

# Minority and Women Business Enterprise Plan for the Town of Pembroke



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**TABLE OF CONTENTS**

POLICY STATEMENT .....1

OVERVIEW.....1

I. ADMINISTRATION.....1

II. DEFINITIONS.....1

III. PROCEDURES FOR CONSTRUCTION CONTRACTS.....2

    A. Purpose and Application .....2

    B. MBE/WBE Goals .....3

    C. Bid Documents.....3

    D. Town of Pembroke Responsibilities.....4

        1. MBE/WBE Registry .....4

        2. Certification .....4

        3. Certification Eligibility Standards .....4

        4. Decertification Procedures .....5

        5. Pre-bid Conference . .....5

    E. Contractor Responsibilities.....5

    F. Awarding of Contracts .....7

    G. Counting MBE/WBE Participation Toward Meeting the Goals .....7

    H. Documentation of Attainment of MBE/WBE Participation Requirements.....9

V. PROCEDURES FOR PURCHASING CONTRACTS.....9

    A. Purpose and Application .....9

    B. MBE/WBE Goals .....9

    C. Certification Standards.....9

    D. Certification Eligibility Standards.....10

    E. Decertification Procedure.....10

    F. Town of Pembroke Responsibilities .....10

        1. Identification of MBE/WBE Firms .....10

        2. Bid Solicitation.....10

    G. Award of Purchasing Contracts.....10

H. Annual Reporting Procedure.....	10
VI. PROCEDURES FOR PROFESSIONAL AND PERSONAL SERVICE CONTRACTS.....	11
A. Purpose and Application .....	11
B. MBE/WBE Goals.....	11
C. Town of Pembroke Responsibilities .....	11
D. Certification .....	12
E. Certification Appeals Process. ....	12
F. Request for Proposals and Bids.....	12
G. Meeting MBE/WBE Goals. ....	13
H. Counting MBE/WBE Participation. ....	13
I. Provider Good-Faith Efforts.....	13
J. Documenting Good-Faith Efforts.....	14
K. Semi-annual Reports.....	15
VII. GRIEVANCE PROCEDURE .....	15

## POLICY STATEMENT

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

## OVERVIEW

The Town of Pembroke's Minority and Women Business Enterprise Plan (M/WBE) is a voluntary goals program in construction, purchasing, and professional and personal services based on "good-faith efforts". These goals are established for a three-year period and achievement will be evaluated annually. The goals of the Town for utilization of minority and women business enterprises are:

· Minority business participation in construction services.....	25%
· Women business participation in construction services.....	13%
· Minority business participation in supplies and materials purchases.....	25%
· Women business participation in supplies and materials purchases.....	13%
· Minority business participation in professional and personal services.....	25%
· Women business participation in professional and personal services.....	13%

### I. ADMINISTRATION

The Town Manager is authorized to take all usual and legal administrative actions necessary to implement this Plan. The ultimate responsibility for the MBE/WBE Plan's administration is assigned to the Town Manager. The Town Manager is either to be personally responsible or to designate a specific person to coordinate and manage this Plan. The Town Manager or his designee is responsible for determining whether a contractor has complied with the provisions of this Plan or has shown good-faith effort to do so. Except for those staff services specifically assigned by this Plan to other departments, the heads of departments responsible for construction, procurement of services and materials shall be responsible to the Town Manager or his designee and shall cooperate with the Town Manager in implementing this Plan.

The M/WBE Plan shall apply to all contracts for construction, supplies, and services as specified in Sections IV through VI. The provisions of this Plan take precedence over any other department plans or procedures in conflict herewith, except specific requirements mandated by terms or conditions of agreements in force between the Town and the federal government or the State of North Carolina that require different procedures than those described in this Plan. This Plan will be evaluated at the end of three years to determine its effectiveness and what adjustments are required.

### II. DEFINITIONS

**Affirmative Action** - Specific steps to eliminate discrimination and efforts to ensure nondiscriminatory results and practices in the future, and to fully involve minority business enterprises and women business enterprises in contracts and programs.

**Bidder/Participant** - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

**Contract** – A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment or service, including construction and leases, and obligating the buyer to pay for them.

**Contractor** – Any person, firm, partnership, corporation, association, or joint venture that has been awarded a public contract or lease, including every subcontract on such a contract.

