



EQUITY & INCLUSION

CITY OF DURHAM

EQUAL BUSINESS OPPORTUNITY PROGRAM

CONSTRUCTION FORMS

Updated 03/21



These instructions summarize the provisions of the City of Durham’s Equal Business Opportunity Ordinance as it applies to the bid process. Of course, as with any summary, it cannot reflect all of the ordinance.

QUESTIONS AND ANSWERS ON UBE REQUIREMENTS

1. **What is the purpose of the City’s Equal Business Opportunity (EBOP) program?** The City Manager has set UBE goals for certain contract classifications. There will be a goal for UBEs owned by minorities and a goal for UBEs owned by women. For the bid to be fully considered by the City, the bid needs to meet the established goals or the bidder needs to have made good-faith efforts to subcontract with UBEs in order to meet the goals. In order to be given credit for making those good-faith efforts, the bidder must provide written documentation of those good-faith efforts. That written documentation must be submitted to the City within 2 days after the bid opening unless a different time is stated by the City. See the instructions below regarding Form E-107.

2. **What is an “UBE”?** It means an Underutilized Business Enterprise. An UBE is a business, certified by the N. C. Department of Administration HUB Office, N.C. Department of Transportation or the U.S. Small Business Administration Section 8(a) Business Development Program as a minority or women business enterprise. The qualifying UBE needs to have its certification from one of the above named entities before the bid opening if it is to count toward meeting the goals. Failure to provide evidence of UBE status may disqualify the firm’s participation for the purpose of meeting UBE goals

For purposes of this document and associated forms, any reference to an “UBE,” or similar reference shall include reference to a qualified women or minority owned firm certified and approved in accordance with the above paragraphs.

3. **What UBE forms must a bidder or contractor turn in to the City, and when?**

<i>Name or description of form</i>	<i>Necessary to submit this form?</i>	<i>When to submit it?</i>
E-101 (UBE PARTICIPATION ON BASE BID)	Always	With the bid
E-102 (UBE PARTICIPATION ON BID ALTERNATE)	Yes, if there are alternates. Use a separate form for each alternate.	With the bid
E-103 reserved for future use)	n/a	n/a

UBE forms continued

E-104 (STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR)	Yes, if the bidder proposes to count any subcontracts with UBEs towards the UBE goals	Within 5 days after bid opening unless a different time is stated by the City.
E-105 (REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING)	Yes, if the bidder or contractor proposes certain changes in its subcontracting	Not with the bid. Once the bidder is identified as the apparent lowest responsible bidder, this form is due before the bidder/contractor can make the proposed change.
E-106 (QUESTIONNAIRE ON BIDDER'S GOOD-FAITH EFFORTS)	Yes, if the bidder fails to meet the UBE goals. Do not turn in if the bidder met the goals.	Within 2 days after bid opening unless a different time is stated by the City
Good-faith documentation	Yes, if the bidder failed to meet the UBE goals.	Within 2 days after bid opening unless a different time is stated by the City

