

**The University of North Carolina**

**Plan to Increase Utilization of  
Historically Underutilized Businesses  
in Construction Projects**

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## HISTORICALLY UNDERUTILIZED BUSINESS PLAN FOR CONSTRUCTION PROJECTS

- I. Goal
- II. Statement of Policy
- III. Plan Objective
- IV. Administration
- V. Identification
- VI. Outreach
- VII. Good Faith Effort
- VIII. Program Monitoring
- IX. Post Award Monitoring
- X. Contract Disputes and Complaints
- XI. Professional Services
- XII. Reporting and Review

### **I. Goal**

The goal of The University of North Carolina (the University) in adopting its plan for expansion of participation by Historically Underutilized Businesses (the Plan) is to ensure and promote equal and increased opportunities for all segments of the design and construction community to participate in University construction projects. The University seeks to include those businesses owned by minorities that have been historically underutilized and excluded from the prime contractor or subcontractor market. The University encourages all those associated with the University construction program to commit to this goal through a good faith effort.

## **II. Statement of Policy**

*It is the policy of The University of North Carolina to provide businesses owned by minority persons equal access and opportunity to participate fully in all aspects of the University construction program; to prohibit discrimination against businesses on the basis of race, color, national origin, or gender; to promote and encourage full and open competition; and to promote equal access to contracting opportunities among the various contractors and vendors that do business with the University. Minority persons are defined in North Carolina General Statutes 143-128.2.*

## **III. Plan Objectives**

The objectives of the Plan are:

- To provide Historically Underutilized Businesses (HUBs) equal access and opportunity for participating in The University of North Carolina construction program.
- To demonstrate commitment to the State of North Carolina HUB program.
- To meet and strive to exceed the State's goal of 10% for HUB utilization.
- To raise the awareness of the State's HUB program within both the University and the construction community.
- To increase the level of knowledge within The University of North Carolina about HUBs and to raise the awareness of available construction services offered by HUBs.
- To provide clear and efficient procedures for monitoring compliance with the HUB program.
- To encourage minority- and women-owned businesses to obtain certification with the North Carolina Department of Administration's Office for Historically Underutilized Businesses.

## **IV. Administration**

The primary laws that govern minority business participation on University construction and repair projects are North Carolina General Statutes (G.S.) 143-64.31, G.S.143-128.2, G.S.143-128.3 and G.S.143-131. G.S. 143-128.2 states:

“the State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each State building project, including building projects done by a private entity on a facility to be leased or purchased by the State”.

The statutory provisions apply to state construction and repair projects that are greater than \$5,000 and are separated into compliance requirements for projects between \$5,000-\$300,000 and projects that are greater than \$300,000. The statutes establish the Department of Administration as the state agency responsible for overseeing compliance with minority business participation requirements.

The University refers to businesses owned by minority persons as Historically Underutilized Businesses (HUBs). The terms “minority business and minority persons” are defined in G.S. 143-128.2(g). Under the statutes, the definition of minority persons (Black, Hispanic, Asian American, American Indian and Female) has been expanded to also include socially and economically disadvantaged persons. Socially and economically disadvantaged persons are defined in 15 U.S.C. 637.

The University groups projects into the following three categories:

- **Informal Projects** are between \$5,000 and \$300,000. The statutes do not require public advertisement, sealed bids, public bid openings, performance bonds and payment bonds on these projects. However, constituent institution may require public advertisement, sealed bids, public bid openings, performance bonds and payment bonds. Each constituent institution is responsible for awarding the contract to the lowest responsible responsive bidder taking into consideration quality, performance and time.
- **Formal Download Projects** are between \$300,000 and \$2,000,000. The statutes require public advertisement, sealed bids, public bid openings, performance bonds and payment bonds on these projects. The University of North Carolina, Office of the President, is responsible for awarding the contract to the lowest responsible responsive bidder taking into consideration quality, performance and time.
- **Formal State Construction Projects** are greater than \$2,000,000. The statutes require public advertisement, sealed bids, public bid openings, performance bonds and payment bonds on these projects. The Department of Administration’s State Construction Office (SCO) is responsible for awarding the contract to the lowest responsible responsive bidder taking into consideration quality, performance and time.

