

# City of ASHEVILLE



## Minority Business Plan

**Office of Economic Development**

**Minority Business Program**

**City of Asheville**

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**MINORITY BUSINESS PLAN**

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## **MINORITY BUSINESS PROGRAM**

### **I. DECLARATION OF POLICY**

It is the policy of the City of Asheville to: (1) provide minorities equal opportunity to participate in all aspects of City contracting and purchasing programs, including but not limited to, participation in procurement, professional and construction contracts; (2) prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, disability, familial status, or national origin, and to conduct its contracting and purchasing programs so as to prevent any discrimination and to resolve all claims of such discrimination.

The City of Asheville will actively seek to identify minority businesses and offer them an opportunity to participate as providers of goods and services to the City. It is the intent of this plan to widen opportunities for participation, increase competition and to ensure the proper and diligent use of public funds.

This policy is not intended in any manner to require that contracts be awarded to anyone other than the lowest responsible bidder, not to supersede the requirement of any federal, state or local laws and rules, regulations and policies adopted pursuant thereto.

### **II. PLAN OBJECTIVES**

The objectives of the plan are:

1. To provide minority businesses equal opportunity for participating in City construction, professional and procurement contracting.
2. To increase the City's awareness of available minority business vendors and the available product lines and services they provide through the development of a minority business list.
3. To sponsor workshops and conferences which will assist minority businesses in becoming actively involved in procurement and contracting opportunities.
4. To provide clear and concise procedures for monitoring Plan compliance and to provide procedures for the resolution of complaints against businesses holding construction, procurement or service contracts with the City.

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### III. DEFINITIONS

**Bidder:** Any person seeking to be awarded a public contract or subcontract.

**City:** City of Asheville, North Carolina.

**Contractor:** Any person who has entered into a contract with the City.

**Emergency Situations:** A situation that poses a serious and immediate threat to the health and safety of the people or their property within the City of Asheville as declared by the governing body.

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

**Minority Business Program Coordinator:** A person established to manage and implement the Minority Business Plan and serve as a liaison between the minority businesses and contracting personnel.

**Minority Business:** A business as outlined in N.C. General Statute 143-128.2(g)(1) of the State's definition of minority business or as it may be amended from time to time. This definition includes a business which is at least 51% owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least 51% of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

**Minority Person:** A person as outlined in N.C. General Statute 143-128.2(g)(2) of the State's definition of minority business or as it may be amended from time to time. These persons include Black, Hispanic, Asian American, American Indian and Female as outlined in this Plan.

**Person:** Includes individuals, corporations, partnerships, associations, legal representatives, trustees, trustees in bankruptcy or receivers.

**Procurement:** Includes materials, supplies, apparatus, and equipment.

**Restructured Firms:** A previously non-minority owned firm which through transfer of stock or other change results in minority ownership.

**Subcontractor:** Any person, who has contracted to furnish labor or materials to or who has performed labor for a contractor or another subcontractor in connection with a public construction contract.

**Verifiable Goal:** The Good Faith Efforts to recruit minority business participation as more specifically set forth on **page 12** of this Plan.

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### IV. ADMINISTRATION

#### A. Establishment of the Minority Business Plan

##### 1. Authority

The City Manager is hereby authorized to take all usual and legal administrative actions necessary to implement the Plan. Notwithstanding any specific assignment contained in the Plan, the ultimate responsibility for its administration is assigned to the City Manager.

This Plan shall apply to all construction, procurement and professional service contracts administered by the City. All agencies funded in whole or part by the City should be encouraged to adhere to the policies set forth herein. There shall be a brief statement recognizing the City's commitment to the Minority Business Plan included in all City written contracts. The provisions of this program take precedence over all departmental plans or procedures in conflict herewith, except for specific requirements mandated by state law or the terms of agreements enforced between the City and the federal government or the State of North Carolina that require different procedures than those described in this Plan.

This Plan however, shall not apply in emergency situations (**See definitions, Page 2**) when a contract is awarded pursuant to non-competitive solicitation. The appropriate department head shall as soon as practical after the emergency non-competitive award, notify the Minority Business Program Coordinator. The Minority Business Program Coordinator shall calculate the percentage of City contracts awarded under this emergency exception to the Plan as well as under **Section V. Section B.7**, and include same in the Annual Report hereinafter referenced.