**Discrimination** – To distinguish, differentiate, separate and/or segregate on the basis of age, race, religion, color, sex, national origin, handicap and/or veteran status.

**Equipment** – Includes materials, supplies, commodities, and apparatus.

**Goal** – A voluntary percentage or quantitative objective.

**Joint Venture** – An association of two or more businesses to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge.

**Lessee** – A business that leases, or is negotiating to lease, property from the Town of Pembroke or equipment or services to the Town of Pembroke, or to the public on Town’s property.

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

- a. Black (a person having origins in any of the black racial groups of Africa);
- b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- c. Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture origin, regardless of race);
- d. Asian (a person having origins in any of the original people of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands); and
- e. American Indian and Alaskan Native (a person having origins in any of the original people of North America).

**MBE/WBE** – Any minority or women business enterprise.

**Minority or Women Business Enterprise (MBE/WBE)** – A business that is at least fifty-one (51) percent owned and controlled by minority group members or women. An MBE/WBE is bona fide only if the minority group or female ownership interests are real and continuing and not created solely to meet the MBE/WBE requirement. In addition, the MBE/WBE must itself perform satisfactory work or services or provide supplies under the contract and not act as a mere conduit. In short, the contractual relationship must also be bona fide.

### **III. PROCEDURES FOR CONSTRUCTION CONTRACTS**

#### **A. Purpose and Application**

1. The general purpose of this Plan is to help develop and support Minority and Women Business Enterprises (MBE and WBE) by providing opportunities for participation in the performance of all construction contracts in the Town of Pembroke financed via the local, state or federal funds.

2. This Plan shall apply to construction contracts when the Town of Pembroke's estimated contract cost is \$50,000 or more, except when a contract is exempt from competitive bidding under the General Statutes of North Carolina.
3. Where contracts are financed in whole or in part with federal or state funds, including grants, loans, or other funding sources containing MBE and WBE Programs, the Town of Pembroke will, where permitted by the grantor, meet the Plan requirements with the highest MBE/WBE goals. The Town Manager will be responsible for monitoring the Plan to ensure the goals are met.
4. Since the Town of Pembroke construction contracts are typically prepared and administered by consulting engineers, consulting engineers shall prepare procedures for bidding and outreach as are required to implement this Plan.
  - a. Within ninety (90) days of Town of Pembroke Council Members' approval of this Plan, appropriate staff and equipment will be in place for full implementation.
  - b. The departmental procedures and contract provisions shall be in effect for all bid documents issued after the date of the Town of Pembroke's approval.

#### **B. MBE/WBE Goals**

1. To implement the purpose of this Plan, the goal shall be to award at least twenty-five (25) percent of the total of all construction contract award amounts in each fiscal year in each department to MBE firms and at least thirteen (13) percent to WBE firms.
2. The Town Manager and/or M/WBE Plan Coordinator may determine that higher or lower goals are appropriate on a project-by-project basis, where it can be shown that the type, size, or location of the project will affect the availability of MBE and WBE firms, so long as the aggregate of all contracts does not lower the annual goals.

#### **C. Bid Documents**

1. Bidders shall submit MBE/WBE information with their bids. Such information shall be subject to verification by the Town of Pembroke prior to the awarding of the contract. The information shall include names of MBE/WBEs to be used and the dollar value of each such MBE/WBE transaction.
2. Contractors, subcontractors, suppliers, or MBE/WBE members of a joint venture intended to satisfy the Town of Pembroke's MBE/WBE goals shall be certified by the State Department of Transportation (DOT) or shall be listed on another Public Agency certified list. The Town of Pembroke may accept any of the following as alternate sources of certified MBEs and WBEs:
  - a. Listing in a City or certified registry established in accordance with Section IV, D(2) of this Plan.
  - b. A self-certification form for a MBE/WBE or a MBE/WBE member of a joint venture not already listed in the Registry or certified by the State.

