



***Statewide Uniform Certification Program***

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A collaborative effort among North Carolina's state and local governments to consolidate the certification services for Historically Underutilized Businesses (HUB)

## Policy Statement

The North Carolina Department of Administration (Department) is committed to the State of North Carolina's Historically Underutilized Business (HUB) Program. Through the Office for Historically Underutilized Businesses, the Department strives to reduce barriers to HUB/MWBE participation in contracts for goods and services acquired by state agencies, community colleges, municipalities, institutions, public schools and universities. The Office for Historically Underutilized Businesses certifies firms under N.C. General Statutes 143-48, 143.128.2, and 143.128.4.

It is the policy of the Department to ensure non-discrimination on the basis of race, color, national origin, or gender, and support total inclusion in the award of any contract. It is the intent of the Department to create an equitable environment in which businesses can compete fairly for contracts financed with state funds. The Department shall take all reasonable and necessary steps to ensure non-discrimination in the administration of functions administered through the HUB Program.

The effective management of the HUB Program requires the cooperation of many stakeholders. The Director of the Office for Historically Underutilized Businesses has been delegated the authority and responsibility for the administration and management of the HUB Program. Notwithstanding this delegation, it is my expectation that all state personnel will support the mission of the HUB Program and the HUB Office.

Moreover, it is my expectation that all state personnel will support the Statewide Uniform Certification Program, managed by the HUB Office. A copy of the Statewide Uniform Certification Program document containing the approved policy and Standards and Procedures will be available for review by any interested individual at the following locations:

Department of Administration  
Office for Historically Underutilized Businesses  
116 West Jones Street  
Raleigh, NC 27601

Questions or request for additional information regarding the HUB Program should be directed to the HUB Office at (919) 807-2330.

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Britt Cobb  
Secretary

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Date

## Table of Contents

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### Section I.

Purpose.....	4
Discriminatory Actions.....	4
Applicability.....	5
Statement of Understanding .....	5
Reciprocity.....	6
Directory.....	6
Definitions and Acronyms.....	6

### Section II.

Eligibility.....	11
Burdens of Proof .....	11
Certification Standards and Procedures.....	12
Application Process.....	21
Maintaining Certification.....	22
Annual Renewal.....	23
Recertification.....	23
Decertification.....	24
Due Process.....	25

### Section III

Confidentiality and Cooperation.....	27
Program Management.....	27
Program Offices and Administrative Partners.....	28
Compliance and Enforcement .....	29

### Section IV.

Form: Certification Application with Supporting Documents Checklist	30
Form: Ethnicity Affidavit .....	38
Form: Eligibility Complaint Form .....	39
Form: Disability Affidavit .....	40
Form: Affidavit of No Change .....	41

## Section I.

### **Purpose**

The Statewide Uniform Certification Program (SWUC Program) was developed for the three-fold purpose of streamlining the certification of minority and women-owned businesses in their quest for validation of their statuses, provide a set of uniform standards and procedures through which firms could be certified, and provide for a single database that houses information for all firms certified to participate in Minority Business Programs.

The SWUC Program legislation was signed into law on August 19, 2007 by Governor Michael Easley. The law gave the Department of Administration the authority to develop and administer a statewide certification for certification of historically underutilized businesses for use by state departments, agencies, institutions, and political subdivisions of the state.

The SWUC Program streamlines the certification process by reducing the number of public sector entities by which businesses must apply for certification. Except for the consolidation of certification functions within the HUB Office, the fundamental tenets of SWUC Program administered by these public sector entities remain unchanged.

The SWUC Program provides for a centralized, uniform, comprehensive, statewide database of certified HUB/MWBE firms that prime contractors, project managers, purchasing agents, and HUB /MWBE Coordinators can utilize. All firms that are certified as Historically Underutilized Businesses to participate in Minority Business Programs as minority, women, disabled, or disadvantaged owners will be listed on the unified SWUC Directory.

The primary benefits of the SWUC Program are manifested in the centralized accountability of all certification actions by one agency, leading to a reduction in the duplication of services and an increase in the amount of time outreach personnel have available to assist with business development, contract acquisition, and readiness functions. With the consolidation of the certification function within the HUB Office, the HUB /MWBE Coordinators employed by local entities are now available to provide more intense one-on-one assistance to contractors and vendors to ensure their readiness, willingness, and ability to perform the work for which they have been contracted.

This document outlines the standards and procedures that will be used by the HUB Office to accomplish the state's certification goals with optimal efficiency.

### **Discriminatory Actions**

- a) The State of North Carolina (including state departments, agencies, and institution, and political subdivisions of the state, hereinafter called "entities") does not exclude any person from participation in, deny any person the benefits of, or

otherwise discriminate against anyone in connection with the award and performance of any contract covered by the SWUC Program on the basis of race, color, sex, national origin, or disability.

- b) The State of North Carolina, including its entities, does not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the SWUC Program with respect to individuals of a particular race, color, sex, national origin or disability.

### **Applicability**

Participation in the SWUC Program is required by all entities that administer or maintain a Minority Business Program and use a database of minority and/or women vendors to set and/or meet contract goals.

Under the SWUC Program, minority business certifications will be performed by the HUB Office, with the following exceptions:

- City of Durham's Equal Business Opportunity Program has narrowly tailored additional eligibility restrictions. For this reason, the City of Durham will augment the basic HUB/MWBE certification with additional eligibility requirements as required by municipal authority.
- City of Charlotte administers a court-ordered race and gender-neutral Program that does not consider race, ethnicity or gender as conditions of certification. For this reason, the City of Charlotte's Small Business Opportunity Program is excluded from participation in the SWUC Program.
- Minority and women business certification programs administered by the North Carolina Department of Transportation are excluded from participation in the Program by authority granted the agency per N.C.G.S. 136.28.4.

| The SWUC Program shall make all certification decisions on behalf of all entities.

1. Certification decisions by the HUB Office shall be binding on all entities within the state of North Carolina.
2. All entities in the state will honor this "one-stop" process to applicants for certification, such that an applicant is required to apply only once for a HUB/MWBE certification.

## **Statement of Understanding**

The SWUC Program will make all certification-related decisions on behalf of North Carolina's participating entities. Any state department, agency, institution, and/or political subdivision that is required to maintain a Minority Business/HUB Program that is expressly designed to increase participation of minorities and/or women in contracting opportunities must continue to maintain said SWUC Program.

The SWUC Program cannot and does attest to the ability, capacity, or standards of performance of any vendor certified as a HUB/MWBE through this Program. The certification granted through this Program affirms that the participant meets the standards of eligibility as described herein. State departments, agencies, institution, and political subdivisions are encouraged to develop a prequalification process to ensure firms meet their expected standards of performance, are able to acquire necessary bonding and insurance, have required local privilege licenses, and are otherwise qualified to be added to the entity's approved vendor list.

## **Reciprocity**

The SWUC Program requires all applicants to complete the certification process as described herein. The HUB Office will make an independent certification decision based on the information submitted by the applicant and acquired during the site visit.

Generally, reciprocity is limited to the acceptance of site visit reports from agencies with comparable certification programs. However, full reciprocity is granted to individuals claiming disability or social and economic disadvantage as their basis for Program eligibility.