##### 2. Minority Business Program Coordinator

The City Manager will designate the Minority Business Program Coordinator as responsible for supervising, implementing, and managing this Plan. The City shall provide adequate staffing to ensure meaningful, certain and effective implementation of the Minority Business Plan.

### B. IMPLEMENTATION

##### 1. Monitoring

The City will have a centralized database to monitor bidders selected for contracts, purchase orders and check orders. The Minority Business Program Coordinator shall be responsible for monitoring Plan compliance.

##### 2. Evaluation

The City shall establish a system to provide the Minority Business Program Coordinator information needed from City departments throughout the year to evaluate the program and to prepare the Annual Report. The Coordinator of the Minority Business Program will upon receiving approval of the City Manager,

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attend department head and management team meetings to explain what is needed to improve the program.

The Minority Business Program Coordinator shall obtain from the City departments a quarterly report listing all contracts originating within the City along with the dollar amounts. If required, the Minority Business Program Coordinator, in consultation with department heads, will determine reasons for achievement or non-achievement in meeting minority business goals. These reports will be used by the Minority Business Program Coordinator to prepare the Annual Report, as described below. At least annually the Minority Business Program Coordinator will, upon receiving approval of the City Manager, attend a department head meeting to explain the information needed in the quarterly report.

To continuously monitor the effectiveness of the Minority Business Plan, Minority Business Program Coordinator shall prepare an annual report, which shall include but not be limited to: number of minority businesses, percentage of minority businesses contracting with the City either as a prime contractor or as a subcontractor, percentage of overall reported contracts awarded to minority businesses, percentage of contractors complying with good faith efforts, percentage of goals achieved and goals waived. The Annual Report shall be presented to City Council along with any recommendations to increase the effectiveness of the Minority Business Plan.

### 3. **Workshops & Training**

The Minority Business Program Coordinator with the assistance of the appropriate City departments shall conduct seminars, workshops and roundtable discussions to acquaint small businesses with City contracting activities and opportunities. Topics shall include but not be limited to: the process used by the City in preparing bids and quotes and information on accessing small business assistance programs. Additional classes may be provided with the assistance of the appropriate department on a project-by-project basis through structured seminars, classes, and individual assistance provided to minority businesses requesting this type of support.

Such workshops shall include a session on cultural diversity and customer service. The City Manager shall require appropriate department heads to attend such workshops as well, which will benefit from leadership by elected officials and management.

The Minority Business Program Coordinator shall conduct information sessions on the Minority Business Plan for City department heads and key contracting staff. Such sessions shall include but not be limited to Internal Compliance, **N. C. Gen. Stat. 143-128.2** (Minority business participation goals), **N. C. Gen. Stat. 143-128.3** (Minority business participation administration) and **143-131 (b)** (Minority business participation with informal contracting), and City Resolutions.

The City shall require for all of those staff members who are directly involved in the procurement and contracting process that good faith efforts towards goal attainment be a consideration in personnel evaluations.

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### 4. Race and Gender Neutral Measures

To show its commitment to the Minority Business Plan and the declaration of policy set forth herein, the City may, where consistent with Federal, State and local laws:

- a. Waive bonding requirements;
- b. Provide for alternative bids by considering dividing formal (large) projects/purchases into smaller contracts;
- c. Provide department flow charts with explanations of the major steps in the contracting and procurement process;
- d. Require the Minority Business Program Coordinator to provide, to the general public, annual summaries of contracting and procurement opportunities with the City from information received from departments following budget approval.
- e. Require the Minority Business Program Coordinator to make an easily accessible location available where specifications, bid documents, RFPs and material relating to current and upcoming projects may be reviewed.
- f. Require the City departments to provide project information on internet websites.
- g. City Purchasing to provide listings of commonly purchased items.