4. **If a bidder fails to meet the UBE goals, can it still be awarded the contract?** Bidders that do not meet the goals but demonstrate good-faith efforts are treated equally to those that meet the goals. Awarding a contract is ultimately the decision of the City Council, which considers compliance with the EBO ordinance along with other matters.
5. **In making good-faith efforts, what UBEs should a potential bidder contact?** The City provides a list of UBEs that have been certified by the N. C. Department of Administration HUB Office, as a minority or women business enterprise for particular trades, services, goods, etc. Potential bidders should contact UBEs listed for the work that can be subcontracted.
6. **Our firm already has employees who can do the work and does not want to subcontract that work. How does this fit in?** The purpose of the EBO ordinance is to change business practices that would otherwise occur, by giving opportunities to under-used segments of the economy. If the bidder does not meet the goals, its good-faith efforts will be examined as with any other bidder that did not meet the goals.
7. **If the bidder contacts an underutilized business enterprise owned by a minority or woman that could become a UBE, will that count toward good-faith efforts?** This contact will not count unless the firm that you contact is certified by the N. C. Department of Administration HUB Office, N.C. Department of Transportation or the U.S. Small Business Administration Section (a) Business Development Program as a minority or women business enterprise before the bids are opened. In making good-faith efforts, let us suppose that a potential bidder contacts firms that could qualify to be UBEs. If those firms have their certification from the previously identified authorities at the time of the bid opening, those contacts will count towards good-faith efforts. But there is a risk, because getting certification takes time.
8. **Do all subcontracts with UBEs count?** The City will count as UBE participation only expenditures to an UBE that performs a commercially-useful function in the relevant work. An UBE performs such a function when the minority or women business owners themselves are actually involved in performing, managing, and supervising a distinct element of the work. To determine whether those requirements are met, the City takes into account the amount of work subcontracted, industry practices, the adequacy of the resources of the UBE for the work, the qualifications, such as possession of licenses, permits, and professional designations of the minority and women owners, and other relevant factors. For example, if an UBE lacks substantially all of the resources equipment and personnel to do the work it shall be presumed not to perform a commercially-useful function. The EBO ordinance includes more points to consider on this issue.
9. **May an UBE enter into subcontracts?** This question arises in two situations: (1) the bidder is an UBE and (2) the bidder is subcontracting with an UBE. Consistent with normal industry practices, an UBE may enter into subcontracts. If an UBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the UBE shall be presumed not to be performing a commercially-useful function. The UBE may present evidence to rebut this presumption to the City.
10. **What does it mean to say that information must be submitted “with the bid”?** Unless bidders are given other written instructions from the City, it means that the information must be in a sealed envelope, delivered to the same place where a bid can be delivered, and before the time set for the bid opening. Unless bidders are given other written instructions from the City, the information can be either in the same envelope as the bid or in a separate envelope. If it is a separate envelope, the outside of the envelope must state the same information that is required on the bid envelope, and that it contains UBE forms.

11. When the chart in question 3 says that a form can be submitted 2 days or 5 days after the bid opening, exactly when is it due? Where is it to be submitted?

The form must be submitted to the City's Equity & Inclusion Department, located at 101 City Hall Annex or faxed/mailed to (919) 560-4513, so that it is received within 2 days or 5 days (whichever applies according to the chart) after the bid opening. If the form is faxed/mailed, it must be received before midnight on that 2nd or 5th day. If it is delivered by any other means, it must be received before 5:00 PM. In counting these 2 days or 5 days, exclude the following: the day of the bid opening, Saturday, Sunday, and holidays observed by city government of the City of Durham. For instance, for a form due in 2 days, if the bid opening is on a Thursday, the due date for the form would be on the following Monday (midnight if faxed, otherwise 5:00 PM). If the day after the bid opening or that Monday is a City holiday, the form would be due on Tuesday. For a form due in 5 days, if the bid opening were on Tuesday, the due date for the form would be on the following Tuesday (midnight if faxed, otherwise 5:00 PM). If any weekday between those Tuesdays is a City holiday or if the Tuesday on which the form would be due is a City holiday, the form would be due on Wednesday. It is best to place the documents inside an envelope, and to write on the outside of the envelope the same information that is required on the bid envelope, and that it contains UBE forms. Holidays observed by city government are New Years' Day, Dr. Martin Luther King, Jr., Day; Good Friday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day; two days (varying from year to year) during the week of Christmas Day; and other times as may be authorized by City Council.

12. When there are bid alternates how is UBE participation counted? The total amount of the award actually made by the City is the key. For instance, assume the following made-up example:

- Base bid is \$200,000
- Alternate A bid is \$50,000
- Alternate B bid is \$22,000
- Minority-owned UBE goal is 11%.
- The bidder proposes Minority-owned UBE participation as follows: \$22,000 on the base bid, \$4,000 on Alternate A, and \$10,000 on Alternate B.

