

## NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

### CHAPTER 6 – LEGAL

#### 6.01 – MINORITY BUSINESS OUTREACH PLAN

##### **MISSION**

The North Carolina Education Lottery (“NCEL”) seeks to foster the continued development and economic growth of minority, women-owned businesses and veteran-owned businesses through equity in contracting with MWBE and veteran-owned business enterprises, and implementing strategic community affairs outreach to engage with diverse stakeholder groups.

##### **PURPOSE**

The intent of this Plan is for the NCEL, as awarding authority for lottery and lottery-related projects, and the Contractors and Sub-Contractors performing Contracts governed by this Plan to cooperate and in good faith do all things, legal, proper and reasonable to achieve the goal of ten percent (10%) for participation by minority businesses (as set forth in Article 8 of Chapter 143 of the General Statutes).

To the greatest extent practical, this Plan shall apply to any Contracts subject to the discretion of the NCEL. In any case, the NCEL will award its Contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition. Nothing in this Plan shall be construed to require Contractors or the NCEL to award Contracts, or to make purchases of Goods and/or Services from Minority/Women/Veteran-owned Businesses, Contractors or Sub-Contractors, who do not submit bids that the NCEL, in its sole discretion determines to be responsible, responsive, in compliance with the bid or other requirements imposed by the NCEL or the North Carolina State Lottery Act and that are deemed to be the best proposals that maximize the benefits to the NCEL and State of North Carolina. Once enacted, a copy of this Plan will be made available at NCEL headquarters and may also be posted on the NCEL website.

##### **DEFINITIONS**

- A. **“Act”** means the North Carolina State Lottery Act, as may be amended from time to time. (G.C. 18C-101 et. seq.)
- B. **“Contract”** means a mutually binding legal relationship obligating the Contractor selected by the NCEL to enter into a contract with the NCEL to furnish Goods and/or Services to the NCEL which the NCEL in its discretion determines to be governed by this Plan.
- C. **“Contractor”** means any person or entity, other than a person or entity selected to become a lottery retailer, who submits a bid, proposal or offer to provide Goods and/or Services under a Contract.

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- D. **“Goods and/or Services”** means services, apparatuses, supplies, materials or equipment supplied to the NCEL pursuant to a Contract.
- E. **“Minority Business”** means a business:
1. In which at least fifty-one percent (51%) is owned by one or more “Minority Persons” (as defined in Section 3.01F) or “Socially and Economically Disadvantaged Individuals” (as defined in Section 3.01H), 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
  2. 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.
- F. **“Minority Person”** means a person who is a citizen or lawful permanent resident of the United States and who is:
1. Black, that is, a person having origins in any of the black racial groups in Africa;
  2. 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;
  3. 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;
  4. American Indian, that is, a person having origins in any of the original peoples of North America;
  5. Female; or
  6. Disabled, that is, a person with a disability as defined in N.C.G.S. §168A-3
- G. **“Veteran-owned Business”** means a company that is at least 51% owned, operated and controlled by a **veteran**. NCEL does not certify or offer certification to such companies, however, veterans may obtain a specific distinction classified by the U.S. Small Business Administration. Military and veterans are included in this Plan to demonstrate the NCEL’s commitment to include and promote diversity in the workforce and business participation. This outreach effort is

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aligned with the State of North Carolina’s commitment to provide veterans equal access and opportunities to compete for public contracts with state agencies.

- H. **“NCEL”** means the North Carolina Education Lottery.
- I. **“Socially and Economically Disadvantaged Individual”** means individuals who are:
  - 1. **“Socially Disadvantaged Individuals”** who are those individuals 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; and
  - 2. **“Economically Disadvantaged Individuals”** who 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 Individuals. (see also 15 U.S.C. 637)
- J. **“Sub-Contractor”** means a firm under contract with the prime Contractor for supplying Goods and/or Services under a Contract.