- c. Evidence of certification or the self-certification form submitted to the Town of Pembroke at or before the bid opening.
- d. State Certified Historically Underutilized Businesses (HUBs)

**D. Town of Pembroke Responsibilities**

1. MBE/WBE Registry – The Town of Pembroke will establish and maintain a registry of certified Minority and Women Business Enterprises. The purpose of the registry is to provide a resource for prime bidders on Town of Pembroke construction projects who intend to solicit bids from MBE and WBE subcontractors and suppliers to meet the Town of Pembroke’s MBE and WBE goals. The registry will not constitute a recommendation or endorsement of any listed firm. The registry will be developed and maintained by advertising at least annually, for letters of interest from MBE and WBE firms and community organizations wishing to be included in the registry and notified of construction contracts and sole source contracts (one source). Advertisements will be placed in at least one newspaper of general circulation and in at least one minority newspaper in the state.

2. Certification –

(a) The certification process will involve submission of a completed Town of Pembroke certification form or inclusion on another acceptable public agency registry. All businesses must be recertified every twenty-four (24) months. The submitted form will be subject to approval by the Town Manager or his designee. The Town of Pembroke may accept proof of certification from the following:

- North Carolina Department of Transportation
- North Carolina Department of Administration
- Other North Carolina cities with established certification procedures.

(b) Certification decisions made by the Town of Pembroke can be appealed by the applicant or a third-party challenger. Protests must be delivered to the M/WBE Office in writing or forwarded to the Town Manager’s Office. MBE/WBE applicants for certification with the Town of Pembroke are allowed ten (10) days after the receipt of the certification decision to protest. A third-party challenge can be submitted at any time. Written protests will be reviewed by the Town Manager, who will render a final decision.

3. Certification Eligibility Standards –

(a) The eligibility of a business is determined by the ownership and control of the business.

(b) An eligible Minority Business Enterprise owner is a citizen or lawful permanent resident of the United States, a member of a recognized ethnic or racial group, and fifty-one (51) percent owner of the business. The eligible ethnic or racial groups are:

- Black

- Hispanic
- Portuguese
- Asian/Pacific Islander
- American Indian/Alaskan Native

(c) An eligible Women Business Enterprise owner is a citizen or lawful resident of the United States and a fifty-one (51) percent owner of the business and is female.

4. Decertification Procedures – A firm certified as a MBE/WBE may be decertified by the Town Manager or his designee after an investigation and hearing for any one of the following reasons:

- a. Change of Status – The Town Manager or his designee may decertify a MBE/WBE if he finds that the ownership or control of the business changes so that the business no longer meets the requirements of Section IV, D(3) (b) and (c) above.
- b. Failure to comply with the MBE/WBE Plan – The certification of a business as a MBE/WBE may be revoked by the Town Manager or his designee if he finds any of the following conditions:
  - c. That a business has submitted inaccurate, false or incomplete information to the Town of Pembroke;
  - d. That in performance of a contract, a business has failed to comply with requirements of the contract with the Town of Pembroke;  
That in performance of a contract, a business has failed to comply with MBE/WBE requirements of a contract established by a contractor with the Town of Pembroke in response to Town of Pembroke requirements; or
  - e. That a business has otherwise failed to comply with the provisions of this MBE/WBE Plan.
- f. Appeal of Decertification – A business may appeal a determination to decertify as a MBE/WBE by utilizing the procedures described in Section IV, D(2) above.

5. Pre-bid Conference – The Town of Pembroke may hold a pre-bid conference on all formal bid contracts for all prospective bidders, subcontractors, and MBE/WBEs for the purpose of explaining the provisions of the MBE/WBE Plan, the process for bidding, and the contract to be performed. Available data on MBE/WBEs interested and/or capable of engaging in the prospective contract shall be made available to prospective bidders, contractors, and subcontractors.

#### **E. Contractor Responsibilities**

1. The contractor (bidder) shall make good-faith efforts to encourage participation of MBE/WBEs in projects prior to submission of bids in order to be considered as a responsive bidder. A good-faith effort shall include, at a minimum, specific affirmative action steps and

complete documentation thereof. The following list of factors to determine good-faith effort is not exclusive or exhaustive:

- a. Whether the bidder attended any pre-solicitation or pre-bid meetings, if scheduled by the Town of Pembroke;
- b. Whether the bidder identified and selected specific items of the project for which the contract could be performed by Minority and/or Women Business Enterprises, to provide an opportunity for participation by those enterprises (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE/WBE participation);
- c. Whether the bidder advertised, a reasonable time before the date the bids are opened, in one or more daily or minority weekly newspaper or trade association (i.e., N.C. Minority Business Association), trade journal or other media;
- d. Whether the bidder provided mail notice of his or her interest in bidding on the contract to at least three (3) Minority or Women Business Enterprises (for each identified sub-item of the contract) licensed to provide the specific items of the project a reasonable time prior to the opening of bids;
- e. Whether the bidder provided interested Minority and Women Business Enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work;
- f. Whether the bidder contacted the Town of Pembroke's M/WBE Office for assistance in identifying minority and women businesses certified with the Town of Pembroke and three (3) approved public agencies as referenced in Section IV, D(2)a;
- g. Whether the bidder negotiated in good-faith with Minority or Women Business Enterprises and did not unjustifiably reject as unsatisfactory bids prepared by Minority or Women Business Enterprises, as defined by the Town of Pembroke;
- h. Whether the bidder, where applicable, advised and made efforts to assist interested Minority and Women Business Enterprises in obtaining bonds, lines of credit, or insurance required by the Town of Pembroke or contractor;
- i. Whether the bidder's efforts to obtain Minority and Women Business Enterprise participation could reasonably be expected by the Town of Pembroke to produce a level of participation sufficient to meet the goals of the Town of Pembroke. Bidders are cautioned that even though their submittal indicates they will meet the MBE/WBE goals, they should document their good-faith efforts and be prepared to submit this information to protect their eligibility for award of the contract in the event the Town of Pembroke questions whether the good-faith requirement has been met.

2. Performance of MBE and WBE Subcontractors and Suppliers – The MBE/WBEs listed by the contractor on the Schedule of MBE/WBE Participation, which are determined by the Town of Pembroke to be certified, shall perform the work and supply the materials for which they are listed unless the contractor has received prior written authorization from the Town of Pembroke to perform the work with other forces or to obtain the materials from other sources. The contractor shall enter into and supply copies of fully executed subcontracts with each MBE/WBE listed on the “Bidder MBE/WBE Information” form to the Town of Pembroke’s M/WBE Plan Coordinator after award of the contract and prior to the issuance of a Notice to Proceed. Any amendments to the subcontracts shall be submitted to the M/WBE Office within five (5) days of execution. Authorization to utilize other forces or sources of materials may be requested for the following reasons:

- a. The listed MBE/WBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project, or on the terms of such subcontractor’s or supplier’s written bid, is presented by the contractor.
- b. The listed MBE/WBE becomes bankrupt or insolvent.
- c. The listed MBE/WBE fails or refuses to perform his/her subcontract or furnish the listed materials.
- d. The work performed by the listed subcontractor is unsatisfactory according to industry standards and is not in accordance with the plans and specifications; or the subcontractor is substantially delaying or disrupting the progress of the work.

**F. Awarding of Contracts**

1. If a construction contract is to be awarded, it shall be awarded in accordance with North Carolina General Statutes to the lowest responsible bidder who complies with all of the prescribed requirements and either:
  - a. Made a good-faith effort to comply with these goals and requirements before the time bids are opened as described above. Where a good-faith effort is claimed by the apparent lowest responsible bidder, the bidder shall be required to submit documentation WITHIN TWENTYFOUR (24) HOURS OF THE TOWN OF PEMBROKE’S NOTIFICATION, which in most instances will occur the day of bid opening to show that the criteria for good-faith efforts have been met, or
  - b. Once a firm is determined to be an eligible MBE/WBE, and before the contract is awarded, the total dollar value to be paid to the MBE/WBE shall be evaluated by the M/WBE Office to ensure that it is in accordance with the bidder’s proposal. If the evaluation shows that the bidder has misrepresented MBE/WBE participation or has not made a good-faith effort to meet the contract goals for MBE and WBE participation, the bidder may be disqualified.

**G. Counting MBE/WBE Participation Toward Meeting the Goals** – The degree of participation by MBE/WBE contractors, subcontractors, suppliers, or joint-venture partners in contract awards shall be counted in the following manner:

1. Once a firm is determined to be an eligible MBE/WBE contractor in accordance with this Plan, the total dollar value of the contract awarded to the MBE/WBE is counted as participation.
2. The goals can be met by any certified MBE/WBE contractor, subcontractor, supplier, trucker, or joint venture partner as listed in the Town of Pembroke and agency directory. All MBE/WBEs used to meet the goal must be certified by the Town of Pembroke or an approved agency at the time of bid opening. Only certified firms listed in the directory can be counted toward the goal. The standard for certification is set forth in this Plan.
3. The total dollar value of a contract with a business owned and controlled by a minority woman is counted toward either the minority goal or the goal for women, but not toward both. The contractor or Town of Pembroke employing the firm may choose the goal to which the value is applied.
4. In the case of a joint venture, the joint venture recipient or contractor may count toward its MBE/WBE goals a portion of the total dollar value of the contract that the MBE/WBE partner's participation in the joint-venture represents. Credit will be given equal to the minority partner's percentage of ownership in the joint venture. A MBE/WBE joint-venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying requirements for ownership and control.
5. A recipient or contractor may count toward its MBE/WBE goals only expenditures to MBE/WBEs whose ownership interests are real and continuing and not created solely to meet the Town of Pembroke's goals for participation, and that perform a commercially useful function in the work of a contract. A MBE/WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a MBE/WBE is performing a commercially useful function, the M/WBE Office shall evaluate the amount of work subcontracted, industry practices, and other relevant factors. Consistent with normal industry practices, an MBE/WBE may enter into subcontracts. If a MBE/WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE/WBE shall be presumed not to be performing a commercially useful function. Evidence to rebut this presumption may be presented to the Town of Pembroke. The MBE/WBE may present evidence to rebut this presumption. The M/WBE Office's decision on the rebuttal of this presumption is subject to review by the Town Manager or his designated representative. Once a firm is determined to be an eligible MBE/WBE in accordance with this section, the total dollar value of the contract awarded to MBE/WBE is counted toward the applicable MBE/WBE goals, except as provided in the provisions of this section.
6. A contractor may count toward its MBE/WBE goals expenditures for materials and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBE/WBE assumes the actual and contractual responsibility for the provision of the materials and supplies.

**H. Documentation of Attainment of MBE/WBE Participation Requirements** – In order that the Town Manager may make a recommendation to the Town of Pembroke as to the responsiveness of bidders, bidders shall be required to submit the following information on each M/WBE-related subcontract:

1. A description of the subcontract and purchase(s) of significant equipment and supplies to be used to perform the subcontract or prime contract, including the name and address of each MBE/WBE firm selected, and the name and telephone number of a contact person;
2. The dollar amount of participation of each MBE/WBE;
3. A statement of intent from the MBE/WBE subcontractor or material supplier as
  - a. Identified in Section IV, H(1) above that they intend to contract or supply the materials, or
  - b. Sworn statements, with appropriate documentation, showing that the contractor made a good-faith effort to comply with the MBE/WBE Plan in accordance with Section IV, E of this Plan.

## **V. PROCEDURES FOR PURCHASING CONTRACTS**

### **A. Purpose and Application**

1. The general purpose of this Plan is to help develop and support Minority Business Enterprises and Women Business Enterprises (MBE/WBE) by providing opportunities for participation in purchasing contracts for the Town of Pembroke.
2. This Plan applies to purchasing contracts over \$20,000 for apparatus, materials, supplies and purchasing contracts for goods where the patent-holder is not the sole supplier. Purchasing contracts will include all procurement by the authorized purchasing agent of various departments.
3. Where contracts are funded in whole or in part with federal or state funds and the grants, loans, or other funding sources containing MBE/WBE requirements, the Town Manager may, where permitted by the grantor, meet the Plan requirements with the highest MBE/WBE goals.
4. The Town Manager will be responsible for monitoring the Plan to ensure that the goals are met. Implementation of the Plan will be delegated to the M/WBE Office.

**B. MBE/WBE Goals** – To implement this Plan, the goal shall be to award twenty-five (25) percent of the total amounts of all purchasing contract awards in each fiscal year to MBE firms, and thirteen (13) percent to WBEs. The goals are effective from the date the Town's procedures are approved for a period of three (3) years. It is further the intent of the Town to encourage, to the extent allowed, the use of local vendors (defined as located within Robeson County) whenever doing so is consistent with the requirements under G. S. 143- 129.