On projects that are between \$5,000 and \$300,000 (informal projects) the statutes require the following of each constituent institution:

1. A verifiable 10% goal. (G.S. 143-128.2)
2. Solicitation of minority participation. (G.S. 143-131)
3. Maintenance of records of minority contractors solicited and documentation of efforts to recruit minority business participation. (G.S. 143-131)
4. Reporting of all data to the Department of Administration, Office for Historically Underutilized Businesses. (G.S. 143-131)

All projects greater than \$300,000 (formal download projects and formal state construction projects) are subject to the same state requirements. On these projects, G.S. 143-128.2 requires specific actions be performed by both the constituent institution and bidder (contractor). Each constituent institution is required to perform the following:

1. Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach effort to encourage minority business participation in these projects to

- include education, recruitment, and interaction between minority businesses and non-minority businesses. (G.S. 143-128.2.(e))
2. Attend the scheduled pre-bid conference. (G.S. 143-128.2.(e))
  3. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
    - 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 the individual within the public entity who will be available to answer questions about the project;
    - d. Where bid documents may be reviewed;
    - e. Any special requirements that may exist. (G.S. 143-128.2.(e))
  4. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought. (G.S. 143-128.2.(e))
  5. Establish prior to solicitation of bids the good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts for building projects and require contractors to make good faith efforts(see construction businesses submitting bids requirements below and Section VII of this plan). (G.S. 143-128.2.(b))

Each bidder (contractor) is required to perform the following:

- a. Identify on its bid the minority businesses that it will use on the project. (G.S. 143-128.2(c))
- b. Provide an affidavit listing the good faith efforts it has made (see below and Section VII of this Plan) and the total dollar value of the bid that will be performed by the minority businesses or provide an affidavit indicating that all of the work will be performed with the bidders' own workforce. (G.S. 143-128.2(c))

The apparent lowest responsible, responsive bidder is also required to file the following within the time specified in the bid documents, either:

- a. An affidavit that includes 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; or
- b. 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. (G.S. 143-128.2(c))

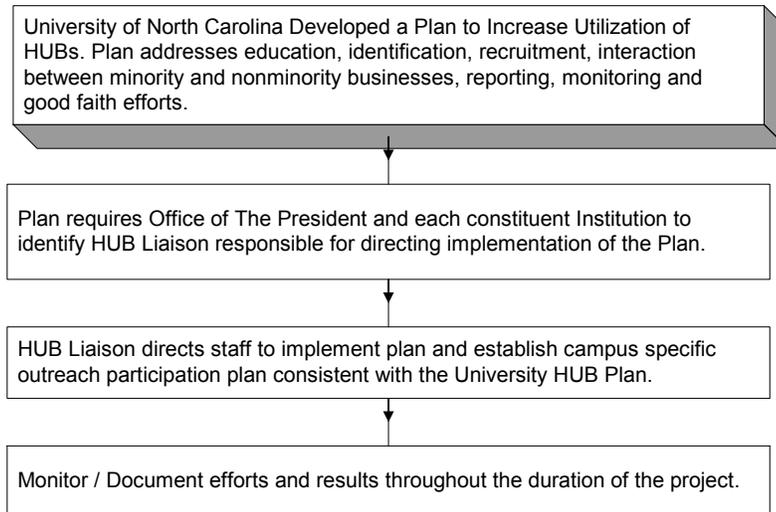
The statutes identify ten good faith efforts and direct public entities to require bidders to either meet the State's minority participation goal or undertake five out of the ten efforts

in order for their bids to be considered responsive. The statutes further require the Secretary of the Department of Administration to adopt rules by July 1, 2002 establishing a point system for evaluating each contractor's good faith effort. In establishing the point system, the Secretary may not require a contractor to earn more than fifty points or assign a value of less than 10 points to each of the ten efforts listed in the statutes. Constituent institutions may require additional good faith efforts be taken. The ten Good faith efforts listed in G.S. 143-128.2(f) are:

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.
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.
3. Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
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.
5. Attending any prebid meetings scheduled by the public owner.
6. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
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 a minority business based on lack of qualification should have the reasons documented in writing.
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 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. 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.
10. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

This Plan applies to all construction contracts, project-related procurements, design and other construction-related professional service contracts administered by The University of North Carolina. Personnel that engage in construction at all constituent institutions and affiliated organizations of the University that engage in construction activities should adhere to the Plan.

The University Plan identifies personnel in the Office of the President as well as at each constituent institution to be responsible for directing the implementation of the HUB Plan. The following diagram depicts an overview of how the Plan is intended to operate.



