contractor will perform work under contract by its own workforce) – prior to recommendation of an award.
5. During the construction phase of the project, review "HUB Documentation for Contract Payment" form with monthly pay applications to the owner and forward copies to the City of Albemarle.

Prime Contractor(s), Construction Manager-At Risk, and its First-Tier Subcontractors

Under the single-prime bidding, the separate-prime bidding, dual bidding, Construction Manager-at-Risk and alternative contracting methods, contractor(s) must do all of the following:

1. Attend the scheduled prebid conference.
2. Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
3. At least ten (10) days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification must include all of the following:
 - (a) A description of the work for which the subbid is being solicited.
 - (b) The date, time and location where subbids are to be submitted.
 - (c) The name of the individual within the company who will be available to answer questions about the project.
 - (d) Where bid documents may be reviewed.
 - (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.
4. During the bidding process, comply with the contractor(s) requirements listed in the proposal for minority participation.

5. Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and Affidavit Listing Good Faith Efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f) or Intent to Perform Contract With Own Workforce Affidavit.
6. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First Tier Subcontractor responsibilities available for review by City of Albemarle upon request.
7. Provide one of the following upon being named the apparent low bidder: (1) 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. This affidavit shall give rise to a presumption that the bidder has made the required good faith effort; or (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken 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. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
8. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
9. Submit with each monthly pay requests(s) and final payment(s), "HUB Documentation for Contract Payment" for designer's review.
10. If at any time during the construction of a project, it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
11. Make a good faith effort to solicit subbids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

Historically Underutilized Business (HUB) Responsibilities

The City of Albemarle must use only Historically Underutilized Businesses that have been certified by the North Carolina Department of Administration, Office of Historically Underutilized Businesses, Statewide Certified Program in order for the dollar value of the work performed by the Contractor to be counted toward meeting the City's 10% Historically Underutilized Business (HUB) Participation Goal on any of the City's projects. G.S. 143-128.4(e)

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

Historically Underutilized Businesses will have an opportunity to receive technical assistance in licensing, bonding, certification, completing bid forms, clarification of any area of the contract in which there are questions (not including estimates for any specific project), and other procedures involved in securing City contracts.

A copy of these guidelines will be issued with each bid package for City of Albemarle building construction projects. These guidelines shall apply to all contractors regardless of ownership.

Calculating Historically Underutilized Business (HUB) Participation

The degree of participation by HUB subcontractors, minority-majority joint ventures, and HUB contractors in contracts awarded will be calculated as follows:

1. The total dollar value of the contract awarded to the HUBs.
2. The total dollar value of purchases of equipment or supplies from HUBs.
3. Participation by HUBs by race and gender classification.

Monitoring Historically Underutilized Business (HUB) Program Activity

In order to monitor the implementation of the HUB policy to provide minorities and women equal opportunity for participating in all aspects of the City's construction and procurement programs, participation shall be documented by each department of the City and reported quarterly to the HUB Program Coordinator. Appropriate forms will be developed and available to all departments.

Responses from departments shall include:

1. The number of solicitations to HUBs
2. The number of bids submitted by HUBs
3. The number of contracts awarded to HUBs
4. The value of contracts awarded the HUBs

Penalties

All documents and information submitted by the contractor will become a legal and binding part of the contract documents. A finding by the City that any of the information submitted is deliberately inaccurate, false or incomplete will constitute grounds for non-compliance, and the penalty of five (5%) of the contract payment amount applied.