## **Directory**

The Office for Historically Underutilized Businesses will maintain a Directory containing information for all firms certified in the SWUC Program, and make it available to the public via the internet. The HUB Office shall update the electronic version of the Directory by including additions, deletions, and other changes as soon as they are made.

In the HUB/MWBE Certification process, ethnicity takes precedence over gender. Therefore, a business owned by a Hispanic woman will be listed as a Hispanic owned business.

## Definitions and Acronyms

In determining eligibility and evaluating evidence, the following terms shall have the meaning assigned to them in this Section (unless otherwise expressly provided). These definitions are hereby incorporated as a part of the Eligibility Standards for HUB/MWBE designation purposes.

Affidavit	A written declaration made under oath before an authorized official attesting to the truth of the matter.
Appeal	A written request by an applicant to reconsider a determination of denial or decertification.
Bidder	Any person, firms, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
Bidder's List	A list consisting of firms providing a service and or commodity that request to receive notification of upcoming bids.
Contract	A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
Contractor	Any person, firm, partnership, corporation, association, or joint venture which has contracted with an entity of the State of North Carolina to provide goods and services.
Control	Control is comprised of both management as well as daily and long-term operation of the business. The eligible individual(s) must demonstrate responsibility for critical areas of the operations and must be able to make independent and unilateral business decisions. Control by individuals must be real and go beyond pro forma authority as reflected on paper.
Corporation	A corporation is an organization formed under state or federal law. It is an artificial entity legally separate from its owners.
DBE	Disadvantaged Business Enterprise; a business that is at least 51% owned and controlled by individuals that meet the definition of socially and economically disadvantaged as defined in 15 USC 637.
Debarment	The process by which the contract owner determines that an adjudication of fraud or malfeasance has been entered by a court of law or an administrative law judge declaring the vendor ineligible to furnish materials, supplies or services to the State of North Carolina.

Denial	The determination that an applicant has failed to prove, by a preponderance of the evidence, that it meets the eligibility criteria for HUB/MWBE certification.
Designer	Any person, firm, partnership, or corporation, which has contracted with the contract owner within the State of North Carolina to perform architectural or engineering work.
Disabled Business Enterprise	A nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.
DOT	Department of Transportation; may refer to the North Carolina Department of Transportation, or cases of limited reciprocity , refers to any State Department of Transportation that participates in the DBE Program.
HUB	<p>Historically Underutilized Business; a certification granted by the Department of Administration's Office for Historically Underutilized Businesses to firms that have successfully demonstrated their compliance with the standards of certification outlined herein.</p> <p>The HUB certification is recognized by all State departments, agencies, institutions, and political subdivisions of the state for minority business purposes.</p>
HUB Certification	The process through which a firm's eligibility as a HUB is determined. HUB certification also refers to the designation used to identify a firm that has successfully demonstrated its compliance with the eligibility standards of the program.
Individual	Sole Proprietors who do business under their own legal name or under a DBA in cases where a company name is used.
Limited Liability Corporation	A limited liability company is a business entity created by statute. It has some characteristics of a partnership and some characteristics of a corporation.
MBE	Minority Business Enterprise; a business that is at least 51% owned and controlled by individuals of a recognized ethnic group. All ethnic groups that are eligible for certification through the HUB Office are not necessarily recognized by all Contract Owners. Entities that have approved Programs ( by their local ordinances and authorities) maintain the right to include only those ethnic



groups that comply with local Program restrictions.

Non Profit Work Center for the Blind and Severely Disabled	An agency a) organized under the laws of the United States or this State, operated in the interest of the blind and severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual; b) in compliance with any applicable health and safety standard prescribed by the United State Secretary of Labor; and c) in the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41U.S.C. 46, et. req.) for the production of commodities or provision of services, whichever is less. (NCGS143-48(b) (1b).
Ownership	The determination that an eligible individual successfully substantiates their purchase of a firm. To be eligible for certification, on any basis, the applicant must demonstrate that they acquired ownership of at least 51% of the business or its assets with their own capital or expertise.
Partnership	A partnership is two or more people who carry on a trade or business as co-owners for profit.
Person	A natural person, and does not include a corporation or other business entity.
Public Entity	The State of North Carolina and all public subdivisions and local government units
Revocation of HUB Certification(also Decertification)	The process by which the Office of Historically Underutilized Businesses determines that a firm no longer meets the eligibility requirements as a HUB and removes the firm's certification.
SBA	Small Business Administration; refers to the Federal program that administers 8(a) and SDB certification for eligible small businesses.
S Corporation	A corporation structured like a "C" corporation, but taxed liked a partnership
Sole Proprietorship	A sole proprietorship is an unincorporated business that is owned by one individual for profit.
SWUC	Statewide Uniform Certification; the one-stop certification service

	<p>Program that is administered by the Department of Administration for all State departments, agencies, institutions, and political subdivisions. The certification rendered by the Department of Administration is "HUB", which is used throughout the state for minority business purposes.</p>
Using Agency (also Contract Owner)	<p>The State of North Carolina, Agency, Institution, or Political Subdivision named in the contract.</p>
Vendor List	<p>The list of firms that have met the factors of eligibility for participation in contacting activities with Contract Owners. Also, Division of Purchase and Contract database, housed in Vendor Link that contains the names of registered vendors and HUB designated vendors.</p>
Vendor Name	<p>The legal name of your business</p>
Verify	<p>To prove that something exists or is true, or to make certain that something is correct.</p>
WBE	<p>Women Business Enterprise; a business that is at least 51% owned and controlled by non-minority females</p>

## Section II.

### **Eligibility**

In determining whether to certify a firm as eligible to participate as a HUB/MWBE, the following standards of this section apply:

The firm seeking certification has the burden of demonstrating to the SWUC Program by a preponderance of the evidence, that it meets the requirements of this section concerning operational status, group membership, disability, or social and economic disadvantage, ownership, and control. For firms that wish to participate in the City of Durham's Equal Business Opportunity Program, a demonstration of eligibility relating to business size and owner's economic disadvantage is also required.

The SWUC Program must rebuttably presume that members of the designated groups identified in G.S. 143-128.4(b) are eligible. Other groups identified as underutilized by an approved disparity study may be included. Eligible groups include persons who are citizens or lawful permanent residents of the United States and who are:

- a. Black -a person having origins in any of the black racial groups in Africa;
- b. Hispanic -a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
- c. Asian American -a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent or the Pacific Islands;
- d. American Indian - a person having origins in any of the original peoples of North America;
- e. Female
- f. Disabled – a person with a disability as defined in G.S. 168.1 or G.S. 168A-3, or
- g. Socially and Economically Disadvantaged – a person who is eligible as defined in 15 USC Part 637. These individuals have successfully demonstrated that they are socially eligible and have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Additionally, these socially disadvantaged individuals' ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area that are not socially eligible.

## **Burdens of Proof**

In determining whether to certify a firm as eligible to participate as a HUB/MWBE, the SWUC Program must apply the standards described herein. The firm seeking certification has the burden of demonstrating to the Program, by a preponderance of the evidence, that it meets the requirements of the SWUC Program concerning operational status, group membership), ownership, and control.