### 5. Other Measures

The City shall:

- a. Ascertain that the Community Reinvestment Act (**CRA**) ratings of banks are satisfactory prior to conducting business with them, and further make an assessment of their lending to minority businesses.
- b. Subject to the approval of the Asheville City Council, if feasible, establish a community based loan pool in conjunction with local banking institutions by funding its administration.
- c. Inform the Minority Business Program Coordinator of privilege license applicants claiming minority status.
- d. Inform the Minority Business Program Coordinator of contracts awaiting execution.
- e. Share any letters of complaint or recommendation regarding certified minority businesses with the Minority Business Program Coordinator.

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### 6. Duration

The duration of the City's Minority Business Plan shall be twenty years from the date of its adoption unless one of the reviews referred to hereinafter reveal that past discrimination has been removed.

The Minority Business Program Coordinator shall recommend that the Minority Business Plan be reviewed so as to reflect changes in the market area, update minority business availability and to reassess goals.

The City shall in the year 2013 conduct a comprehensive Disparity Study to determine whether disparity continues to exist and revise the duration of the Minority Business Plan accordingly.

## V. PROCEDURES TO ENSURE EQUAL OPPORTUNITY FOR MINORITY BUSINESSES TO COMPETE FOR PROJECTS

### A. Construction Projects

The City of Asheville shall provide equal opportunity for minority businesses to compete for construction projects. Those actions shall include those matters hereinafter set out.

1. The Minority Business Program shall provide a list of certified minority businesses included but not limited to the bidding area, using information obtained from the Office of Historically Underutilized Businesses' list of certified firms ([www.doa.state.nc.us/hub/](http://www.doa.state.nc.us/hub/)). The list shall describe the capabilities of certified minority businesses depending upon the scope of the project involved.
2. For each project put out for bids, notice of the contract shall be transmitted to the appropriate minority businesses on the above list and documentation of that notice provided to the Minority Business Program Coordinator.
3. For formal building contracts put out for bids, the department shall hold a pre-bid conference to orient contractors and subcontractors on the steps for minority business participation and good faith efforts as it is specified in this Plan as well as bid procedures and regulations. The Minority Business Program Coordinator will be notified prior to the scheduling of the pre-bid conference to be present to review the Minority Business compliance procedures of the Plan with contractors.
4. A period of at least ten (10) days shall lapse between the date on which the advertisement appears and the date of the opening of formal bids (**construction or repair \$300,000 or more and purchase of apparatus, supplies, materials, or equipment \$90,000 or more**) in accordance with N.C. Gen. Stat. 143-28.2(e)(3) and 143-129(b). Exceptions may be made in cases of special emergency (See definition, Page 2) involving the health and safety of the people or their property.
5. For any contract put out for bids, the contractor shall:
  - a. Notify those certified minority businesses appearing on the list maintained pursuant to **paragraph 1 of this section** of the portion of the project which will be sub-contracted by the single prime or separate specification contractor and solicit bids from those minority businesses. Additional provisions exist

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with minority participation goals and outreach as specified in **N.C. Gen. Stat. 143-128.2** for building construction.

- b. Submit a listing of the minority business participation that will be utilized on the appropriate form (depending on project, Minority Business Program Coordinator will provide the forms for completion) with the bid in order for the bid to be considered responsive. Bidders must indicate the total dollar value of minority business participation for the contract at the time of the bid opening. Blank forms will not be deemed to represent zero participation.  
***Bidders must either submit all additional verification of the good faith effort made to increase minority business participation with their bid or they may wait until the lowest bidder has been established and only that bidder would be responsible for providing the remaining good faith efforts documentation within 72 business hours following the bid opening.***
  - c. Submit bid records to the Minority Business Program Coordinator with respect to:
    - (1) Prior to the pre-bid conference, provide a listing of those elements of the project for which subcontracts will be let; potential subcontractors notified of the project; and the number of those potential subcontractors that are certified minority businesses appearing on the list maintained pursuant to paragraph 1 above.
    - (2) Following the bid opening, provide a list of those subcontractors that bid or otherwise respond to notice of the project and the number of these that appear on the list of certified minority businesses maintained pursuant to paragraph 1 above.
    - (3) Following the award of contracts, provide a list of those subcontractors awarded contracts as part of the project and the number and identity of those that appear on the list of certified minority businesses maintained pursuant to paragraph 1 above.
  - d. These policies shall be a part of the specifications and guidelines for any such project, and non-compliance by any bidder shall be grounds for declaring the bid non-responsive.
6. The successful bidder shall:
- a. Maintain subcontractor payment information, which includes date(s) and amount(s) of payment(s) and shall submit same to the Minority Business Program Coordinator upon request for quarterly and annual reporting purposes.
  - b. Submit proof of payment to subcontractors as part of the payment request.
  - c. Submit to the Minority Business Program Coordinator the appropriate contract administrator requests for approval of subcontractor changes during projects.
7. For construction projects not requiring formal bids in accordance with state law the City shall, in addition to its normal procedures, include on its bid list for direct solicitation the minority businesses listed for the type of construction needed.