#### **Office of the President**

The President of the University, through the Vice President for Finance, is responsible for the implementation of this Plan. The Vice President for Finance shall designate an Associate or Assistant Vice President to be responsible for coordinating, implementing and managing the Plan at a system-wide level.

The Associate or Assistant Vice President for Finance designated to carry out the provisions of the Plan will serve as the University's HUB Liaison Officer and will be responsible for administering the plan on a day-to-day basis. This Officer will specifically be responsible for accomplishing the following:

- Assisting each constituent institution, affiliate, and UNC-GA with implementation, management and evaluation of the Plan for all construction projects greater than \$5,000.
- Providing each constituent institution, affiliate, and UNC-GA with assistance in resolving specific problems related to implementation of the Plan;
- Providing reports, as needed and as requested, to The University of North Carolina Board of Governors; the North Carolina General Assembly, members of the North Carolina Legislative Black Caucus; the Office of Historically Underutilized Businesses; the North Carolina Institute of Minority Economic Development; the Bond Oversight Committee; Chancellors of the constituent institutions; Directors of affiliated organizations; and others.

#### **Constituent Institutions, Affiliated Organizations, and UNC - General Administration**

The Chancellor at each of the constituent institutions and the Director of each affiliated organization will appoint a representative to serve as that entity's HUB Liaison Officer.

The HUB Liaison Officers will be responsible for implementing, managing, and evaluating the HUB programs for both formal and informal projects.

Each entity's HUB Liaison Officer is to have the authority and resources to direct the accomplishment of the following:

- Promote the University's HUB program internally and externally.
- Develop an outreach agenda to facilitate HUB utilization.
- Participate in training seminars for the purpose of informing potential bidders/proposers/vendors of HUB programs and business opportunities available.
- Assure that projects are reviewed to determine the possibility of subdividing the work among multiple contractors. Requests for bids may be subdivided to encourage HUB participation.
- Assist the design team in developing methods for structuring bids, proposals, specifications, and plans so as not to unreasonably prejudice or limit HUB participation.
- Review HUBs on the directory provided by the Department of Administration's Office for Historically Underutilized Businesses and local HUB directories identified by the Department of Administration's Office for Historically Underutilized Businesses to verify HUBs' availability, contact information, specific type of work, and relevant experience.
- Become knowledgeable of HUBs that are potential contractors and include HUBs on contract solicitation lists.
- Ensure that HUB goals and "Good Faith Effort" requirements are included in requests for bid/proposals and are discussed during pre-bid/proposal conferences.
- Attend professional service (architect, engineer, construction manager, etc.) interviews to discuss the professional service provider's plan to assist the constituent institution with meeting the HUB construction goals and assess the professional service provider utilization of HUBs.
- Assist HUBs in obtaining adequate information about plans, specifications and construction requirements.
- Review good faith documentation for completeness.
- Conduct debriefing sessions, when requested by HUBs, on awarded contracts, to explain why bids/proposals by HUBs may have been unsuccessful.
- Maintain records sufficient for verification of steps taken and evaluate efforts to increase HUB participation.
- Maintain a file for three years of successful bid/proposal documents from past procurement and permit HUBs to review and evaluate these documents.
- Monitor HUB utilization throughout the duration of construction.
- Monitor enforcement of Article 17 of the "General Conditions of the Contract," which requires sub-contractors to receive payment within seven days of the contractor receiving payment from the owner.
- Engage the architect, engineer and construction managers during the design development phase to identify minority business and investigate methods of structuring the bids that might increase minority utilization.

- Commission the architect, engineer or construction managers to review the good faith efforts of the construction businesses submitting bids and to make recommendations concerning the adequacy of the construction business efforts.

Examples of the actions associated with accomplishing the above are listed on Attachment A.

## **V. Identification and Recruitment**

G.S. 143.128.2.(e) requires each constituent institution (on projects greater than \$300,000) to notify HUBs of the opportunity to submit bids and prescribes the information to include in the notification (see below):

G.S. 143.128.2.(e)

- At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
  - 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 the individual within the public entity who will be available to answer questions about the project.
  - d. Where bid documents may be reviewed.
  - e. Any special requirements that may exist. (G.S. 143-128.2.(e))
- Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought. (G.S. 143-128.2.(e))

The University will continue to use the HUB directory maintained by the Office for Historically Underutilized Businesses as its primary source of identifying HUB firms. The University will also use local HUB directories that have been approved by the Office for Historically Underutilized Business. The University will use, the directories to recruit HUBs; notify HUBs of upcoming bid opportunities and inform HUBs of outreach sessions. The constituent institutions will continue to build upon established relationships with local HUB offices and minority trade organizations to utilize their services to assist with identification of HUB contractors.