The SWUC Program must make determinations concerning whether individuals and firms have met their burden of demonstrating operational status, group membership (or disability, or social and economic disadvantage), ownership, and control by considering all the facts in the record, viewed as a whole.

## **Certification Standards and Procedures**

Determinations concerning whether individuals and firms have met their burden of demonstrating operational status, group membership, ownership, and control, is assessed by considering all the facts in the record, viewed as a whole.

In determining whether a firm is eligible for participation as a HUB/MWBE, the Statewide Uniform Certification Program will use the following standards.

### Operational Status

- 1) The firm must demonstrate that they are an on-going, fully operational business entity. This means that the SWUC Program must not certify business concepts, or well intentioned plans to commence operations in the future.
- 2) The SWUC Program must not discriminate on the basis that a firm is a newly formed business.

### Group Membership

- 1) The SWUC Program must require the individual to demonstrate, by a preponderance of the evidence, that he or she is eligible. In making such a determination, the SWUC Program must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The SWUC Program may require the applicant to produce at least one piece of appropriate documentation to substantiate group membership.
- 2) If the SWUC Program determines that an individual claiming to be eligible is not a member of an eligible group, the individual must demonstrate eligibility on an individual basis.
- 3) Decisions made by the SWUC Program concerning membership in a designated group are subject to the certification appeals process of these procedures.

### Disability

According to G.S. 168A-3, a person with a disability is any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. The term:

- a. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.
- b. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- c. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.
- d. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

A firm applying for Statewide Uniform Certification must have a current, valid certification of disability from or recognized by the Social Security Administration, Department of Health and Human Services Disability Determination Division, Department of Veterans Affairs, or other governmental agencies, which are authorized to determine qualification for disability benefits.

In circumstances where a current, valid certification of disability from one of the agencies described above is unavailable, an individual may submit a Disability Affidavit completed by a physician licensed to practice medicine in the State of North Carolina.

The SWUC Program must accept the certification of disability in lieu of conducting its own disability certification proceedings.

### Social and Economic Disadvantage

#### Social Disadvantage:

The SWUC Program must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be eligible by the SBA or through USDOT's Disadvantaged Business Enterprise Program, are eligible individuals. The SWUC Program must require applicants to submit a signed, notarized certification that each presumptively eligible owner is, in fact, eligible.

#### Economic Disadvantage:

The SWUC Program must require each individual owner of a firm applying to participate as a HUB/MWBE, using social and economic disadvantage as the basis for eligibility, whose ownership and control are relied upon for certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

Notwithstanding any provision of state law, the SWUC Program must not release an individual's personal net worth statement or any documentation supporting it to any third party without the written consent of the submitter.

In determining net worth, the SWUC Program must exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence. A contingent liability does not reduce an individual's net worth.

If the statement of personal net worth that an individual submits shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. There is no need to hold an appeal proceeding in order to rebut the presumption of economic disadvantage in this case.

If the SWUC Program has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically eligible the SWUC Program may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. In such a proceeding, the SWUC Program has the burden of demonstrating, by a preponderance of the evidence, that the individual is not eligible. The SWUC Program may require the individual to produce information relevant to the determination of his or her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of eligibility unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual

is no longer eligible for participation in the Program and cannot regain eligibility by making an individual showing of disadvantage.

DBE, SBA 8(a) and SDB Firms:

If a firm applying for certification has a current, valid certification from or recognized by the U.S. Department of Transportation as a Disadvantaged Business Enterprise (DBE), or SBA under the 8(a) or Small and Disadvantaged Business (SDB) Program, the SWUCProgram may accept the firm's 8(a), SDB, or DBE certification in lieu of conducting its own certification proceeding.

Ownership

In determining whether the participants in a firm own the firm, the SWUCProgram must consider all the facts in the record, viewed as a whole.

- A. To be an eligible HUB/MWBE, a firm must be at least 51 percent owned by eligible individuals.
  - 1. In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
  - 2. In the case of a partnership, 51 percent of each class of partnership interest must be owned eligible. Such ownership must be reflected in the firm's partnership agreement.
  - 3. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by eligible individuals.
- B. The firm's ownership by eligible individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The eligible owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- C. All securities that constitute ownership of a firm shall be held directly by eligible persons. Securities or assets held in trust are regarded as held by an eligible individual for purposes of determining ownership of the firm, if (1) the beneficial owner of securities or assets held in trust is an eligible individual, and the trustee is the same or another such individual; or (2) the beneficial owner of a trust is an eligible individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm.

Assets held in a revocable living trust may be counted only in the situation where the same eligible individual is the sole grantor, beneficiary, and trustee.

- D. The contributions of capital or expertise by eligible owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not eligible or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations

that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

- E. In situations where expertise is relied upon as part of an eligible owner's contribution to acquire ownership, the owner's expertise must be (i) in a specialized field; (ii) of outstanding quality; (iii) in areas critical to the firm's operations; (iv) indispensable to the firm's potential success; (v) specific to the type of work the firm performs; and (vi) documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm. In addition to expertise, the individual whose expertise is relied upon must have a significant financial investment in the firm.
- F. The SWUC Program must deem as held by eligible individuals, for purposes of determining ownership, all interests in a business or other assets obtained by the individual (1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or (2) Through inheritance, or otherwise because of the death of the former owner.

The SWUC Program must presume as not being held by eligible individuals, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any eligible individual or non-HUB/MWBE firm who is (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; (ii) Involved in the same or a similar line of business; or (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the eligible individual must demonstrate to the SWUC Program, by clear and convincing evidence, that the gift or transfer to the eligible individual was made for reasons other than obtaining certification as a HUB/MWBE; and the eligible individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-eligible individual who provided the gift or transfer.

- G. The SWUC Program must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the SWUC Program must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The SWUC Program does not count a greater portion of joint or community property assets



toward ownership than state law would recognize as belonging to the eligible owner of the applicant firm.

A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for HUB/MWBE certification.

- H. The SWUC Program may consider the following factors in determining the ownership of a firm. However, the SWUC Program must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because an eligible individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, except as indicated above; there is a provision for the co-signature of a spouse who is not an eligible individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not an eligible individual to a spouse who is such an individual.

### Control

In determining whether eligible owners control a firm, the SWUC Program must consider all the facts in the record, viewed as a whole.

- A. Only an independent business may be certified as a HUB/MWBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

In determining whether a potential HUB/MWBE is an independent business, the SWUC Program must scrutinize relationships with non-HUB/MWBE firms, in such areas as personnel, facilities, equipment, and other resources.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by eligible individuals.

- B. The SWUC Program must consider whether present or recent employer/ employee relationships between the eligible owner(s) of the potential HUB/MWBE and non-HUB/MWBE firms or persons associated with non-HUB/MWBE firms compromise the independence of the potential HUB/MWBE firm.

The SWUC Program must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential HUB/MWBE firm.

In considering factors related to the independence of a potential HUB/MWBE firm, the SWUC Program must consider the consistency of relationships between the potential HUB/MWBE and non-HUB/MWBE firms with normal industry practice.

