
Coates' Canons Blog: Are You Certified? Part II: More Information About The New Statewide Uniform HUB Certification Program

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My post on the Statewide Uniform HUB Certification Program from two weeks ago prompted some follow-up questions through email. I thought it might be helpful to post those questions and my answers to those questions here.

Question 1.a.: Does this certification program apply only to building construction and repair projects?

Answer: The General Statutes require HUB participation (or good faith efforts to achieve such participation) only for *building* construction and repair projects. (See G.S. 143-128.2 and G.S. 143-131.) Unfortunately, the statutes do not define the term “building.” As my colleague Fleming Bell explains in *Construction Contracts with North Carolina Local Governments* (available for purchase here), “While the word ‘building’ is usually associated with projects that require the use of plumbing, electrical, and heating and air conditioning contractors, this is not always the case. Most boards will probably wish to be cautious and follow the statute’s requirements if there is any question about the matter.”

Note that state grants often require compliance with the minority business participation statutes (G.S. 143-128.2, G.S. 143-128.3, G.S. 143-128.4, and G.S. 143-131(b)) even for construction projects that do not involve buildings, such as water and sewer projects. If your local government is using state funds for such a project, check the grant documents to determine if the minority business participation statutes will apply.

Question 1.b.: What if my local government requires HUB participation on construction and repair projects not involving buildings (or for other types of contracts)? Can we only use state-certified HUBs for these other contracts?

Answer: G.S. 143-128.4(e), the statute that authorized the new Statewide Uniform HUB Certification Program, states that “All State departments, agencies, and institutions, and political subdivisions of the State shall only use historically underutilized businesses listed in the database created in accordance with this section *for minority business purposes.*” (emphasis added). I would argue that this means that your local government can only use state-certified HUBs even for contracts not involving building construction and repair. There are two reasons for this:

1. The policy reason – The purpose of the Statewide Certification Program was to reduce barriers to minority participation created by the use of several different certification programs throughout the state. If your local government continues using its own certification program, that will defeat the purpose of the Program.
2. The practical reason – Keeping up with your own local certification program will be an unnecessary administrative headache when you can now use the State’s database of HUB contractors and vendors and simply encourage HUB contractors and vendors in your local area to get certified.

Note that if you decide to use the State’s Program instead of your own local certification program, and you currently have a policy in place that requires the use of your own certification program, you will need to amend that policy to allow you to use the State’s Certification Program instead of your current certification program.

Question 2: If my local government has established a verifiable goal that is more or less than 10%, do we now have to use the state’s 10% goal?

Answer: No. If your local government has already established a verifiable goal, as required by G.S. 143-128.2(a), the new Certification Program does not change that goal.

Question 3: Does this mean that local governments can scrap their HUB programs? (Should we get rid of our forms and participation goals?)

Answer: Although you must now get rid of your certification program (if you had one), you cannot scrap your HUB program. You will still need to maintain your verifiable goal for HUB participation, and you will still need to make good faith efforts to encourage HUB participation, as required in G.S. 143-128.2 and G.S. 143-131. You will also need to continue to report on HUB participation as required in G.S. 143-128(a2), G.S. 143-128.2, G.S. 143-128.3, and G.S. 143-131(b).

Question 4: Will this program also include small, disadvantaged businesses?

Answer: Yes. To qualify for certification, the business must meet the definition of a “historically underutilized business” found in G.S. 143-128.4. This definition includes disadvantaged businesses, as that term is defined in 15 U.S.C. § 637.

Question 5: May we only use HUBs that are certified through the new Statewide Certification Program even if we are receiving no state money for the project?

Answer: Yes, this new requirement applies even if your local government is receiving no state money for the project.

If you have additional questions about the Statewide Uniform HUB Certification Program, please feel free to post them as comments below, or to email or call me directly.

An information session on the new Program will be a part of our upcoming Contracting for Construction and Design course, which will be held on September 14th and 15th. Additional information and online registration for the course is available [here](#).

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.2.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-131.html
- www.sog.unc.edu/publications/books/legal-guide-construction-contracting-north-carolina-local-governments-fifth-edition-2014
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.3.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.4.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.html
- www.law.cornell.edu/uscode/15/usc_sec_15_00000637---000-.html
- www.sog.unc.edu/courses/0423/index.html