**C. Certification Standards** - All MBE/WBE vendors used to satisfy the Town 's MBE/WBE goals shall be certified by the Town or shall be listed in another acceptable public agency registry. The M/WBE Office may accept proof of certification from any of the

following acceptable agency registries:

- North Carolina Department of Transportation
- North Carolina Department of Administration
- Other North Carolina cities with established certification procedures

**D. Certification Eligibility Standards** – See Section IV, D(3).

**E. Decertification Procedure** – See Section IV, D(4).

**F. Town of Pembroke Responsibilities**

1. Identification of MBE/WBE Firms – The Town of Pembroke Department Heads shall maintain a current registry of certified MBE/WBEs, organized by the goods and services the firms provide. The registry shall include the businesses that provide the goods and services routinely procured by the Town and a description of the goods and services that the firms are capable of providing. The MBE/WBE Office will be responsible for updating the registry. The registry will include:

- Business name and address,
- Name(s) of business owner(s),
- Type of business (MBE/WBE),
- Types of goods and services available,
- Certification and expiration date, and
- Certification with approved agencies with expiration date.

2. Bid Solicitation

a. The Purchasing Office of the Town of Pembroke and all other departments with direct contracting authority will be responsible for contacting from the registry at least one MBE and WBE for a price quotation of \$20,000 or more on each purchasing contract. A record of the solicitations for each bid should be maintained, and the MBE/WBE vendors should be identified in the file record.

b. The responses from all MBE/WBE vendors contacted shall be recorded and maintained in the permanent record of the purchase as documentation for annual MBE/WBE reports. The data shall be recorded on either the requisition form or the bid recap form. The departments should maintain this data in their files and use it to prepare the MBE/WBE departmental reports that shall be submitted to the MBE/WBE Plan Coordinator annually.

**G. Award of Purchasing Contracts** – If a purchasing contract is to be awarded, it shall be awarded in accordance with North Carolina General Statutes and/or other applicable local, State and Federal regulations.

**H. Annual Reporting Procedure**

1. The M/WBE Plan Coordinator shall submit annual progress reports to the General Manager's Office. The MBE/WBE Purchasing Contracts Plan Annual Report shall be prepared by the M/WBE Plan Coordinator from information submitted by each department involved in procurement within thirty (30) days of the period. Progress reports shall indicate whether the purchasing contract was for services or goods and shall include the following:

- Number and dollar value of total purchasing contracts by departments;
  - Number and dollar value of all contracts awarded to MBE/WBEs by the department;
  - Where departmental goals are not met, the progress report shall specify the reasons and include recommendations for correcting deficiencies.
2. The Town Manager shall submit an annual report to the Town. The report shall include the total number of purchasing contracts by departments and the number and dollar value of all contracts with MBE/WBE participation. The level of MBE/WBE participation shall be reported annually.

## **VI. PROCEDURES FOR PROFESSIONAL AND PERSONAL SERVICE CONTRACTS**

### **A. Purpose and Application**

1. The general purpose (goal) of this Plan is to help develop and support Minority Business Enterprises and Women Business Enterprises (MBE/WBE) by providing opportunities for participation in the performance of the Town of Pembroke professional service contracts and personal service contracts (hereinafter referred to as service contracts).
2. This Plan applies to all service contracts except contracts under \$5,000, and in those unique circumstances where the Town Manager determines that an exception is necessary.
3. Where contracts are funded in whole or in part with federal or state funds and the grants, loans, or other funding sources containing MBE/WBE Plan requirements, the Town of Pembroke may, where permitted by the grantor and not otherwise required by law, seek to achieve whichever MBE/WBE goals are highest.
4. The Town Manager or his designated representative will be responsible for administering and monitoring the Plan to ensure that appropriate action(s) are taken in an attempt to achieve the goals.

**B. MBE/WBE Goals** – To implement this Plan, the goal shall be to award twenty-five (25) percent of the total service contract dollars awarded in each fiscal year to MBE firms and thirteen (13) percent to WBE firms. The goals will become effective on the date that the Town of Pembroke Town Council approves the Plan and continue for a period of three (3) years.