- C. A HUB/MWBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the eligible owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-eligible partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the eligible owners, without the cooperation or vote of any non-eligible individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in the Ownership section of this document.
- D. The eligible owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
1. An eligible owner must hold the highest officer position in the company (e.g., chief executive officer or president).
  2. In a corporation, eligible owners must control the board of directors.
  3. In a partnership, one or more eligible owners must serve as general partners, with control over all partnership decisions.
- E. Individuals who are not eligible may be involved in a HUB/MWBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- F. The eligible owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are eligible individuals. Such delegations of authority must be revocable, and the eligible owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the eligible owners in the firm's overall affairs must be such that the SWUC Program can reasonably conclude that the eligible owners actually exercise control over the firm's operations, management, and policy.
- G. The eligible owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The eligible owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The eligible owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

- H. If state law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the eligible persons who own and control a potential HUB/MWBE firm of that type must possess the required license or credential. If state law does not require such a person to have such a license or credential to own and/or control a firm, the SWUC Program must not deny certification solely on the ground that the person lacks the license or credential. However, the SWUC Program may take into account the absence of the license or credential as one factor in determining whether the eligible owners actually control the firm.
- I. The SWUC Program may consider differences in remuneration between the eligible owners and other participants in the firm in determining whether to certify a firm as a HUB/MWBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. Decisions of the owner to forego a salary for the purpose of reinvestment into the firm must be documented in the official records of the firm.

The SWUC Program may determine that a firm is controlled by its eligible owner although that owner's remuneration is lower than that of some other participants in the firm. In a case where a non-eligible individual formerly controlled the firm, and a eligible individual now controls it, the SWUC Program may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-eligible individual remains involved with the firm and continues to receive greater compensation than the eligible individual.

- J. In order to be viewed as controlling a firm, an eligible owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- K. An eligible individual may control a firm even though one or more of the individual's immediate family members (who themselves are not eligible individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the SWUC Program must make a judgment about the control the eligible owner exercises vis-a-vis other persons involved in the business as the SWUC Program does in other situations, without regard to whether or not the other persons are immediate family members.

If the SWUC Program cannot determine that the eligible owners--as distinct from the family as a whole--control the firm, then the eligible owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

- L. Where a firm was formerly owned and/or controlled by a non-eligible individual (whether or not an immediate family member), ownership and/or control were transferred to an eligible individual, and the non-eligible individual remains involved with the firm in any capacity, the eligible individual now owning the firm must demonstrate to the SWUC Program, by clear and convincing evidence, that:
- The transfer of ownership and/or control to the eligible individual was made for reasons other than obtaining certification as a HUB/MWBE; and
  - The eligible individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-eligible individual who formerly owned and/or controlled the firm.
- M. In determining whether a firm is controlled by its eligible owners, the SWUC Program may consider whether the firm owns equipment necessary to perform its work. However, the SWUC Program must not determine that a firm is not controlled by eligible individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with another party that compromises the independence of the firm.
- N. A business operating under a franchise or license agreement may be certified if it meets the standards described herein and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the SWUC Program should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- In order for a partnership to be controlled by eligible individuals, any non-eligible partners must not have the power, without the specific written concurrence of the eligible partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- O. The eligible individuals controlling a firm may use a staffing company. The use of such a company does not preclude the eligible individuals from controlling their firm if they continue to maintain an employer-employee relationship with the contracted employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

## **Application Process**

The purpose of the application process is to provide the SWUC Program a standardized process for reviewing, and approving or denying requests for certification as a Historically Underutilized Business. All applicants are required to complete the application process. A site visit is required for all applicants; however, the SWUC Program may rely upon agencies with comparable standards to supply a current site visit report.

The preferred method of requesting certification as a HUB/MWBE is through the online process. However, paper applications will be accepted. The applicant may call the SWUC Program or any participating partner to request an application packet, or one may be downloaded from the website.

In determining if a firm meets the standards of certification as described herein, the SWUC Program must perform an on-site visit to the offices of the firm. The SWUC Program must interview the principal officers of the firm and review their resumes and/or work histories. The SWUC Program must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation. For firms whose principle offices are located outside of North Carolina, the SWUC Program may rely upon the site visit report of another agency whose certification standards meet or exceed the standards of this Program

The SWUC Program must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. Applications on which the applicant has not attested to the truthfulness and accuracy of the information are considered incomplete and must be returned to the applicant.

After an acceptable application packet is received by the SWUC Program, the application is entered into the database and given a status of "Received". The appropriate blocks are annotated on the supporting documents checklist to indicate the documentation that was received within the packet.

### *SBA 8(a) or SDB, and DBE:*

When an application is received from a firm that claims to be certified through the SBA or as a DBE, the application is reviewed to determine if the applicant is currently SBA or USDOT certified. If it is found that the applicant holds a valid certification from either agency or its affiliate, the SWUC Program will contact the agency that issued the certification to request proof of certification and the site visit.

After the documentation is received from the SBA certifying agency, a site visit will be conducted. If the applicant is out of state, the SWUC Program will contact the home state and request a site visit. Since all firms must have a valid site visit, out-of state firms must ensure they have been certified with a local entity that conducts site visits for compliance with their Program's requirements.

Firms that are currently certified as DBE through a U.S. Transportation agency will be afforded full reciprocity of certification once proof of the site visit is received from the certifying agency.

*All Other Firms:*

The application packet is reviewed for completeness and basic eligibility. For incomplete application packets, an “Exception” letter will be forwarded to the applicant. The letter will inform the applicant that the packet has been received, but is missing specific documentation that is required to make a decision. The applicant will be allowed fifteen days to provide the required documentation. If required documentation has not been received within the initial fifteen day wait period, a second notice will be generated allowing the applicant an additional fifteen days to provide the required documentation. If required documentation is not received, the applicant will be notified that the application has been administratively withdrawn. The applicant may reapply at any time.

If the packet is made complete at any point in the exception process, evaluation will begin and a site visit will be scheduled, or the site visit report otherwise obtained. Correspondence will be forwarded to the applicant confirming the scheduled site visit date. The site visit is conducted.

A recommendation for approval or denial will be presented to the appropriate authority within the SWUC Program. A decision will be made. If the application is approved, an “Approval” letter will be sent to the applicant. The applicant’s status will be changed to “Approved” in the database and the Directory is updated. If the application is denied, a “Denial” letter will be sent. The applicant’s status will be changed to “Denied” in the database. Due process consistent with the basis for denial is afforded the applicant.

The SWUC Program must make decisions on applications for certification within 60 days of receiving a complete packet from the applicant firm. The SWUC Program may extend this time period once, for no more than an additional 30 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. The SWUC Program’s failure to make a decision by the applicable deadline is deemed a constructive denial of the application, on the basis of which the firm may appeal.

### **Maintaining Certification**

Once the SWUC Program has certified a HUB/MWBE, the firm shall remain certified for a period of at least four years unless and until its certification has been removed through decertification procedures.

A HUB/MWBE firm must inform the SWUC Program in writing of any change in circumstances affecting its ability to meet eligibility status, ownership, or control requirements or any material change in the information provided in the application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) The firm must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The firm must provide the written notification within 30 days of the occurrence of the change. If the firm fails to make timely notification of such a change, the firm will be deemed to have failed to cooperate.