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



Historically Underutilized Business (HUB) Program



INSTRUCTIONS

TO

BIDDER DOCUMENTS

FOR

CONTRACT COMPLIANCE

CONTRACT COMPLIANCE REQUIREMENTS

The Guidelines for Recruitment and Selection of Historically Underutilized Business for Participation in the City of Albemarle's Contracts are hereby made a part of these contract documents. These guidelines shall apply to all contractors regardless of ownership. Copies of these guidelines may be obtained from:

Physical Address: The City of Albemarle,
144 North Second Street
Albemarle NC 28001

Representative: HUB Program Coordinator

Mailing Address: P. O. Box 190
Albemarle NC 28002-0190

Telephone Number: 704-984-9444
FAX Number: 704-984-9448

Website: www.ci.albemarle.nc.us

All written statements, affidavits or intentions made by the Bidder shall become a part of the agreement between the Contractor and the City of Albemarle for the performance of the contract. Failure to comply with any of these statements, affidavits or intentions or with the minority business guidelines shall constitute a breach of contract. A finding by the City that any information submitted either prior to award of the contract or during the performance of the contract, is inaccurate, false or incomplete shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of City of Albemarle whether to terminate the contract for breach.

The City of Albemarle shall include in all contract specifications specific instructions and procedures to define HUB compliance requirements. Historically Underutilized Business requirements will be reviewed at pre-bid meetings for all potential contractors.

Each contractor proposing to bid a project shall submit the following to the HUB Program:

1. Items that will be subcontracted.
2. General list of materials to be used in the project.

The City will provide to contractors an updated listing of certified minorities and female-owned businesses listed with the City's HUB Program. The list is available to contractors for use in recruiting and selecting HUB subcontractors.

Subcontract Goals

The goal for participation by minority firms as subcontractors on a project has been set at 10%.

BID SUBMITTAL REQUIREMENTS

The bidders must submit the following with their bid:

1. Affidavit A: Identification of Historically Underutilized Business Participation

This form illustrates the areas in which the contractor has identified potential HUB subcontract opportunity and the dollar value in which the contractor proposes to attain in HUB utilization.

AND,

2. Affidavit B: Good Faith Efforts

In accordance with G.S. 143-128.2(c), 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 commit the Contractor to subcontracting these areas only to HUB firms or releasing the contractor from negotiating with HUB firms for subcontract opportunities in other areas.

OR,

3. Affidavit C: Intent to Perform Contract With Own Workforce

WHEN FORM AFFIDAVIT "C" IS BEING SUBMITTED, FORM AFFIDAVIT A (Identification of HUB Participation) AND FORM AFFIDAVIT B (Good Faith Effort) ARE NOT REQUIRED AND SHOULD NOT BE SUBMITTED WITH THE BID PACKAGE.

This form is to be submitted if the bidder does not intend to subcontract any portion of the work and there are not any significant material purchases on which HUB firms can be utilized. The bidder must certify that this has been a typical practice on projects of similar scope and dollar value; and provide with his/her bid a list of those projects along with the project name, the owner, the owner's project manager and/or representative, total dollar value, the beginning and completion date.

By submittal of "Intent to Perform Contract with Own Workforce" (Affidavit C) for self-performance", the contractor is certifying that:

1. He/she will not enter into any subcontract for duration of project, and if he/she does decide to subcontract any portion of the work he/she will:
 - a. Notify the City immediately of the decision to subcontract.
 - b. Adhere to the provision of "Good Faith Efforts" in filling that subcontract opportunity.
2. He/she does not typically subcontract on projects of similar scope and dollar value.

The Historically Underutilized Business Program may request the apparent low bidder to provide additional information to clarify the bidder's responsiveness.

Failure to submit the completed forms with your bid may deem the bid as non-responsive.

After the Bid Opening

The City of Albemarle will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon receipt of the Notice/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 HUB documentation:

1. Affidavit D: Portion of the Work to be Performed by HUB Firms

This form shall be submitted by the apparent lowest responsible, responsive bidder within **72-hours** after notification of being low bidder if the portion of the work to be executed by minority businesses, as defined in **GS 143-128.2 (g)**, is **equal to or greater than 10%** of the bidders total contract.