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The non-availability or limited availability of certified minority businesses in a specific type of construction does not limit the maximum number of non-minority businesses, which may be solicited.

8. For construction contracts that require formal bids in accordance with State law, contractors who propose to perform the total contract with their own work force and without the use of subcontractors shall issue a Statement of Intent to Perform Work Without Subcontracting along with supporting documentation sufficient for the City to certify that:

it is a normal business practice of the contractor to perform all elements of the contract with its own work force without the use of subcontractors,

and

the contractor in fact has demonstrated its capabilities to perform all elements of the contract with its own work force without the use of subcontracts.

Such contractors will not be required to document good faith efforts to subcontract with minority businesses. They will be required to document good faith efforts to provide equal opportunity for minority businesses to participate in significant material supplier opportunities available under the prime contract.

9. The City will meet its payment obligations in accordance with established City policy and State law. Nevertheless, payments for construction contracts will be made no later than thirty (30) days after receipt of an approved invoice provided the construction work has been accepted by the City.

### B. Procurement Contracts

The City of Asheville shall provide equal opportunity for minority businesses to compete for contracts for the purchase of apparatus, supplies, materials or equipment. Those actions shall include those matters hereinafter set out.

1. For procurement contract bid process, the City shall include in the contract specifications instructions and procedures to define minority business compliance requirements.
2. The Minority Business Program Coordinator shall provide a list of certified minority businesses identical to the list described in **Article V, Section A.1.** of this plan.
3. The City Purchasing Division will send bid information to the appropriate certified minority businesses on the above list.
4. All documents related to the contract shall be available at the Minority Business Program office.
5. For procurement contracts the information in bid documents shall state the policy expressed in this Plan as well as bid procedures and regulations. Though not required, in those instances where a pre-bid conference is held, certified minority businesses in applicable trades on the list obtained and maintained as provided

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herein shall be notified of and invited to pre-bid conferences. The City Purchasing Division shall forward to the Minority Business Program Coordinator a list of bidders contacted, provide bid summaries and indicate bidder selected.

6. When a bidder is unable to perform successfully on a procurement contract, certified minority businesses shall be provided an equal opportunity to replace the non-performing bidder.
7. A period of at least ten (10) full days will be given between advertising notice and receiving formal bids to provide minority businesses adequate time to obtain bonding and any needed technical assistance. Exceptions may be made in cases of special emergency as declared by the governing body, involving the health and safety of the people or their property (**See definition, Page 2**).
8. The City will meet their payment obligations in accordance with established City policy and State law. Nevertheless, payments for purchase of apparatus, supplies, materials or equipment will be made no later than thirty (30) days after receipt of an approved invoice provided the apparatus, supply, material or equipment has been accepted by the City.
9. The Purchasing Department/Division for the City shall maintain a list of bidders contacted indicating the successful bidder to the Minority Business Program Coordinator.

### C. Professional Services Projects

Appropriate City departments shall pursuant to approval of the annual budget, forward to the Minority Business Program Coordinator a complete description of all projects planned for the year, which would require hiring consultants or the services of professionals. The Minority Business Program shall supply the departments with current listings profiling those certified minority businesses, which specialize in areas of service, needed by the City. For those projects, which are developed after the annual budget is approved; a complete description of such projects shall be forwarded to the Minority Business Program. Monitoring of program compliance shall be conducted by the Minority Business Program Coordinator.