## **VI. Outreach**

G.S. 143.128.2.(e) requires The University to develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach effort to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and non-minority businesses. This Plan meets the requirements of the legislation.

The University outreach efforts consist of broadening access to construction contract information, facilitating the development of relationships among the construction community, raising the awareness of the availability of HUBs, and providing assistance to contractors who have not historically participated in University construction projects. The following outreach efforts are targeted:

- The University’s outreach efforts to reach HUB contractors will be open to all contractors, including those who have not historically participated in University construction projects.
- The University will meet with community organizations, trade groups, and others as requested for the purpose of providing information on upcoming bid opportunities, issues related to doing business with the University, and improving relations.
- The University will implement an ongoing communications program that will incorporate a variety of methods for disseminating information regarding construction opportunities and procedures. The program will include the use of news media, brochures, email announcements, grass roots efforts, and direct mailing to contracting organizations and advocacy groups.
- The University will ensure that project plans are available for review by potential contractors for an appropriate length of time to provide the information needed for the submission of professional bids.
- The University will maintain records for public review of the scope of each project, the award amount, the contract duration, and the final construction amount.
- The University will sponsor and participate in workshops, seminars and trade fairs that provide opportunities to educate HUBs, recruit HUBs and facilitate interaction between minority and non-minority firms.

## **VII. Good Faith Effort**

On projects that are greater than \$300,000, construction businesses submitting bids must meet the stated HUB goal of 10% or demonstrate a “Good Faith Effort” in the solicitation of HUB subcontractors. The ten good faith efforts identified in G.S. 143-128.2 are listed below along with examples of the efforts the University will consider when evaluating the submitters efforts.

- 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.  
**Example:** Copies of written notification or fax to minority businesses and document number of quotes/proposals received for work category solicited to minority businesses. Written notification or fax to include, at a minimum, project location; location where plans and specifications may be obtained or viewed; trade or scopes of work

for which subcontracts are being solicited; contact person within the prime contractor organization;

- 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.

**Example:** Copies of written notification or fax to minority businesses. Written notification or fax to include, at a minimum, project location; location where plans and specifications may be obtained or viewed; trade or scopes of work for which subcontracts are being solicited; contact person within the prime contractor organization;

- 3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.

**Example:** Document steps taken to segment elements of the work into economically feasible units to meet minority business availability. Identify sub-contractors/suppliers/consultants and scope of work involved in segmenting.

- 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.

**Example:** Provide a copy of meeting minutes between prime contractor and minority trade, community, or contractor organization. At minimum, the following topics should be discussed/reviewed during the meetings: project location; location where plans and specifications may be obtained or viewed; trade or scopes of work for which subcontracts are being solicited; bonding requirements; insurance requirements; prime contractor's contact person; minority trade, community, or contractor organization contact person; strategies to segment elements of the work into economically feasible units to meet minority business availability; strategies to increase minority business utilization through joint ventures and/or partnerships; notification that the meeting will be counted toward the contractor's good faith effort.

- 5) Attending any prebid meetings scheduled by the public owner.

**Example:** Attendance will be verified by conference sign-in sheet.

- 6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.

**Example:** Documentation describing the type of assistance provided or offered to minority businesses. Provides names and contacts of minority businesses to whom assistance was offered and names of the contact person of bonding companies or financial institutions offering assistance.

- 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 a minority business based on lack of qualification should have the reasons documented in writing.

**Example:** Document number of bids received from minority businesses in the trade or scopes of work for which subcontracts are being solicited, the number of minority businesses that submitted low bids or proposals, the number of minority businesses the bidder has offered to negotiate prices or services, and the number of minority businesses the bidder has agreed to utilize on the project, outline steps taken.

- 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 required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.

**Example:** Document names, addresses and telephone numbers of minority businesses to which assistance was offered, outline steps taken. Give dates assistance was offered and document outcome.

- 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.

**Example:** Provide a copy of joint venture or partnership arrangements between bidder and minority business.

- 10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

**Example:** Provide a copy of quick pay agreements and/or policies and document the number of minority businesses, which will utilize the quick pay agreement.