In this fictional example, the bidder may or may not meet the goal, depending on the actual award by Council. This chart illustrates:

AWARD BY CITY COUNCIL

	Only the base bid	Base bid + Alternate A	Base bid + Alternate B	Base bid + Alternates A & B
Bid total	\$200,000	\$250,000 (200,000 + 50,000)	\$220,000 (200,000 + 20,000)	\$270,000 (200,000 + 70,000)
Total UBE participation	\$22,000	\$26,000 (22,000 + 4,000)	\$32,000 (22,000 + 10,000)	\$36,000 (22,000 + 14,000)
Minority-owned UBE percentage	11%	10.4%	14.5%	13.3%
Meet 11% Minority-owned UBE goal?	Yes	No	Yes	Yes

14. How is the lease of equipment by an UBE counted? If the UBE leases equipment for the work of the contract, the value of the lease payments is included as part of the UBE's participation. However, it is not proper to include such lease payments if they are to be made to the prime contractor or the prime contractor's "Affiliate." To understand what an "Affiliate" is, see section 26-3 of the EBO ordinance.

15. How is the purchase of goods from an UBE counted? If the bidder is buying goods from an UBE, the cost of the goods can be considered UBE participation only if (a) the UBE operates or maintains a factory that produces the goods, or (b) the UBE has an establishment where the goods of the general character described by the specifications or required under the Contract are regularly sold or leased to the public in the usual course of business. If (b) applies, the UBE's *principal* business must be selling or leasing those goods and the UBE must operate under its own name

INSTRUCTIONS FOR INDIVIDUAL UBE BID FORMS FOR CONSTRUCTION

Form E-101 (UBE PARTICIPATION) On this form, "participation" is the dollar amount of subcontracts for significant goods and services to be used to perform the contract. For instance, if the bidder would enter into subcontract with UBEs for a total of \$30,000, that would be the UBE participation amount. The sum of UBE participation and non-UBE participation should equal the amount of the bid. Form E-101 is required for the base bid

Form E-102 (UBE PARTICIPATION ON BID ALTERNATE) This form is essentially the same as Form E-101, except that it is used for the alternate bids instead of the base bid. Use a separate Form E-102 for each alternate bid.

Form E-103 reserved for future use

Form E-104 (STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR) The bidder must provide a Form E-105 (Statement of Intent) for each UBE firm that the bidder would subcontract with if the City awards the contract to the bidder. See questions 3 and 11 above on when and where to turn in this form.

On Form E-104, what happens if column 2 (dollar amount) disagrees with column 3 (percentage)? If there is a conflict between the dollar amount in Column 2 and the percentage of base bid in Column 3, the percentage stated in Column 3 will control. For instance, if Column 2 is \$10,000, Column 3 is 10%, and the base bid is \$200,000, there is an error, because ten percent of \$200,000 is \$20,000, not \$10,000. In that example, the form will be read as a commitment for \$20,000. If the UBE both (i) is doubtful of its arithmetic and (ii) wants Column 2 to control in case of disagreement, it may say that Column 2 will control over Column 3, but to do so, it must write that on Form E-105.

E-105 (REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING) When is this form used? Beginning with the time that the City Manager identifies a bidder as the apparent lowest responsible bidder and continuing as that bidder is awarded the contract and continuing until that bidder/contractor reaches the point of final completion of the work, Form E-106 is to be used when the following occurs: If the bidder/contractor proposes to do any of the following;

- to replace a subcontractor,
- to perform subcontracted work with the bidder/contractor's own forces, to
- increase the quantity of subcontracted work,
- to decrease the quantity of subcontracted work, or
- to change the allocation of work among subcontractors,

then the bidder/contractor must make good-faith efforts to attain the goals that it has shown on the E-101 and applicable E-102 forms, and the bidder/contractor must fill out Form E-106. Substitutions of subcontractors in these circumstances, both before and after the awarding of a contract, are subject to City approval. Consult the City's Equity & Inclusion Department on the procedures to follow in order to comply with City Code 26- 10(c).

E-106 (QUESTIONNAIRE ON BIDDER'S GOOD-FAITH EFFORTS) Bidders that do not attain the UBE goals have the responsibility to make good-faith efforts and to demonstrate to the City that they have made such efforts. In determining a bidder's good-faith efforts to engage UBEs, the City Manager shall consider the information supplied by the bidder to answer the questions in Form E-107, along with other criteria that the City Manager deems proper. Form E-107 is an optional tool that bidders may use to show that they have made good-faith efforts. See questions 3 and 11 above on when and where to turn in this form. Even when this form may be submitted after the bid opening, it cannot include information on efforts made after the bid opening. Even if a bidder does not use Form E-107, the City will nevertheless attempt to answer the questions on the E-107 using good-faith documentation supplied by the bidder. Bidders who do not turn in Form E-107 will still find it helpful to know how the City will determine whether good-faith efforts have been made.