#### **RESPONSIBILITY FOR PLAN**

The NCEL shall employ and maintain staff to develop and manage its minority business outreach strategy. The position(s) will conduct a variety of outreach and community engagement activities, to include but not limited to:

- A. Develop, implement, maintain and promote a diversity participation program to support the NCEL’s mission.
- B. Assist with identifying and promoting contract opportunities for HUB/ minority/women/veteran-owned small businesses. Increase awareness of business opportunities.
- C. Serve as an advocate, liaison and maintain effective communications with the NC Office for Historically Underutilized Business and various trade organizations. Become an active member of applicable trade associations and HUB professional development organizations.
- D. Attend community meetings to make contacts and build rapport and awareness with HUB/minority/women/veteran-owned small businesses. Attend applicable conferences and expo events.

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- E. Cultivate and sustain relationships with organizations and individuals to promote the mission of the NCEL.
- F. Develop and conduct presentations on “How to Do Business with the NCEL.” Develop training for NCEL staff to identify contracting opportunities for HUB/ minority/women/veteran-owned small businesses.

#### **OUTREACH PLAN**

The NCEL shall, in good faith, endeavor to take as many of the following actions or steps as possible to achieve the goals of this Plan:

- A. Work with minority-focused and small business groups that support minority business inclusion in the solicitation of bids;
- B. Enhance the NCEL’s website by dedicating a page for minority business information which shall include this Plan, listing good faith efforts, and creating links to either minority business resources or those who are supporting such efforts, and creating awareness of specific NCEL contracting and subcontracting opportunities;
- C. If bids are to be advertised, promptly post upcoming bid opportunities on available website(s) that reach minority businesses;
- D. Make documents related to bid opportunities available for inspection at a convenient and accessible location, including the NCEL’s website;
- E. Provide information to minority businesses to receive immediate notices of relevant bid opportunities;
- F. Work to make subcontracting opportunities more noticeable and more easily understood by potential minority businesses;
- G. Place more emphasis on the importance of soliciting minority business firms for subcontracting opportunities in bid documents, examine specifications to identify special subcontracting opportunities and encourage Contractors to solicit bids for subcontracts from minority business firms;
- H. Forward to applicable current NCEL Contractor(s) contact information for any minority businesses who have identified themselves, or have been identified by the NCEL, as being interested and capable of providing Goods and/or Services to the NCEL;
- I. Require Contractors to undertake good faith efforts as described herein;

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- J. Make available, to minority-focused agencies who request it, a list of Contract opportunities when they are identified, and, to the extent it can be made public and available, provide to minority businesses that request it a list of known prime Contractors who have identified an intent to solicit products/services so that the minority business can contact them for subcontracting consideration;
- K. Be visible through participation in trade shows, business organizations or other events of interest to minority businesses, and from time to time provide information to the general public about the NCEL Minority Outreach Plan, and continue outreach efforts to the business community;
- L. Participate in education opportunities throughout the community as they become available and, upon request, offer training sessions to share NCEL's Minority Outreach Plan with interested businesses and organizations;
- M. Build new business relationships through networking and continue networking with other North Carolina agencies to find out how their Minority Business program is working and sharing "best practices" and ideas to improve the program;
- N. Sponsor minority-focused agencies via paid advertisement and/or registration at various events held by such minority-focused agencies to show support of their endeavor and/or obtain information and networking opportunities; and/or
- O. Assess the effectiveness of the Minority Outreach Plan, and identify opportunities to enhance it, by evaluating minority business participation and compliance and reviewing the "good faith efforts" provided in bid packages.

#### **NCEL RESPONSIBILITIES**

Before awarding a Contract that is made subject to this Plan, the NCEL shall do the following:

- A. Provide the following information to minority businesses that have requested notices of Contract work and minority businesses that the Office of Historically Underutilized Businesses has identified to the NCEL as having an interest and ability to provide the Goods and/or Services of the type being bid:
  - 1. A description of the work for which the bid is being solicited;
  - 2. The date, time, and location where bids are to be submitted;
  - 3. The name of the individual within the NCEL who will be available to answer questions about the project;

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4. Where bid documents may be reviewed; and
  5. Any special requirements that may exist.
- B. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