### **Annual Renewal**

While certified as a HUB/MWBE, the firm must provide to the SWUC Program, every year on the anniversary of the date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet eligibility status, ownership, or control requirements or any material changes in the information provided in its application form, except for changes about which you have notified the SWUC Program under the "Maintaining Certification" section. If the firm fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate.

### **Recertification**

A firm that is certified as a HUB/MWBE will remain certified for a period of four years. In order to continue participation as a HUB/MWBE firm, the owner must submit an application packet to the SWUC Program in the manner described under "Application Process" for recertification as a HUB/MWBE firm.

The SWUC Program must make decisions on applications for recertification within 60 days of receiving a complete packet from the applicant firm. The SWUC Program may extend this time period once, for no more than an additional 30 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. The SWUC Program's failure to make a decision by the applicable deadline is deemed a constructive denial of the application, on the basis of which the firm may appeal.

In determining if a firm continues to meet the standards of certification as described herein, the SWUC Program must perform an on-site visit to the offices of the firm. The SWUC Program must interview the principal officers of the firm and review their resumes and/or work histories. The SWUC Program must also perform an on-site visit

to job sites if there are such sites on which the firm is working at the time of the eligibility investigation. For firms whose principle offices are located outside of North Carolina, the SWUC Program may rely upon the site visit report of another agency whose certification standards meet or exceed the standards of the SWUC Program.

## **Decertification**

A review of a certified firm's eligibility may be initiated through an ineligibility complaint submitted by a participating entity or a third party.

### *Third-Party Complaints:*

Any person may file with the SWUC Program a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The SWUC Program will not accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

The SWUC Program must review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The SWUC Program may request additional information from the firm.

If the SWUC Program determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, the SWUC Program must provide written notice to the firm that the SWUC Program proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the SWUC Program determines that such reasonable cause does not exist, the SWUC Program must notify the complainant and the firm in writing of this determination and the reasons for it.

All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

### *Partner Initiated Proceeding:*

If, based on notification by the firm of a change in its circumstances or other information that comes to the SWUC Program or any participating partner's attention, the SWUC Program determines that there is reasonable cause to believe that a currently certified firm is ineligible, the SWUC Program must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

### *Grounds for Decertification:*

The SWUC Program must not base a decision to remove a firm's eligibility on a reinterpretation or changed opinion of information available to the SWUC Program at the time of the firm's certification. The SWUC Program may base such a decision only on one or more of the following with specific evidence to support the proposal to remove a firm's certification.



1. Firm's owner failed to cooperate with the SWUC Program's request for information
2. HUB/MWBE firm is no longer an on-going business entity
3. Firm's owner falsified a sworn statement
4. Firm no longer meets ownership eligibility standards
5. Firm no longer meets control eligibility standards
6. Firm is no longer owned by a qualifying individual
7. Decertification requested by firm's owner
8. Change in certification standards or requirements that render the firm ineligible
9. Initial certification decision was based on erroneous information
10. Information or evidence was not available at initial certification
11. Information was misrepresented or concealed by firm during initial certification

### **Due Process**

When a firm is denied certification or notified that there is reasonable cause to remove its eligibility, the SWUC Program must give the firm an opportunity for appeal within the Department of Administration and the opportunity to appeal to the Office for Administrative Hearings pursuant to N.C. G.S. 150B.

#### Appeal:

The firm may present information and arguments in writing for review by the Appeal Committee.

In a decertification proceeding, the SWUC Program bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part. In a denial proceeding, the firm seeking certification has the burden of demonstrating to the committee, by a preponderance of the evidence, that it meets the requirements of the HUB Program concerning operational status, group membership (or disability, or social and economic disadvantage), ownership, and control.

The SWUC Program must maintain a complete record of the appeal. The SWUC Program must retain the original record of the appeal. A copy may be made available to the firm pursuant to NC DOA public records policy. The SWUC Program may charge the firm only for the cost of copying the record.

#### Separation of Functions:

The SWUC Program must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

#### Appeals Committee:

The Appeals Committee is a body of three or five individuals with knowledge of the certification standards and processes from the Program offices and administrative partners. A chairperson is identified to guide the panel in its exploration of the facts of the denial or decertification.

The SWUC Program shall appoint the appeals committee that will consist of a Chairperson and additional members from the Program Offices named herein with knowledge of the certification process and eligibility standards. The person who originally denied the application cannot be a member of the panel. The SWUC Program must ensure that the demographics of the hearing panel are representative of the parties appearing before the panel.

Appeals Process:

The appeal process provides the SWUC Program a standardized method for reviewing certification decisions that negatively impact the applicant or participant. The Appeal Hearing is an informal proceeding designed to provide the applicant or participant an objective opportunity to respond to the reasons for the denial of the firm's certification or the firm's decertification, and provide information and arguments to support their position.

The appeal process may be initiated by the applicant/participant upon receipt of a denial or decertification letter generated by the SWUC Program. The denial or decertification letters will explain to the applicant why the applicant was denied or decertified, provide appeal procedures, and a timeline to appeal.

The applicant or firm must inform the SWUC Program, *in writing*, of the intent to appeal the certification decision within fifteen calendar days from the date of the denial or decertification letter.

1. When the intent to appeal is received, the SWUC Program must give the firm an opportunity for an appeal, at which the firm may respond to the decertification or denial in person and provide information and arguments concerning why it should remain or be certified.
2. The SWUC Program representative shall contact the applicant to schedule a hearing. The hearing is conducted at a mutually agreed upon time of the applicant and the panel within 30 business days of receipt of notice of intent to appeal.
3. The appeal information is reviewed and a decision to uphold or overturn the original determination is rendered. If the decision of the panel is to overturn the recommendation, the decision is administratively final.
4. If the hearing panel upholds the original determination, the applicant may file a contested case with the NC Office of Administrative Hearings pursuant to N.C.G.S. 150B.
5. Intent to Appeal notices should be sent to the Department of Administration, Office for Historically Underutilized Businesses, 1336 Mail Service Center, Raleigh, NC 27699-1336.
6. Firms that are denied certification, or whose certification has been removed through the decertification process, must wait one full calendar year before a new application for certification will be accepted by the SWUC Program. Evaluations of

certification eligibility must be conducted on the basis of present circumstances. The SWUC Program must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by eligible individuals at some time in the past, if the firm currently meets the ownership and control standards.

## Section III.

### **Confidentiality and Cooperation**

#### *Disclosure of Private Information:*

The SWUC Program shall safeguard identifying information submitted from unlawful disclosure pursuant to N.C.G.S. 14-113.20; 14-113.8; 132-1.10; 143-64.60; and consistent with other federal and State laws.

#### *Cooperation:*

All participants in the Statewide Uniform Certification Program (including, but not limited to, entities, HUB/MWBE firms and applicants for certification, complainants and appellants, and contractors using HUB/MWBE firms to meet contract goals) are required to cooperate fully and promptly with the SWUC Program for certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to HUB/MWBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses HUB/MWBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

### **Program Management**

The SWUC Program is an independent function of the Office for Historically Underutilized Businesses developed to provide one-stop HUB/MWBE certification services to applicants and HUB/MWBE firms. The SWUC Program is charged with the responsibility of certifying firms and compiling and maintaining a single statewide database of certified HUB/MWBEs pursuant to G.S. 143-128.4. The database is intended to expand the use of HUB/MWBE firms by maintaining complete and current information on those businesses and the products and services they can provide to State Agencies, Institutions, and political subdivisions of North Carolina. The efficient administration of the SWUC Program is contingent upon the Department's commitment of and the SWUC Program's management of resources.