The soliciting departments shall include in the contract specifications, instructions, and procedures to define minority business compliance requirements as defined in **Article V., Sections A and B for Construction and Procurement contracts**. Though not required, in those instances where a pre-submittal meeting is conducted, the Minority Business Program shall review the purpose, procedures and plans for meeting minority business goals.

### D. Responsibilities of Minority Business Firms

Minority business firms are responsible for self-promotion as it pertains to consideration in the procurement and contracting process. In addition to self-promotion, the following steps are strongly recommended for minority business firms considering contractual relations with the City of Asheville:

1. Submit information to the contract recipients to identify firm status as that of a minority business.

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2. Firms should become certified as minority businesses through the Office of Historically Underutilized Businesses ([www.doa.state.nc.us/hub/](http://www.doa.state.nc.us/hub/)) as the City of Asheville will be accepting their certification for the City's Minority Business Program.
3. Contact federal, state and local minority business liaison offices to obtain information on potential jobs.
4. Provide capability statements to state, federal and local agencies stating types of work performed by the firm, size of job that the firm could handle, bonding information and any special skills.
5. Make every effort to establish contacts and relationships with contractors for potential future business, including attending pre-bid conferences and subscribing to industry and trade journals.
6. Respond promptly to solicitation requests.
7. Notify the Minority Business Program Coordinator immediately of change in ownership of minority business.
8. Document all contacts and communications made above so as to be able to assist the Minority Business Program Coordinator in determining whether a complaint lodged by a minority business firm against a bidder for failure to use good faith efforts can be validated by the complaining minority business firm.
10. Maintain all relevant professional licenses, professional certifications, and other such documentation that may be required to be in the name of the minority owner or of the business in North Carolina to advertise themselves for services.

## VI. CERTIFICATION OF MINORITY BUSINESS FIRMS DESIRING TO PARTICIPATE IN CITY PROCUREMENT, CONSTRUCTION AND PROFESSIONAL SERVICES

### A. Certification of Minority Business Firms

The City of Asheville shall accept certification of minority owned firms as prescribed by the State of North Carolina's Office of Historically Underutilized Businesses, a division of the Department of Administration ([www.doa.state.nc.us/hub/](http://www.doa.state.nc.us/hub/)) as prescribed in **Article V, Section A. 1**. Minority businesses will request designation as a HUB (or historically underutilized business) through the Vendor Link system administered through the Division of Purchase and Contract.

### B. General Provisions for Overall Voluntary Construction, Procurement and Service Projects Verifiable Goals

1. Separate verifiable goals for participation in awarded contracts by minority businesses will be set for the City's construction projects, procurement projects and professional/consulting and other services projects.

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- 2. Goals shall be set at 150% above availability or on a project-by-project basis by the Minority Business Program Coordinator when provided sufficient time following notification of projects. The Minority Business Program Coordinator shall waive goals prior to advertisement when there exists no availability. A minority business shall be counted only once in evaluating goals.
- 3. The annual verifiable goals for minority business participation in construction projects, procurement and professional services projects are as follows:

**Minority Participation Goals:**

<b><u>CONSTRUCTION</u></b>	<b><u>CITY</u></b>
African Americans	3%
Hispanic, Asian & Native Americans	1%
Women	8%
<b><u>PROCUREMENT</u></b>	<b><u>CITY</u></b>
African Americans	5%
Hispanic, Asian & Native Americans	2%
Women	18%
<b><u>PROFESSIONAL SERVICES</u></b>	<b><u>CITY</u></b>
African Americans	7%
Hispanic, Asian & Native Americans	7%
Women	37%

**VII. ENFORCEMENT**

**A. Good Faith Efforts**

- 1. Determinations of Good Faith Efforts shall be made by the Minority Business Program Coordinator and include but are not limited to the following guidelines:
  - a. Whether the prime bidder attended any pre-solicitation or pre-bid conferences that were scheduled by the City;
  - b. Whether the prime bidder advertised at least 10 days prior to bid opening in general or construction related publications, and minority-based publications or newspapers;
  - c. Whether the prime bidder provided written notice to a reasonable number of specific minority businesses that their interest in the contract was being solicited in sufficient time to allow the minority businesses to participate effectively;
  - d. Whether the prime bidder followed up initial solicitations of interest by contacting minority businesses to determine with certainty whether the minority businesses were interested;