For Section 2 of Form E-107 -- To make the best good-faith efforts as described under Section 2 on E-107, your firm should have sent a written letter, email, phone call or fax to all UBEs on the City's list that perform the kind of work to be subcontracted. Your firm needs to keep a record of all of these attempts to reach UBEs. That letter would say, in effect, as follows: (Of course, your firm would need to write appropriate words where *italicized instructions* are used below.)

Our firm is interested in bidding on a contract with the City of Durham for [*describe the project*]. We are interested in subcontracting, to your firm, the following work [*describe specific work, for example, painting of interiors of 5 rooms, including prep work; or supplying 20 circuit breakers of type XJE-R or equivalent*]. You may inspect the applicable plans and specifications and descriptions of items to be purchased at our office located at the address shown above, or at the City of Durham's Equity & Inclusion Department, 101 City Hall Plaza Annex, Durham, N.C., 27701, 919-560- 4180[, or at the AGC plan room in (*specify the locations*)]. You may obtain a copy [*explain how and from whom (the City, architect, engineer, etc.) the potential subs can obtain a copy*].

If applicable, tell the UBEs at which offices of the AGC the plans and specifications may be seen, possibly from the following AGC list.

1100 Euclid Avenue Charlotte, NC 28203-1868 Phone: (704)372-1450	Caswell Bldg., Glenwood Place 3700 National Drive, Ste. 201 Raleigh, NC 27612 Phone: (919)781-3270
2713 Breezewood Avenue Fayetteville, NC 28303 Phone: (910)484-0184	2527 S. 17th St. Wilmington, NC 28401 (McGee CADD Reprographics Bldg.) Phone: (910)791-5533
Other AGC locations if they have the plans and specifications	

GOOD-FAITH DOCUMENTATION. This is not a City form but is documentation to be supplied by the bidder. See the instructions on Form E-107 above. Unless the bidder meets the UBE goals, the bidder must demonstrate that it made good-faith efforts. To do so, it can use a combination of providing answers to Form E-107 and documentation, such as copies of the notices to UBEs that are described in question 1(c) on Form E-107. See questions 3 and 11 above on when and where to turn in this form. Even when this documentation may be submitted after the bid opening, it cannot include information on efforts made after the bid opening.

Form E-101 UBE PARTICIPATION ON BASE BID

Name of Bidder: _____

Total dollar amount of UBE participation in base bid work: _____

or each row, check one column: E or F

Column A	Column B	Column C	Column D	Column E	Column F
Name of proposed subcontractor for base bid work	Goods and services to be provided for base bid work	Subcontract amount, in dollars, for base bid work	Percentage of total base bid (Column C divided by total base bid)	Minority-owned UBE	Women-owned UBE
		\$	%		
		\$	%		
		\$	%		
		\$	%		

Attach extra sheets as needed.

Do the above participation amounts meet the goals on this contract, assuming only the base bid is counted?

Yes **No.** If the answer is No: (1) the bidder must have made good-faith efforts; (2) the bidder must provide, within 2 business days after bid opening, documentation of good-faith efforts; and (3) the bidder must sign below.

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and the Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this E-101 and on all applicable E-102 forms, to perform the work for the dollar amounts or percentages described on this E-101 and applicable E-102s.

Signature of Individual authorized to sign for Bidder

Form E-102 UBE PARTICIPATION ON BID ALTERNATE

This form pertains to the following bid alternate:

(Specify the alternate, in the way that it is designated in the bid documents)

Name of Bidder:

Total dollar amount of UBE participation in work on this alternate:

For each row, check one column: E or F

Column A	Column B	Column C	Column D	Column E	Column F
Name of proposed subcontractor for this alternate	Goods and services to be provided for this alternate	Subcontract amount, in dollars, for this alternate	Percentage of total bid for this alternate (Column C divided by total bid for this alternate)	Minority-owned UBE	Women-owned UBE
		\$	%		
		\$	%		
		\$	%		
		\$	%		

Attach extra sheets as needed.