The Department of Administration and the HUB Office will make every effort possible to establish the required positions, to include a SWUC Program Manager, within the agency to implement and manage the Statewide Uniform Certification Program. The SWUC Program Manager will be responsible for clarifying issues regarding SWUC Program policy and procedures, coordinating the periodic meetings of the SWUC Appeals Committee and insuring the integrity of information contained in the SWUC database.

The SWUC Program Steering Committee will remain intact to discuss and resolve issues regarding the SWUC Program as they arise. Committee members will be responsible for attending periodic meetings and ensuring appropriate representation from their region is active in the management of the SWUC Program.

After initial development and implementation of the SWUC Program, membership on the Steering Committee will be reviewed to insure membership remains consistent with HUB/MWBE distribution and demographics. Membership on the steering committee is voluntary.

### **Program Offices and Administrative Partners**

The HUB Office works to increase the amount of goods and services acquired by the State from businesses owned and controlled by HUB/MWBEs. This is accomplished by providing technical assistance to HUB/MWBE firms; partnering with agency purchasing officers, and business and industry professionals to identify and eliminate barriers or constraints that may restrict HUB/MWBEs from doing business with the state or local agencies. Additionally, the HUB Office encourages purchasing officers and capital project managers within the state agencies, community college, municipalities, institutions, public schools and universities to identify prospective HUB/MWBE firms and service providers. The HUB Office and Program Offices across the state work collaboratively to achieve the aforementioned goals.

Program Offices are local government partners that provide management assistance to current and prospective HUB/MWBEs. They offer one-stop assistance to individuals by providing a wide variety of information and guidance to firms located within their markets. Program Offices offer invaluable services to the citizens of North Carolina as evidenced in the development of the SWUC Program, a cooperative effort of the private sector, the representative of the contracting community and federal, state and local government. Program Offices include:

- City of Greenville
- City of Greensboro
- City of Asheville
- City of Winston-Salem
- Raleigh-Durham International Airport
- City of Raleigh
- City of Durham

Administrative partners include municipalities, counties, state agencies, airports, and political subdivisions that administer and award contracts. SWUC Program participants are classified as certifying and non-certifying members.

*Certifying members* perform Historically Underutilized Business (HUB/MWBE) certifications on behalf of the State of North Carolina entities. Certification activities performed by a certifying member include, among others, processing HUB/MWBE applications, performing HUB/MWBE site interviews, making HUB/MWBE certification decisions, and investigating certification complaints and appeals. One of the following certifying agencies should be contacted for HUB/MWBE certification:

- Office for Historically Underutilized Businesses
- City of Durham

*Non-certifying members* adhere to all aspects of the SWUC Program, excluding the performance of HUB/MWBE certification activities. A non-certifying member agency accepts all firms certified as a HUB/MWBE by a certifying member. Accordingly, the HUB/MWBEs listed on the Directory are eligible to participate on all minority business contracts administered by a SWUC Program participant.

### **Compliance and Enforcement**

Any person who believes the North Carolina Department of Administration or its Office for Historically Underutilized Businesses has failed to comply with its obligations under these guidelines may file a contested case with the NC Office for Administrative Hearings pursuant to N.C.G.S. 150.

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## Statewide Uniform Certification Program

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Dear Applicant:

Thank you for your interest in the North Carolina Statewide Uniform Certification Program for Historically Underutilized Businesses (HUB) and Minority /Women Business Enterprises (M/WBE).

The Statewide Uniform Certification Program (SWUC Program) streamlines the certification process by reducing the number of public sector entities to which you, the business owner, must apply for certification. The SWUC Program is a "One-Stop " certification process that eliminates the need for HUB/MWBE firms to obtain certifications from multiple agencies within the State.

To be eligible for the Program, your business must meet the following general guidelines:

- a) The firm must be at least 51% owned by one or more eligible individuals.
- b) Eligible individuals include persons who are citizens or lawful permanent residents of the United States and who are ethnic minorities, women, disabled persons (as defined in N.C. G.S. 168A-3), and disadvantaged persons (as defined in 15 USC Part 637).
- c) The firm must be an independent business, and one or more of the eligible must control its management and daily operations. Only existing for-profit businesses may participate.

### City of Durham

The City of Durham administers a Equal Business Opportunity Program for small firms, deemed socially and economically disadvantaged, that desire to do business in the City's Contracting Marketplace. For this reason, the City of Durham will augment the basic SWUC certification with additional eligibility requirements as required by municipal authority. Please contact the City of Durham's Equal Opportunity Equity Assurance Department Office at (919) 560-4180 for additional information.

### City of Charlotte

The City of Charlotte administers a court-ordered race and gender-neutral program that does not consider race or ethnicity as conditions of certification. For this reason, the City of Charlotte's Small Business Opportunity (SBO) Program is excluded from participation in the SWUC Program. If you live in the Charlotte-Metropolitan Statistical Area (MSA), which consists of Mecklenburg, Gaston, Cabarrus, Union, and Anson counties in NC; and York, SC, and are interested in obtaining information about the SBO Program, contact the Small Business Opportunity Program Office at (704) 336-2473.

In order to avoid unnecessary delays, please complete all portions of the application and include all documents listed on the Supporting Documents Checklist. Additional documentation may be requested if it is considered necessary to make a certification determination. Incomplete applications, e.g., those without all the required documents, will not be evaluated until such documents are submitted. We recommend keeping a copy of all submitted documents for your records.

If you have questions or need assistance completing the application process, please contact the HUB Office at (919) 807-2330. We look forward to serving your certification needs.

Office for Historically Underutilized Businesses  
Statewide Uniform Certification Program

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Statewide Uniform Certification Program

**Application for Statewide Uniform Certification**

Thank you for your interest in becoming certified with the Statewide Uniform Certification (SWUC) Program. By completing this application, you are requesting certification as a Historically Underutilized Business (HUB/MWBE), which includes such eligible individuals as ethnic minorities, women, disabled persons, and socially and economically disadvantaged individuals. The certification granted through this Program is accepted by all state departments, local government entities, colleges and universities, and political subdivisions.

In order to qualify for inclusion in the Statewide Uniform Certification Program as a HUB/MWBE, your firm must be at least 51% owned and controlled by eligible individuals that are citizens or permanent residents of the United States. Your firm must be currently operational and exist for profit.

The following information is submitted to determine the eligibility status of a firm to participate as a HUB/MWBE in accordance with N.C.G.S. 143-128.4.