OR,

2. Affidavit E: If HUB participation does not equal or exceed the overall City goal(s)

If the percentage is not equal to the applicable goal, provide evidence of **Good Faith Efforts** to meet the goal that include:

- a. Copies of solicitation for quotes to at least three (3) minority business firms from the source list provided for each subcontract to be let under this contract (if three or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contract, and location, date and time when quotes must be received.
- b. Copies of quotes or responses received from each firm responding to the solicitation.
- c. A telephone log of follow-up calls to each firm sent a solicitation.
- d. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- e. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- f. Copy of pre-bid roster.
- g. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- h. Letter detailing reasons for rejection of minority business due to lack of qualification.
- i. Letter documenting proposed assistance offered to minority businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.
- j. The HUB Program may require the contractor to submit additional information to verify his/her "Good Faith Efforts".

The HUB documentation will be received at the pre-construction conference and forwarded to the HUB Program within three (3) working days for a determination of compliance. The HUB Program will make a determination of compliance within ten (10) working days from receipt of the documentation. If the contractor does not submit his HUB documentation at the pre-construction conference he/she will be deemed to be in non-compliance with the "Good Faith Efforts". The HUB Program will notify the contractor of the determination of compliance or non-compliance.

The penalty for non-compliance will be applied against the contract until the contractor is determined to be in compliance with his/her "Good Faith Efforts".

At the time of the final request for payment upon completion of the project, the Contractor shall submit a Statement of Final Payments to HUB Subcontractors and Suppliers. Final payment will not be released until Statement of Final Payments to HUB Subcontractors and Suppliers form is submitted.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.

Good Faith Efforts

In determining whether a contractor has made Good Faith Efforts, the City of Albemarle will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. **At least 50 points must be earned from the good faith efforts listed below in order to meet the Good Faith Efforts requirement:**

- (1) **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 at least (10) days before the bid or proposal date and notifying them of the nature and scope of the work to be performed.
- (2) **10 points:**
Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
- (3) **15 points:**
Breaking down or combining elements of work in economically feasible units to facilitate minority participation.
- (4) **10 points:**
Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and those included in the bid documents to provide assistance in recruitment of minority businesses.
- (5) **10 points:**
Attending any pre-bid meetings scheduled by the public owner.
- (6) **20 points:**
Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- (7) **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.
- (8) **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. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- (9) **20 points:**
Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public building construction or repair project when possible.
- (10) **20 points:**
Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.



Affidavit B - GOOD FAITH EFFORT

WHEN FORM AFFIDAVIT A (Identification of HUB Participation) AND FORM AFFIDAVIT B (Good Faith Effort) ARE BEING SUBMITTED) THEN AFFIDAVIT "C" IS NOT REQUIRED AND SHOULD NOT BE SUBMITTED WITH THE BID PACKAGE.

County of _____ Affidavit of _____
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

(A minimum of 50 points is required to have achieved a "Good Faith Effort")

(Y/N)

- ___ (1) 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 at least 10 days before the bid or 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 businesses or providing these documents to them at least 10 days before the bid or proposals are due. **Value = 10 points.**
- ___ (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. **Value = 15 points.**
- ___ (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority 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 businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of minority business based on lack of qualification should have the reasons documented writing. **Value = 15 points.**
- ___ (8) 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 is required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. **Value = 25 points.**
- ___ (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. **Value = 20 points.**
- ___ (10) Providing quick pay agreements and policies to enable minority 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 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 business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____

Name of Authorized Officer: _____

Signature: _____

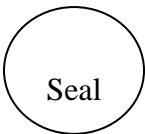
Title: _____

State of _____, County of _____

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

Notary Public _____

My commission expires _____





Affidavit C - INTENT TO PERFORM CONTRACT WITH OWN WORKFORCE

WHEN FORM AFFIDAVIT "C" IS BEING SUBMITTED, FORM AFFIDAVIT A (Identification of HUB Participation) AND FORM AFFIDAVIT B (Good Faith Effort) ARE NOT REQUIRED AND SHOULD NOT BE SUBMITTED WITH THE BID PACKAGE.