### **C. Town of Pembroke Responsibilities**

1. Identification of MBE/WBE Firms
  - a. The MBE/WBE Office shall establish and maintain a registry of certified MBE/WBE service providers that shall be made available to all departments to assist them in identifying appropriate MBE/WBE service providers that can be used to meet the Town of Pembroke 's MBE/WBE goals. The registry shall include the businesses which provide the services routinely procured by the Town and a description of the services which the businesses are capable of providing. The registry will not constitute a recommendation or endorsement of any listed businesses. The registry will include:

- Business name, address, and telephone number,
- Name(s) of business owner(s),
- Type of services available,
- Type of certification (MBE/WBE), and
- Certification and expiration date with the Town of Pembroke, or an acceptable agency.

b. The Town of Pembroke shall advertise annually and throughout the year as deemed necessary for MBE/WBE service providers. Advertisements shall be placed with minority/women-focused publications (state and local). Notification will also be sent to community organizations which might have knowledge of MBE/WBE firms.

c. The department heads and M/WBE Plan Coordinator should attend local and regional business fairs to promote the MBE/WBE Plan. The departments shall also identify potentially eligible service providers through affirmative action efforts and the normal course of business. The names of identified businesses shall be forwarded to the M/WBE Office.

2. Mailing List – Each department shall establish and maintain for its own use a mailing list to be used to announce applicable service contracts. The mailing list shall include MBE/WBE service providers. Businesses on the mailing list should be drawn from the registry and any other sources available to the departments to identify businesses to perform the contract services. The mailing list should be updated regularly.

**D. Certification** – The professionals and service providers listed in the registry must be certified by the Town of Pembroke or an acceptable agency. The acceptable agencies are:

- The North Carolina Department of Transportation,
- The North Carolina Department of Administration, and
- Other North Carolina cities with established certification procedures.

Each of these agencies publish a directory of certified businesses for use as a reference document to identify eligible minority and women service providers. The M/WBE Office will certify eligible MBE/WBE service providers. The term of certification is 24 months. All MBE/WBE providers must be recertified. Any provider who is not certified by the Town of Pembroke or one of the acceptable agencies must submit a “Minority/Women Business Enterprise Certification Application-Schedule A”. The M/WBE Office will review and process the completed application. Copies of the Certification Application can be obtained from the M/WBE Office by an interested service provider.

**E. Certification Appeals Process** – Certification decisions made by the M/WBE Office can be appealed by the applicant, a Town department, or any other interested party. Appeals must be delivered to the M/WBE Office in writing, to be forwarded to the Town Manager’s Office. An unsuccessful applicant for MBE/WBE certification with the Town is allowed ten (10) working days after the receipt of the certification decision to appeal. A third-party challenge may be submitted at any time and must include the reason for the challenge. Written appeals will be reviewed by the Town Manager, who will render a final decision.

**F. Request for Proposals and Bids** – MBE/WBE contract goals shall be set for service contracts

over \$5,000. The request for proposal/ qualifications shall state the contract goals of two (2) percent for both MBE/WBE Professional and Personal Service contractors. It is not required that contracts under \$5,000 meet the contract goal. When possible, at least twenty-five (25) percent of the businesses notified of the contract opportunity shall be MBE/WBE. A list of all providers notified and the date their response was received shall be provided to the M/WBE Office on the Department Reporting Form for review semiannually.

**G. Meeting MBE/WBE Goals** – Goals must be met by awarding contracts to certified MBE/WBE service providers. The MBE/WBE must be certified at the time of the contract award. Service providers not certified at the time of the contract award will not be counted towards MBE/WBE goals. MBE/WBE goals may be met by a certified joint venture or partnership. In the case of joint ventures or partnerships, MBE/WBE participation counted toward the goal will be equal to the percentage of the total dollar value of the contract that the MBE/WBE partner is responsible for performing. A MBE/WBE that is not certified with the Town nor an approved agency at the time the request for proposal is released must submit a completed certification application to the M/WBE Office at least two (2) working days before proposals are due. If the certification application is not received on time or if the M/WBE and/or purchasing office determines that the business is not certifiable, then the business will not be counted towards the MBE/WBE goals if it is employed as a service provider.

**H. Counting MBE/WBE Participation** – The total value of a contract with a business owned and controlled by minority women is counted toward either the minority goal or the goal for women, but not toward both. The service provider or Town departments may choose the goal to which the contract value is applied. If a determination is made by the M/WBE Office that the goals have not been met, the prime service provider will be required to submit a good faith effort statement prior to awarding of the contract.