Section 1. General Information	
Name of Firm	
Contact Information	
Contact Name	Title
Business Phone #	Cell Phone #
Fax #	Pager #
Website	Email Address
Addresses	
Physical (no post office boxes)	Mailing (only if different from physical address)
County	

Section 2. Company's Information	
Firm's Identification	
Legal Name of Firm	
Unique Identifier for firm (Select One)  <input type="checkbox"/> FEIN _____ <input type="checkbox"/> SSN _____ <input type="checkbox"/> DUNS _____	Method of Acquisition  <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Inherited business <input type="checkbox"/> Other
Firm's Profile	
Business structure  <input type="checkbox"/> Corporation (including PLLC) <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership (including LLP) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Joint Venture	Date Firm was established  Date Firm was established
Firm's Relationship with Other Businesses	
Is your firm co-located at any of its business locations with any other business, organization, or entity? If yes, who?	
Does your firm, at any of its business locations, share a phone number, p.o. box, office space, yard, warehouse, facilities, equipment or office staff with any other business, organization, or entity? If yes, who?	
Do any of your immediate family members own or manage another company? If yes, explain.	
Has any other firm had an ownership interest in your firm at present or at any time in the past?	



At present, or at any time in the past, has your firm:

- Been a subsidiary of another firm? Y or N
- Consisted of a partnership in which one or more of the partners are other firms? Y or N
- Owned a percentage of another firm? Y or N
- Had any subsidiaries? Y or N
- Operated under a franchise agreement? Y or N

**Section 3. Ownership Information** (*Ownership percentages must total 100*)  
 If there are more than two owners, attach a separate sheet.

**Owner #1**

Name		Title		Contact Phone #
Ethnicity: <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Caucasian American <input type="checkbox"/> Native American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other: _____		Gender <input type="checkbox"/> Male <input type="checkbox"/> Female		Disabled <input type="checkbox"/> Yes <input type="checkbox"/> No
				Are you a U.S. Citizen or permanent resident alien of the U.S.? <input type="checkbox"/> Yes <input type="checkbox"/> No
Percentage of ownership	Date applicant acquired ownership	Initial Investment to Acquire Ownership <input type="checkbox"/> Cash: \$ _____ <input type="checkbox"/> Real Estate: \$ _____ <input type="checkbox"/> Equipment: \$ _____ <input type="checkbox"/> Expertise: \$ _____		
# of shares owned				

Are you related by blood or marriage to any of the other owners? If yes, who?

Do you own any other businesses?

Do you perform a supervisory or management function for another firm?

Do you work for any company, organization or entity that has a relationship with this firm?

Identify the daily management functions for which you are responsible by placing a check mark in the appropriate box below:

<input type="checkbox"/> Financial Decision making	<input type="checkbox"/> Office Management
<input type="checkbox"/> Hiring/Firing of management personnel	<input type="checkbox"/> Field/Production Operations/Supervisor
<input type="checkbox"/> Estimating and Bidding	<input type="checkbox"/> Purchasing of Major Equipment
<input type="checkbox"/> Marketing / Sales	<input type="checkbox"/> Negotiating and Contract Execution
<input type="checkbox"/> Authorized to make Financial Transactions	<input type="checkbox"/> Authorized to Sign Company Checks (For any purpose)

**Owner #2**

Name		Title		Contact Phone #
Ethnicity: <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Caucasian American <input type="checkbox"/> Native American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other: _____		Gender <input type="checkbox"/> Male <input type="checkbox"/> Female		Disabled <input type="checkbox"/> Yes <input type="checkbox"/> No
				Are you a U.S. Citizen or permanent resident alien of the U.S.? <input type="checkbox"/> Yes <input type="checkbox"/> No
Percentage of ownership	Date applicant acquired ownership	Initial Investment to Acquire Ownership <input type="checkbox"/> Cash: \$ _____ <input type="checkbox"/> Real Estate: \$ _____ <input type="checkbox"/> Equipment: \$ _____ <input type="checkbox"/> Expertise: \$ _____		
# of shares owned				

Are you related by blood or marriage to any of the other owners? If yes, who?

Do you own any other businesses?

Do you perform a supervisory or management function for another firm?

Do you work for any company, organization or entity that has a relationship with this firm?

Identify the daily management functions for which you are responsible by placing a check mark in the appropriate box below:

<input type="checkbox"/> Financial Decision making	<input type="checkbox"/> Office Management
<input type="checkbox"/> Hiring/Firing of management personnel	<input type="checkbox"/> Field/Production Operations/Supervisor
<input type="checkbox"/> Estimating and Bidding	<input type="checkbox"/> Purchasing of Major Equipment
<input type="checkbox"/> Marketing / Sales	<input type="checkbox"/> Negotiating and Contract Execution
<input type="checkbox"/> Authorized to make Financial Transactions	<input type="checkbox"/> Authorized to Sign Company Checks (For any purpose)

List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

**Section 4. Control**

**A. Officers and Board of Directors**

Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
1. Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
2. Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

3. Do any of the persons listed above perform a management or supervisory function for any other business? [ ] Yes [ ] No If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

4. Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? [ ] Yes [ ] No If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**B. Daily Management Functions )**

Identify your firm's management personnel (non-owners) who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			

Historically Underutilized Business Program  
 Statewide Uniform Certification  
 Program Plan

(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			
(11) Does your firm rely on any other firm for management functions or employee payroll? [ ] yes [ ] no If yes, explain.				

C. Professional Licenses			
List current licenses /permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.)			
Name of License or Permit Holder	Type of License/Permit	Expiration Date	License Number and State
a)			
b)			
c)			

**Section 5. References**

Please provide two <b>business</b> references	Name: _____	Name: _____
	Address: _____ _____	Address: _____ _____
	Phone: _____	Phone: _____

**Section 6. Other Certifications**

Please check the agencies or certifications currently held by your firm. <ul style="list-style-type: none"> <li><input type="checkbox"/> DBE (Any State Departments of Transportation)</li> <li><input type="checkbox"/> A National Affiliate of WBENC</li> <li><input type="checkbox"/> A National Affiliate of NMSDC</li> <li><input type="checkbox"/> A Local M/WBE Certifying Agency</li> </ul> Agency: _____ Agency Phone: (     ) _____ - _____	What is the date of your most recent site visit? ____ / ____ / ____ Performed by (Agency): _____ Contact Name: _____ Agency Phone: (     ) ____ - _____
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<b>Section 7 . Good and Services</b>		
<i>Instructions:</i> Please enter a detailed description of the work you perform or the goods you provide.		
<i>Instructions:</i> From the codes table, please enter the code(s) that correspond to the primary type(s) of work you perform, or primary goods you provide. The codes table may be accessed on line or at your local Program Office.		
<i>Instructions:</i> From the list below, please indicate your primary industry category.		
<input type="checkbox"/> Building Construction and Associated Trades	<input type="checkbox"/> Road, Street, or Bridge Construction	<input type="checkbox"/> Professional, Scientific, or Technical Services
<input type="checkbox"/> Wholesaler/Retailer	<input type="checkbox"/> Food Services	<input type="checkbox"/> Janitorial or Landscaping Services
<input type="checkbox"/> Professional Services	<input type="checkbox"/> Hauling	<input type="checkbox"/> Information Services
<input type="checkbox"/> Finance and Insurance Services	<input type="checkbox"/> Real Estate Services	<input type="checkbox"/> Administrative and Support Services
<input type="checkbox"/> Waste Management and Remediation Services	<input type="checkbox"/> Educational Services	<input type="checkbox"/> Health Care and Social Assistance Services
<input type="checkbox"/> Arts, Entertainment, or Recreation Services	<input type="checkbox"/> Automotive Services	<input type="checkbox"/> Other: _____



## Statewide Uniform Certification Program

### Supporting Documents Checklist

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In order to complete your application for HUB/MWBE certification, you must attach copies of all of the following documents as they apply to you and your firm. Failure to submit a complete and accurate application could result in your application being returned to you with no action taken.