#### **CONTRACTOR RESPONSIBILITIES**

- A. Each Contractor that is made subject to this Plan, shall:
1. Identify in its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made and the total dollar value of the bid that will be performed by the minority businesses. A Contractor that performs all of the work under a contract with its own workforce may submit an affidavit as required by the NCEL.
  2. The Contractor selected by the NCEL shall also provide the following:
    - a. Within the time specified in the bid documents, either:
      - i. 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 (an affidavit under this Section shall give rise to a presumption that the Contractor has made the required good faith effort); or
      - ii. Documentation of its good faith effort 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.
    - b. A list of all identified minority business Sub-Contractors that the Contractor will use on the project.
- B. Failure to file a required affidavit or documentation that demonstrates that the Contractor made the required good faith effort may be grounds for rejection of the bid.
- C. Unless the applicable bid issued by the NCEL provides a different standard, no minority business Sub-Contractor who is identified and listed by a Contractor in

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its winning bid may be replaced with a different non-minority business Sub-Contractor except:

1. If the minority business Sub-Contractor's bid is later determined by the Contractor to be non-responsible or non-responsive, or the listed minority business Sub-Contractor fails to satisfy the requirements of any required background checks or refuses to enter into a contract for the complete performance of the bid work; or
  2. With the approval of the NCEL.
- D. Make good faith efforts as described herein to identify and enter into subcontracts with qualified minority businesses and inform the NCEL of its good faith efforts in that regard.

#### **MINORITY BUSINESS RESPONSIBILITIES**

The NCEL does not certify historically underutilized businesses. Based upon 2007 legislation, the State of North Carolina implemented a statewide certification program for certification of historically underutilized businesses. Any business which desires to participate as a minority business will be required to complete and submit for certification documents required by the North Carolina Administration Department, Office for Historically Underutilized Business (HUB Office). Only those firms holding current certification through the HUB Office will be considered eligible for inclusion in meeting the minority business participation percentage goals.

#### **GOOD FAITH EFFORTS**

Non-minority business Contractors that are made subject to this Plan are required to undertake the following good faith efforts and must earn at least fifty (50) points based on the following established point system. NCEL may require that additional good faith efforts be taken, as indicated in bid specifications. In determining whether a Contractor has made good faith efforts, NCEL will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. Failure to file a required affidavit or documentation that demonstrates that the Contractor made the required good faith effort may be grounds for rejection of the bid.

- A - (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 before the bid or proposal date and notifying them of the nature and scope of the work to be performed;
- B - (10 points) Making the plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them before the bid or proposals are due;

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- C - (15 points) Breaking down or combining elements of work in economically feasible units to facilitate minority participation;
- D - (10 points) Working with minority trade, community, or vendor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses;
- E - (10 points) Attending any pre-bid meetings scheduled by the NCEL;
- F - (20 points) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for minority business Sub-Contractors;
- G - (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);
- H - (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, and assist minority businesses in obtaining the same unit pricing with the Contractor's suppliers in order to help minority businesses in establishing credit;
- I - (20 points) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on Contract project when possible; and
- J- (20 points) Providing quick pay agreements and policies to enable minority business Contractors to meet cash-flow demands.

#### **COMMUNITY AFFAIRS**

A component of the minority outreach plan includes a community affairs strategy that involves engaging with diverse stakeholder groups.

The goal is to build relationships with statewide educational stakeholder groups, nonprofits, minority and small business associations, Historically Black Colleges and Universities (HBCU), minority serving institutions (MSIs) and public policy groups.

Collaborate and cooperate with small and minority business development programs for the purpose of promoting the business interests of these groups.



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A Diversity Action Committee was established October 2019 consisting of representatives from various NCEL departments including Sales, Marketing, Finance, HR, Legal, Corporate Social Responsibility and Communications. The Diversity Action Committee members are selected by the Executive Director in consultation with the Minority Business and Community Affairs Manager.

The Diversity Action Committee will exist as an internal network established to allow NCEL employees to provide input on minority outreach efforts as well as on matters of diversity, equity and inclusion as it pertains to the culture of the North Carolina Education Lottery. Employees may be called upon to advise on specific topics that support employee engagement, knowledge and skill-building, and outreach opportunities that promote the NCEL brand in the community.

The Diversity Action Committee will support various projects including an annual diversity HBCU outreach plan and student internship program.

#### **AMENDMENT**

This Plan may be amended from time to time by the NCEL. Minority Businesses, Contractors seeking to enter into Contracts with the NCEL and other interested individuals or entities should obtain and review the latest version of this Plan.