

# Minority and Women's Business Enterprise Update

# MWBE FAQ's

- *Do local governments in North Carolina have M/WBE participation requirements for public construction contracts?*
- North Carolina state law (G.S. 143-128.2) requires public agencies including local governments to carry out programs to promote the use of M/WBEs in building construction and repair projects. These goals or good faith effort requirements apply to projects where total costs exceed \$100,000 funded by state grants or appropriations, or \$300,000 for projects using local funds. Projects in the informal bid range (\$30,000 to \$500,000) are subject to less stringent requirements under G.S. 1143-131(b) to promote M/WBE participation.

- Source: UNC School of Government



# MWBE FAQ's

- *What types of projects require M/WBE efforts?*
- The minority outreach requirements in G.S. 143-128.2 apply only to building construction or repair projects. The statute does not define the term “building.” Local governments must decide on a case-by-case basis whether a particular project is subject to the statute. Though not exclusively, the word building is usually associated with construction projects that require plumbing, electrical, and heating or air conditioning contractors. Most jurisdictions interpret “building and construction repair” to mean that the requirements do not apply to other types of construction such as streets or utilities.

- Source: UNC School of Government



# MWBE FAQ's

- *What types of projects require M/WBE efforts? (continued)*
- The North Carolina Department of Environmental Quality (DEQ), however, interprets the statute to apply to utilities. Therefore, a local government entity using grant funds from DEQ for utility construction will be subject the requirements of this statute. The statute explicitly states, though, that the requirements do not apply to “prefabricated or relocatable” buildings (G.S.143-128(g)).

- Source: UNC School of Government



# MWBE FAQ's

- *What are the qualifications to be considered an M/WBE?*
- A minority business is defined as a business that is at least 51 percent owned by one or more minority persons or socially or economically disadvantaged persons. These persons must control the management and daily operations. A United States citizen or lawful permanent resident who is Black, Hispanic, Asian, American Indian, or female is considered a minority.

- Source: UNC School of Government



# MWBE FAQ's

- *What are the qualifications to be considered an M/WBE? (continued)*
- A “socially and economically disadvantaged individual” is defined by reference to a federal statute (15 U.S. C. § 637). 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 regard 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 who are not socially disadvantaged.”

- Source: UNC School of Government



# MWBE FAQ's

- *What are the qualifications to be considered an M/WBE? (continued)*
- The federal law provides methods of determining economically disadvantaged status based on the individual's assets and net worth. A socially and economically disadvantaged business is one that is 51 percent owned by one or more socially and economically disadvantaged individuals, an economically disadvantaged Indian tribe, or an economically disadvantaged Native Hawaiian organization.

- Source: UNC School of Government



# MWBE FAQ's

- *Are M/WBEs required to be certified?*
- State law does not yet require certification. Some local governments, however, do have certification programs. While certification is not required for state-funded projects, M/WBEs are strongly encouraged to certify with the Office of Historically Underutilized Businesses (HUB). HUB maintains a vendor database of certified firms, which can greatly increase opportunities for M/WBEs to learn about and be notified about public projects. There is no uniform statewide certification program. Some local governments have their own certification procedures, while others may require certification from one of a number of certifying entities including HUB. Check with local governments in the areas where you do business to determine their certification requirements.

- Source: UNC School of Government





# MWBE FAQ's

- *Are M/WBEs required to be certified? (continued)*
- In 2007, the North Carolina General Assembly gave the Secretary of Administration the authority to develop a state-wide certification program for historically underutilized businesses, which are defined to include M/WBEs. G.S. 143-128.4(e) requires that, as of July 1, 2009, "[a]ll State departments, agencies, and institutions, and political subdivisions of the State shall only use historically underutilized businesses" that are certified under this state-wide program for purposes of the M/WBE requirements in G.S. 143-128.2 and G.S. 143-131.

- Source: UNC School of Government