*Instructions:* Please check off the documents included with the application.

#### **All Applicants**

- Work experience resumes for all owners that include places of ownership/employment with corresponding dates
- Proof of citizenship or Permanent Residence (Birth Certificate, Passport, Voter's Registration Card, Green Card, Military ID, or Driver's License)
- Proof of Ethnicity (Passport, Green Card, Birth Certificate) If any of these documents do not prove ethnicity, you will need to complete the Ethnicity Affidavit.
- Copies of Professional Licenses, if required
- Schedule of Salaries paid to all officers, managers, owners, or directors of the firm
- Copies of signed leases for office and/or storage space
- List of equipment (leased or owned) along with signed lease agreements, titles/proof of ownership of equipment needed to operate your business)
- Documented proof of contributions used to acquire ownership for each owner
- Statement prepared and signed by your banking institution listing names of all persons who have signature authority on your business account
- Two letters of reference (with contact information, nature and duration of relationship, and statement of firm's capacity and ability to perform)
- Proof of other certifications

#### **Corporation or LLC or Franchise**

- Official Articles of Incorporation (signed by State official)
- Both sides of all Corporate Certificates and Stock
- Assumed Name Certificate
- Transfer ledger
- Shareholders Agreement
- Minutes of 1<sup>st</sup> and most recent stockholder and Board of Directors meetings
- Corporate bylaws and any amendments
- Articles of Organization (LLC)
- Operating Agreement (LLC)
- Franchise Agreement (Franchise)

#### **Partnership or Joint Venture**

- Partnership Agreement
- Joint Venture Agreement

#### **City of Durham Applicants (only)**

- Personal Net Worth Statement
- Affidavit of Social Disadvantage
- Copies of Federal Tax Returns for most recent three-year period (if new business, Financial Statement)

**To avoid delay in processing your certification, please check your application and supporting documents to ensure all required information is included.**

**Affidavit of Certification**

A material or false statement or omission made in connection with the application is sufficient cause for denial of certification, revocation of a prior approval, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable federal and state laws.

I \_\_\_\_\_(full name), swear or affirm under penalty of law that I am \_\_\_\_\_(title) of applicant firm \_\_\_\_\_(firm name) and that I have read and understand all of the questions in the application and that all of the foregoing information and statements submitted in the application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions in are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities, and pertinent history of the named firm as well as the ownership, control, affiliations thereof.

I recognize that the information submitted in the application is for the purpose of obtaining certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of the books records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

I agree to provide written notice to the Department of Administration, Office for Historically Underutilized Businesses or Statewide Uniform Certification (SWUC) Program of any material change in the information contained in the original application within 30 days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in the application will be grounds for terminating any contract or subcontract which may be awarded as a result of this certification; denial or revocation of certification; and for initiating action under federal and/or state laws concerning false statement, fraud or other applicable offenses.

I declare under penalty of perjury that the foregoing is true and correct.

Signature of owner, officer, or partner \_\_\_\_\_ Date (mm/dd/yy) \_\_\_\_\_

I declare under penalty of perjury that the information provided in the application and supporting documents relating to my disadvantaged status and me is true and correct.

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

NOTARY CERTIFICATE	
STATE OF _____	
COUNTY OF _____	} SS:
Subscribed and sworn to before me the _____ day of _____, 20 _____.	
Signature of Notary Public _____	Printed/typed name of Notary Public _____
County of residence _____	Date commission expires _____



State Wide Uniform Certification Program

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### Ethnicity Affidavit

**Note:** This form must be signed and notarized for each owner upon which eligibility is relied.

I hereby certify under penalty of perjury that I am a member of one of the following groups:

- African American     Hispanic     Native American     Caucasian     Asian Pacific     Asian Indian
- Other Ethnic Group (*Explain*) \_\_\_\_\_

And that I have held myself out as a member of that group and have acted as a member of that group.

I further certify that I am an owner of the company seeking HUB/MWBE certification and that I qualify due to the effects of discrimination based upon my (*check all that apply*)

- Race                       Ethnicity                       Gender                       Disability
- Social and Economic Disadvantage:     Other: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<p>NOTARY CERTIFICATE</p> <p>STATE OF _____</p> <p>COUNTY OF _____ } SS:</p> <p>Subscribed and sworn to before me the _____ day of _____, 20 _____.</p> <p>Signature of Notary Public _____</p> <p>County of residence _____</p> <p>Date commission expires _____</p>
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State Wide Uniform Certification Program

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**Eligibility Complaint Form**

I have reason to believe that \_\_\_\_\_ (*enter name of firm*) does not meet the eligibility standards established for the Statewide Uniform Certification Program for a Historically Underutilized Business. I believe this firm is ineligible for the following reasons:

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I understand that I must have this form notarized before submitting it to your office.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATE

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

} SS:

Subscribed and sworn to before me the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Signature of Notary Public \_\_\_\_\_

County of residence \_\_\_\_\_

Date commission expires \_\_\_\_\_





Statewide Uniform Certification Program

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**Disability Affidavit**

The Disability Affidavit is used to certify "Disability" as the basis of eligibility for an individual to participate in the Historically Underutilized Business (HUB) Program administered by the North Carolina Department of Administration.

According to G.S. 168A-3, a person with a disability is any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. The term:

- e. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.
- f. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- g. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.
- h. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

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**Certification**

I certify that \_\_\_\_\_ (Name of Applicant) meets the definition of "a person with a disability" as defined in G.S. 168A-3.

I further certify that I am the applicant's treating physician. I am licensed to practice medicine in the State of North Carolina.

I understand that the State of North Carolina, Department of Administration is relying upon this certification as part of its review and approval process, and that should it be determined that this certification is materially false or incomplete or incorrect or includes incorrect, false or misleading, information, appropriate enforcement action will be taken.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physical Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number



Statewide Uniform Certification Program

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**Affidavit of No Change**

The is to certify that as an owner, I have full knowledge of the operation of my firm and that to the best of my knowledge and belief, the information previously submitted to the North Carolina Statewide Uniform Certification Program to support my firm's certification as a Historically Underutilized Business, which includes Minority, Women, Disabled, and/or Disadvantaged Business Enterprise, as the case may be, is unchanged.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Mailing Address (include Street, City, State, Zip Code)

\_\_\_\_\_  
Physical Address (if different from Mailing Address)

\_\_\_\_\_  
Email address

( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_  
Office Phone

( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Owner

NOTARY CERTIFICATE	
STATE OF _____	
COUNTY OF _____	} SS:
Subscribed and sworn to before me the _____ day of _____, 20 _____.	
Signature of Notary Public _____	
County of residence _____	
Date commission expires _____	