County of _____

Affidavit of _____
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____ contract.
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

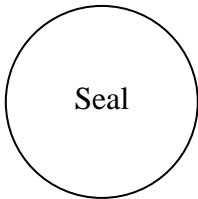
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

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

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 _____

DO NOT ATTACH TO BID

DO NOT ATTACH TO BID

DO NOT ATTACH TO BID

DO NOT ATTACH TO BID



Affidavit D - PORTION OF THE WORK TO BE PERFORMED BY HUB FIRMS

If the portion of the work to be executed by HUB Firms as defined in **GS 143-128.2 (g)** is **equal to or greater than 10%** of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72-hours** after notification of being low bidder.

Affidavit of: _____ I do hereby certify that on the
(Bidder)

(Project Name)

Project ID # _____ Amount of Bid \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority Businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

(Attach additional sheets if required)

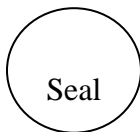
Name	Telephone Number	Minority Category	Work Description	Dollar Value

Minority categories: (I) American Indian, (A) Asian American, (B) Black, African American, (F) Female, (H) Hispanic, (D) Socially and Economically Disadvantaged

Pursuant to G.S. 143-128.2 (d), the undersigned will enter into a formal agreement with HUB Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____



Name of Authorized Officer: _____
 Signature: _____
 Title: _____
 State of _____, County of _____
 Subscribed and sworn to before me this _____ day of _____ 20____
 Notary Public _____
 My commission expires _____



Affidavit E - GOOD FAITH EFFORTS

If the goal of **10%** participation by HUB Firms **is not** achieved, the Bidder shall provide the following documentation to the Owner of his Good Faith Efforts.

Affidavit of: _____
(Bidder)

I do certify the attached documentation is a true and accurate representation of my good faith efforts.

(Attach additional sheets if required)

Name	Telephone Number	Minority Category	Work Description	Dollar Value

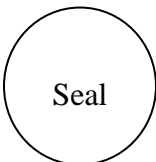
Minority categories: (I) American Indian, (A) Asian American, (B) Black, African American, (F) Female, (H) Hispanic, (D) Socially and Economically Disadvantaged

Documentation of the Bidder’s good faith efforts to meet the goals set forth in these provisions. Examples of documentation shall include the following evidence:

- a. Copies of solicitation for quotes to at least three (3) minority business firms from the source list provided for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contract, and location, date and time when quotes must be received.
- b. Copies of quotes or responses received from each firm responding to the solicitation.
- c. A telephone log of follow-up calls to each firm sent a solicitation.
- d. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- e. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- f. Copy of pre-bid roster.
- g. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- h. Letter detailing reasons for rejection of minority business due to lack of qualification.
- i. Letter documenting proposed assistance offered to minority businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date: _____ Name of Authorized Officer: _____
 Signature: _____
 Title: _____
 State of _____, County of _____
 Subscribed and sworn to before me this _____ day of _____ 20_____
 Notary Public _____
 My commission expires _____



**THIS DOCUMENT MUST BE SUBMITTED WITH EACH
PAY REQUEST & FINAL PAYMENT**



**Affidavit F - HUB DOCUMENTATION
FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: _____

Address & Phone: _____

Project Name: _____

Pay Application #: _____ Period: _____

The following is a list of payments to be made to HUB contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Payment Amount	Owner Use Only

Minority categories: (I) American Indian, (A) Asian American, (B) Black, African American, (F) Female, (H) Hispanic, (D) Socially and Economically Disadvantaged

Date: _____

Approved/Certified By: _____

Name

Title: _____

Signature: _____



Affidavit – MINORITY PARTICIPATION INFORMAL CONSTRUCTION CONTRACTS

The City of Albemarle is committed to ensuring the proper and diligent use of public funds, widen opportunities for participation as providers of goods and services, and to increase competition by providing equal opportunities for participation in all aspects of the City of Albemarle’s contracting and purchasing programs including, but not limited to, participating in procurement contracts for materials, services, construction and repair projects, and lease agreements.