Form E-104 STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR

Name of Bidder: _____

Name of Project: _____

The undersigned firm meets the City of Durham's criteria as a UBE.

The undersigned UBE represents that it will enter into a formal contract with the Bidder to perform the following work in connection with the Project, in the dollar amount or percentage listed below, if the Bidder signs a contract with the City of Durham for the Project.

Describe the work in sufficient detail so that it can be determined whether the UBE's work is a substantial and necessary part of the Project.

Column 1 - description of work to be done by undersigned UBE	Column 2 -dollar amount of the proposed subcontract between the bidder and the undersigned UBE	Column 3 - percentage of Bidder's base bid represented by the proposed subcontract between the Bidder and the undersigned UBE

The undersigned -UBE will be ready to begin work on the subcontract on the following date:

Name of UBE: _____ Telephone No. _____ Fax No. _____

Address: _____

Zip Code: _____

Signature of authorized representative of UBE

Title of the person who signed above: _____

What persons with the UBE should the City contact with questions about this form or the proposed subcontract? _____

Name of individual: _____ Telephone No. _____

Title of Individual: _____

Email address: _____

By submitting this form to the City of Durham, the Bidder represents that if the Bidder signs the contract with the City of Durham for the Project, the Bidder will enter into the subcontract described above with this UBE.

Form E-105 REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING

Project: _____

Name of bidder or contractor: _____

Name and title of representative of bidder or contractor: _____

Address : _____ Zip Code: _____

Telephone No.: _____ Fax Number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (check one) **increases** **decreases** the dollar amount of the bidder's/contractor's contract with the City.

Does the proposed change decrease the UBE participation? (check one) **yes** **no**

If the answer is **yes**, complete the following:

This form is used only if the conditions described in the instructions are present.

BOX A

For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of subcontractor: _____

Goods and services to be provided before the proposed change: _____

Is it proposed to eliminate this subcontract? yes no

If the subcontract is to be increased or reduced, describe the nature of the change (such as adding \$5,000 in concrete work and deleting \$7,000 in grading): _____

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subcontractor is (check one):

- 1. Minority-owned UBE
- 2. Women-Owned UBE
- 3. Not a UBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above (continued)

Name of sub-contractor for the new work:

Goods and Services to be provided by this proposed subcontractor:

Dollar amount proposed of this proposed subcontract: This sub-contractor is:

- 1. Minority-owned UBE
- 2. Women-Owned UBE
- 3. Not a UBE

Add additional sheets as necessary.

This form is used only if the conditions described in the instructions are present.

Form E-106 QUESTIONNAIRE ON BIDDER'S GOOD-FAITHEFFORTS

Name of Bidder: _____

If you find it helpful, feel free to attach pages to explain your answers. How many pages is your Firm attaching to this questionnaire? _____ (Don't count the 2 pages of this questionnaire.)

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING UBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs (that is, in the list provided by the City) in the scopes of work of the contract? **yes** **no**

(b) In such soliciting, did your firm advertise? **yes** **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? **yes** **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? **yes** **no**

(d) Did your firm attend the pre-bid conference? **yes** **no**

(e) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? **yes** **no**

(f) Did your firm follow up with UBEs that showed interest? **yes** **no**

(g) With reference to the UBEs that your firm notified of the type of work to be subcontracted -- Did your firm tell them?

- (i) the specific work your firm was considering for subcontracting? **yes** **no**
- (ii) that their interest in the contract is being solicited? **yes** **no**
- (iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? **yes** **no**

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? **yes** **no**

(b) If **yes**, please describe the portions selected. **ANSWER:**

3. NEGOTIATION. In your answers to 3, you may omit information regarding UBEs for which you are providing Form E-105.

(a) What are the names, addresses, and telephone numbers of UBEs that you contacted? **ANSWER:**

(b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be specific. **ANSWER:**

4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? **yes** **no** (Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? **yes** **no** If **yes**, describe your firm's efforts. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? **yes** **no** If **yes**, describe. **ANSWER:**

5. GOODS AND SERVICES. What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? **ANSWER:**

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit UBEs for the work? **yes** **no**
Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? **yes** **no**
Please explain. **ANSWER:**