The University will make a recommendation as to the apparent low bidder's responsiveness to the provisions of the Plan. Each campus shall establish a "good faith committee" to review bids if consideration is being given to rejecting a bid for lack of a good faith effort. The committee should offer the contractor an opportunity to defend his/her good faith effort before a decision is made. If the committee recommends rejecting the bid, the committee shall document its reasons for making this recommendation and shall seek the chancellor's review. If the chancellor concurs, the recommendation will be forwarded to the Vice President for Finance for review. If the Vice President for Finance agrees, then the University should recommend award to the next lowest bidder who did make a good faith effort (for projects within the construction download) or should request that the State Construction office do so for projects above the construction download. Pursuant to North Carolina General Statutes, contractors who fail to achieve the goals specified in this Plan and who fail to make good faith efforts to achieve the goals may have their bids rejected as non-responsive.

### **Informal Projects**

On projects that are between \$5,000 and \$300,000, each constituent institution is required to have a verifiable 10% goal for participation by minority businesses in the total value of work for each building project. The statutes also require each constituent institution to solicit minority participation, maintain a record of contractors solicited and document efforts to recruit minority business participation. Each constituent institution will assume responsibility for developing a plan to realize the 10% goal. The Plan shall include the methods the constituent institution will utilize to:

- Identify minority contractors
- Recruit minority contractors
- Notify minority contractors of bid opportunities
- Monitor the number of minority contractors that submits bids as prime contractors
- Monitor the number of minority contractors that perform subcontract work

The constituent institution may also require contractors to submit good faith effort documentation as required for projects greater than \$300,000.

The University endeavors to offer HUB and small contractors that opportunity to bid on projects between \$5,000 and \$300,000 as prime contractors.

### **VIII. Program Monitoring**

The Office of the President along with each constituent institution will monitor HUB outreach efforts and utilization data for the purpose of identifying trends, recognizing best practices, and determining which efforts are most directly related to increasing HUB utilization.

### **IX. Post Award Monitoring**

Contractors engaged in State construction projects are required to submit a HUB utilization report when requesting payments for services. The request for payment will not be considered complete and will not be processed without the HUB Utilization Report. The HUB Utilization Report requires that the contractor list the amount to be paid to HUB firms from the payment request.

If the University has reason to believe that a contractor may not be operating in compliance with the terms of the contract, the University will notify the contractor in writing and request a meeting to resolve the issue. A representative from the Office of State Construction may also be invited and encouraged to attend the meeting.

### **X. Contract Disputes and Complaints**

To the maximum extent that is legal, practical, and ethical, the University will endeavor to resolve complaints or disputes associated with minority business requirements to the

benefit of all involved parties. Dispute resolution during construction will be as prescribed in the contract documents and as governed by G.S. 143-128(g).

## **XI. Professional Services**

G.S. 143-64.31 requires public entities to include the use of good faith efforts to notify minority (architect, engineering, surveying and construction management at risk services) firms of opportunities to submit qualifications for consideration. The University will review and consider the utilization of HUB consultants when evaluating professional service proposals. The goal for the participation of HUBs will be consistent with their general availability within the professional communities involved.

All advertisements for professional services will encourage participation by HUB firms.

## **XII. Reporting**

On projects that are greater than \$300,000, G.S 143-128.3 requires the University to report the following information quarterly to the Department of Administration, Office of Historically Underutilized Business.

- 1) The verifiable percentage goal.
- 2) The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or rules used to recruit minority business participation, and good faith documentation accepted by the public entity from the successful bidder.
- 3) The utilization of minority businesses under the various construction methods.

On projects that are between \$5,000 and \$300,000, G.S. 143-131 requires each constituent university to maintain records of contractors solicited and document efforts to recruit minority business participation in those contracts. Data, including the type of project, total dollar value of the project, dollar value of minority business participation on each project, and documentation of efforts to recruit minority participation must be reported to the Department of Administration's Office for Historically Underutilized Business, upon the completion of the project

The University will also provide periodic updates and reports on the status of its efforts to The University of North Carolina Board of Governors; the North Carolina General Assembly; members of the North Carolina Legislative Black Caucus, the Bond Oversight Committee, and others.

The President will review the Plan periodically (at least biennially) and will make a recommendation to the Board of Governors as to whether the Plan is still needed.