This Affidavit shall be provided with the bid and must be submitted even if there is **no** minority participation. Receipt of Affidavit is required prior to award of Contract.

Affidavit of: _____ I do hereby certify that on the
 (Name of Bidder)

 (Project Name)
 Project ID # _____ Amount of Bid \$ _____

I will expend a minimum of _____% of the total dollar amount of the contract with minority business enterprises. Minority Businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

(Attach additional sheets if required)

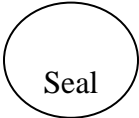
Name	Telephone Number	Minority Category	Work Description	Dollar Value

Minority categories: (I) American Indian, (A) Asian American, (B) Black, African American, (F) Female, (H) Hispanic, (D) Socially and Economically Disadvantaged

Pursuant to G.S. 143-128.2 (d), the undersigned will enter into a formal agreement with HUB Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

Date: _____ Name of Authorized Officer: _____
 Signature: _____ Title _____
 State of _____, County of _____
 Subscribed and sworn to before me this _____ day of _____ 20____
 Notary Public _____
 My commission expires _____





ALBEMARLE
NORTH CAROLINA
Water. Air. Land. Opportunity.

Historically Underutilized Business (HUB) Program



INSTRUCTIONS

TO

BIDDER DOCUMENTS

FOR

MEDIATED SETTLEMENT

CONFERENCES

DISPUTE RESOLUTION

It is the policy of the City of Albemarle that disputes that involve a person's rights, duties or privileges, should be settled through informal procedures. To that end, Historically Underutilized Business (HUB) disputes arising under these guidelines should be resolved as governed under G.S. 143-128(f1). Copies of these guidelines may be obtained from:

Physical Address: The City of Albemarle,
 144 North Second Street
 Albemarle NC 28001

Representative: HUB Program Coordinator

Mailing Address: P. O. Box 190
 Albemarle NC 28002-0190

Telephone Number: 704-984-9444
FAX: 704-984-9448

Website: www.ci.albemarle.nc.us

In addition to these guidelines, there will be issued with each construction bid package provisions for contractual compliance providing minority business participation in the City of Albemarle program.

RULES

IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN CITY OF ALBEMARLE CONSTRUCTION PROJECTS

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RULE

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RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

Purpose of Mandatory Settlement Conferences.

Pursuant to G.S. 143-128(f1) and G.S. 143-135.26 (11). These Rules are promulgated to implement a system of settlement events, which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

Initiating the Dispute Resolution Process

Any party to a City of Albemarle contract who is a party to a dispute arising out of the construction process in which the amount in controversy is at least **\$15,000** may submit a written request to City of Albemarle for mediation of the dispute as a precondition to the initiation of litigation.

Prior to submission of a written request for mediation to City of Albemarle, the parties requesting mediation,

1. If a prime contractor, must have first submitted its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit their written request for mediation to City of Albemarle.
2. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to City of Albemarle.
3. If the party requesting mediation is the Project Designer, then it must first submit its claim to the City of Albemarle to resolve. If the dispute is not resolved with the City of Albemarle's involvement, then the Project Designers' dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the City of Albemarle for mediation.

RULE 2. SELECTION OF MEDIATOR

Selection of Certified Mediator by Agreement of the Parties

The parties may select a certified mediator pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with the City of Albemarle a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

Nomination and City of Albemarle Approval of a Non-Certified Mediator

The parties may select a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and City of Albemarle is otherwise qualified by training or experience to mediate the action.