**I. Provider Good-Faith Efforts** – The following is a list of the efforts that should be made by the prime service provider to encourage MBE/WBE participation. In order to receive credit for having made “good faith efforts”, the service provider should document all actions taken to include the following:

1. Attending pre-bid meetings scheduled by the department;
2. Identifying selected specific items of the project which could be executed by a MBE/WBE;
3. Soliciting MBE/WBE service-provider participation through advertisements in circulation media, trade publications, and minority-focused media;
4. Contacting local businesses, businesses owned by minorities or women, and associations or business development centers which disseminate information to local businesses and businesses owned by minorities or women in a timely manner to allow sufficient time for MBE/WBEs to respond;
5. Following up on initial solicitations of interest by contacting the MBE/WBE to determine whether the MBE/WBE was interested in performing specific items of the project;

6. Attempting to enter into joint venture or partnership arrangements with MBE/WBEs and provide interested MBE/WBEs with information about the requirements for the project;
7. Providing assistance to MBE/WBEs in review of Requests for Proposal and work to be done by sub-service providers;
8. Using available directories of certified MBE/WBEs and other available resources;
9. Ensuring that the proposer negotiated in good faith with the MBE/WBE and did not unjustifiably reject as unsatisfactory quotes prepared by any Minority or Women Business Enterprise;
10. Making every effort to obtain Minority and Women Business Enterprise participation that could reasonably be expected to produce a level of participation sufficient to meet the goals of the Town of Pembroke; and
11. Providing interested minority and women businesses with information relative to project requirements.

**J. Documenting Good-Faith Efforts** – If the prime service provider does not meet the goals for MBE/WBE participation at the time of proposal submittal, then the following documents indicating “good-faith efforts” should be submitted as a minimum:

1. A report of all proposals received by the prime service provider from MBE/WBE sub-providers that must indicate the action taken by the prime provider in response to the proposals submitted to it. In cases where proposals have been rejected, the reason for rejection must be indicated.
2. Documentation of efforts to enter into agreements with MBE/WBEs for sub-provider work or arrangements for joint venture, partnership, or other multi-entity relationships. Also included should be a statement of why agreements or arrangements were not made.
3. Proof of contact with MBE/WBEs and associations or business development centers that disseminate information to MBE/WBEs.
4. A copy of letters sent to groups in Section VI, J(3) above notifying them of the proposer’s intent to submit a proposal to the Town of Pembroke. The letter should indicate the areas of work available for sub-providers.
5. Description of assistance provided to MBE/WBEs in review of proposal documents and work to be done by sub-providers.
6. Description on use made by service providers of available resources such as directories of MBE/WBEs.

7. Documentation of advertisements sent to general circulation media, trade publications, and minority-focused media.
8. Proof of attendance at any pre-bid meeting. If the service provider fails to meet the MBE/WBE goals with its proposed service team and cannot provide documentation of “good-faith efforts”, these failures will be noted to the involved department by the M/WBE Plan Coordinator and/or purchasing office, and the provider may be disqualified.

#### **K. Semi-annual Reports**

1. Each department shall submit semi-annual progress reports to the M/WBE Office. Progress reports shall include:
  - The total number of service contracts awarded during the period;
  - A breakdown of prime service providers’ and subservice providers’ awards;
  - The total number and dollar value of all service contracts awarded during the period to both prime and sub-service providers to MBE/WBEs, including ethnicity and locale of provider;
  - The percentage of awarded contracts during the period to MBE, WBE, and local firms; and
  - Where Town of Pembroke’s goals are not met, reasons therefore and recommendations to achieve such goals.
2. The Town Manager shall submit an annual report to the Town of Pembroke’s Council Members. The report will include a summary of the Town of Pembroke’s MBE/WBE participation and departmental participation for the year-to-date.

#### **VII. GRIEVANCE PROCEDURE**

Any participant feeling himself/herself aggrieved by implementation of the MBE/WBE Plan may present such grievance to the M/WBE Plan Coordinator. The grievance (except for certification as a MBE/WBE) shall be first discussed with the responsible operating department. If the grievance is not resolved, a written description of the grievance with appropriate supporting evidence shall be presented to the M/WBE Plan Coordinator. The M/WBE Plan Coordinator will review the grievance and supporting evidence and make a written response to the participant within ten (10) working days. In the event the participant is not satisfied, said participant may appeal the grievance by filing a written description thereof and supporting evidence with the Town Manager. The Town Manager shall hear the grievance within ten (10) working days and shall make a decision thereon, which shall be final.