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- e. Whether the prime bidder selected portions of the work to be performed by minority businesses in order to increase the likelihood of meeting minority business goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate minority business participation);
  - f. Whether the prime bidder provided interested minority businesses with adequate information about the plans, specifications and requirements of the contract;
  - g. Whether the prime bidder negotiated in good faith with interested minority businesses, not rejecting minority businesses as unqualified without sound reasons based on a thorough investigation of their capabilities;
  - h. Whether the prime bidder made efforts to assist interested minority businesses in obtaining bonding, lines of credit or insurance required by the City or bidder; and
  - i. Whether the prime bidder effectively used the services of the City's minority business program or other minority community organizations, minority contractor's groups, local, state and federal minority business assistance offices and other organizations that provide assistance in the recruitment and placement of minority businesses;
  - j. Whether the prime bidder has retained the names of the minority businesses whom the bidder contacted or who have contacted the bidder, including the names, address, and telephone number of all such contacts; a description of efforts made to subcontract, a description of the outcome and a statement giving the reasons why the bidder and the minority business did not succeed in reaching a subcontracting or joint venture agreement;
  - k. Whether the prime bidder attempted to recruit minority businesses from at least the same geographic area from which the bidder attempted to recruit other subcontractors and other members of a joint venture;
  - l. Whether the prime bidder, consistent with industry practice, gave minority businesses necessary access to and adequate time to review all necessary project plans, drawings, specifications and other documents, as well as adequate time to prepare subcontract bids and/or negotiate joint venture arrangements;
  - m. Whether the prime bidder in rejecting a minority business as not qualified identified the factors which constitute the minority business not being qualified other than the amount of the minority business' bid;
  - n. Whether the prime bidder in rejecting a minority business as not being the lowest bid, included a statement of the amounts of all bids received from potential subcontractors.
2. Documentation of good faith efforts shall be submitted with and become a part of the bid to be considered responsive. Bids containing no documentation shall be deemed non-responsive.

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### B. Sanctions

When the Minority Business Program Coordinator determines that a successful bidder has failed to make or maintain good faith efforts as required by this Plan, the City may impose any or all of the sanctions as follows:

- Deem it as an element of "poor performance" and consider it in the award of future contracts to the bidder.
- Refuse to award the contract to the bidder.
- Impose a penalty in an amount equal to five percent of the contract price. Provided however, the 5% penalty language must be made part of the bid notice and part of the contract.
- Remove the bidder from the bid list for a period of one (1) year.

If deemed appropriate by the Legal Department referral shall be made to the Office of the Attorney General for investigation.

### VIII. GRIEVANCE PROCEDURE

1. Any participant feeling himself/herself aggrieved by implementation of the Minority Business Plan may present such grievance to the City within two (2) weeks. The grievance shall be first discussed with the responsible operating department. If the grievance is not resolved, a written description of the grievance with appropriate supporting evidence shall be immediately presented to the Minority Business Program Coordinator.
2. The Minority Business Program Coordinator will review the grievance and supporting evidence and make a written response to the participant within ten (10) working days. In the event the participant is not satisfied, said participant may immediately appeal the grievance by filing a written description thereof and supporting evidence with the City Manager's Office or designate.
3. The City Manager's Office or designate shall hear the grievance within 30 working days of the initial grievance documentation, and shall make a decision thereon.
4. The responsible operating City department involved in the grievance shall also submit a written response and supporting documentation to the City Manager's Office or designate for review at least three (3) days prior to the grievance hearing.
5. Should the aggrieved participant not be satisfied with said decision by the City Manager may avail him/herself of any remedy available under the law.
6. Throughout the grievance procedure and until such time as the participant's grievance is resolved or pending the final decision of the City Manager, the bid process shall be held and no awards shall be made.