If the parties select a non-certified mediator, the requesting party shall file with the City of Albemarle a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

City of Albemarle shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

Appointment of Mediator by the City of Albemarle

If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall notify City of Albemarle and request, on behalf of the parties, that City of Albemarle appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, City of Albemarle shall appoint a certified attorney mediator. If no preference is expressed, City of Albemarle may appoint a certified attorney mediator or a certified non-attorney mediator.

Mediator Information Directory

To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program.

Disqualification of Mediator

Any party may request replacement of the mediator by City of Albemarle for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 3. THE MEDIATED SETTLEMENT CONFERENCE

Where Conference is to be Held

Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in City of Albemarle. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

When Conference is to be Held

The deadline for completion of the mediation shall be no more than 60 days after the naming of the mediator.

Request to Extend Deadline for Completion

A party, or the mediator, may request that the City of Albemarle extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to City of Albemarle.

The City of Albemarle may grant the request by setting a new deadline for completion of the conference.

Recesses

The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.

The mediated settlement conference shall not be cause for the delay of the construction project which is the focus of the dispute.

RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS

Attendance

1. All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation will result in City of Albemarle's withholding of monthly payment to that party until such party attends the mediation.
2. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
3. Attorneys on behalf of parties may attend the mediation but are not required to do so.
4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

Finalizing Agreement

If an agreement is reached in the conference, parties to the agreement shall reduce the terms to writing and sign it along with their counsel.

Mediation Fee

The costs of the process shall be divided between the parties to the dispute with at least one-third of the cost to be paid by the City of Albemarle, if the City of Albemarle is a party to the dispute. Parties to the dispute shall participate in mediation prior to initiating litigation concerning the dispute in accordance with N.C.G.S. 143-128(f1).

Failure to compensate mediator

Any party's failure to compensate the mediators in accordance with N.C.G.S. 143-128(f1) shall subject that party to a withholding of said amount of money from the party's monthly payment by the City of Albemarle.

RULE 5. AUTHORITY AND DUTIES OF MEDIATORS

Authority of Mediator

1. **Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed.
2. **Private Consultation.** The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
3. **Scheduling the Conference.** The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

Duties of Mediator

1. The mediator shall define and describe the following at the beginning of the conference:
 - a. The process of mediation;
 - b. The difference between mediation and other forms of conflict resolution;
 - c. The costs of the mediated settlement conference;
 - d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
 - e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - g. The inadmissibility of conduct and statements as provided by N.C.G.S. 7A-38.1(1);
 - h. The duties and responsibilities of the mediator and the participants; and
 - i. That any agreement reached will be reached by mutual consent.
2. **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
3. **Declaring Impasse.** It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
4. **Reporting Results of Conference.** The mediator shall report to the City of Albemarle within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform City of Albemarle of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. City of Albemarle may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
5. **Scheduling and Holding the Conference.** It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the Rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order from the City of Albemarle.

RULE 6. COMPENSATION OF THE MEDIATOR

By Agreement

When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of N.C.G.S. 143-128(f1) are observed.

By Appointment

When the mediator is appointed by the City of Albemarle, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

RULE 7. MEDIATOR CERTIFICATION

All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina. (Except when otherwise allowed by the City of Albemarle upon the request of the parties to the mediation) . When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.

All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of City of Albemarle to mediate any dispute in accordance with these Rules.

RULE 8. RULE MAKING

These Rules are subject to amendment by the City of Albemarle at any time the City deems it appropriate.

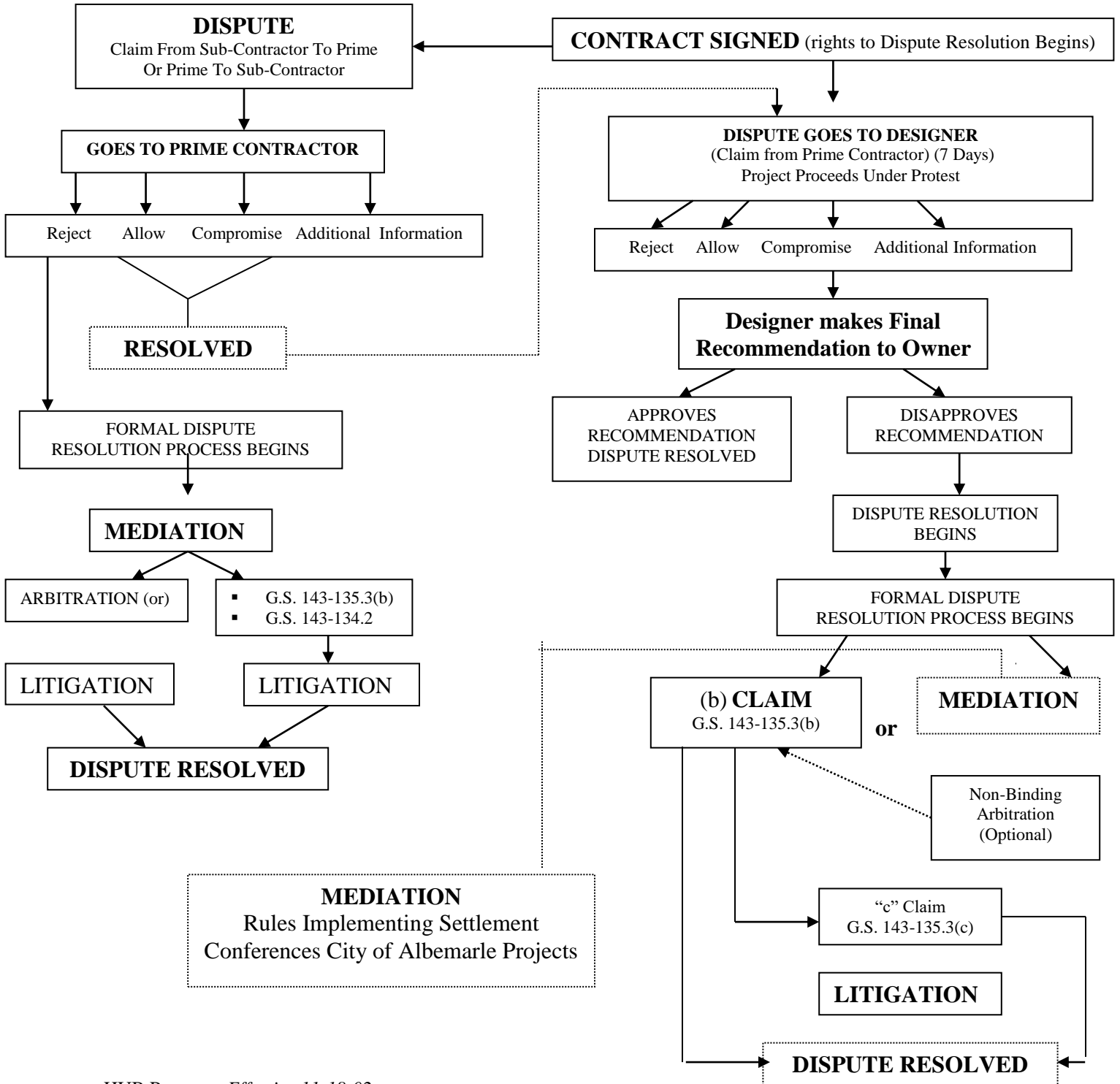
RULE 9. TIME LIMITS

Any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed, the Designer of Record shall decide all waivers or extensions of time for good cause shown.

DISPUTE RESOLUTION



CITY OF ALBEMARLE PROJECTS



HUB Program: *Effective 11-18-02*
 Revised 09-08-09
 Revised 01-06-14

Revisions:

09-08-09:

Page 10, Historically Underutilized Business (HUB) Responsibilities section per Council approval.

01-06-14:

Page 10, Historically Underutilized Business (HUB) Responsibilities section per Council approval