
Coates' Canons Blog: Are You Certified? The New Statewide Uniform HUB Certification Program

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On July 1, 2009, a new Statewide Uniform Certification Program for Historically Underutilized Businesses (commonly abbreviated as “HUBs” and formerly referred to as “minority- and women-owned businesses”) went into effect. North Carolina state agencies and local governments may now count only those businesses that are certified as HUBs through the new statewide program to determine whether their HUB participation goals have been met. In other words, a minority- or woman-owned business that is not certified through the statewide system cannot “count” as a HUB for purposes of meeting those participation goals.

Legal Background

The North Carolina General Statutes require local governments in North Carolina to adopt goals for HUB participation for each building construction or repair project costing \$300,000 or more, if no state money is involved, and for each building construction or repair project costing \$100,000 or more, if any state money is involved. G.S. 143-128.2(a), (j).

State agencies and departments are required to use a 10% participation goal. G.S. 143-128.2(a).

For building projects involving state money, local governments must use the State’s 10% participation goal, unless:

- The local government adopted a different verifiable goal before December 1, 2001, and
- The local government had and continues to have a sufficiently strong basis to justify the use of that goal. G.S. 143-128.2(a).

For building projects that don’t involve state money, local governments must adopt, after a notice and public hearing, an “appropriate verifiable percentage goal” for participation by HUBs. G.S. 143-128.2(a).

Local governments must use good faith efforts to recruit HUBs in order to try to meet their participation goals. For building projects costing \$300,000 or more that don’t involve state funds and for building projects costing \$100,000 or more that do involve state funds, the local government must use the good faith efforts listed in G.S. 143-128.2(e).

For building projects costing at least \$30,000 but less than \$300,000 (or less than \$100,000, if state money is involved), public entities must still use good faith efforts to recruit HUBs, but the percentage goals do not apply to projects in this range, and the statutes do not mandate specific good faith efforts that must be used. G.S. 143-131(b).

Public entities are also required to use good faith efforts to notify HUBs of bid opportunities for architectural, engineering, surveying, and construction management at risk services. G.S. 143-64.31(a). No specific good faith efforts are mandated for the procurement of these services.

Historical Background

In the past, several state agencies and local governments in North Carolina required HUBs to register with them individually. (This was probably done to help these entities determine which businesses should “count” as HUBs for purposes of the participation goals.) This was perceived to be a challenge for HUBs who wanted to do business with several state agencies or local governments, because the HUBs had to register with each entity, and each registration process is slightly different. As a result, HUBs may have been discouraged from doing business with public entities in North Carolina.

The New Statewide Certification Program

The purpose of the new statewide certification program is to allow HUBs to register in just one place—the new statewide system—instead of having to register with each individual public entity. To make this system effective, the new statewide

system replaces all other HUB certification or registration programs currently used by public entities in North Carolina (except for the City of Charlotte's program and DOT's program). As of July 1, 2009, NC state agencies and local governments may count only those businesses that are certified as HUBs through the new statewide system to determine whether their participation goals have been met. G.S. 143-128.4(e), G.S. 143-48.4(c). (In other words, a business that was registered as a HUB through a local government's own registration system but has not been certified as a HUB through the new statewide system will not count towards that local government's participation goals.)

The new program also creates a unified database of HUBs that will be available to all public entities in North Carolina. Note that businesses that were certified as HUBs with a local government or with the HUB Office before the Statewide Certification Program went into effect may transfer their certification by following the instructions on the Program's website . The deadline to transfer certification is October 15, 2009.

What the New Statewide Certification Program Doesn't Do:

The new statewide certification program does not:

- change participation goals;
- exempt public entities from using good faith efforts to solicit HUBs on building projects costing \$30,000 or more, or for architectural, engineering, design, or construction management at risk services; or
- change or replace the reporting requirements found in G.S. 143-128(a2), G.S. 143-128.2, G.S. 143-128.3, or G.S. 143-131(b) for building projects costing \$30,000 or more.

What You Can Do

You must educate bidders about this new program, or you will very likely be forced to reject bids from bidders that were unaware that un-certified HUBs no longer count towards HUB participation goals. Make sure you provide information about the new certification program in your pre-bid conferences, your bid solicitation documents, and on your local government's website. You might also consider offering an information session on the new program for all contractors and sub-contractors in your area.

For more information

Check out the Statewide Uniform Certification Program website, hosted by the North Carolina Office of Historically Underutilized Businesses ("the HUB Office"). You can find the Statewide Uniform Certification Program rules here. If you have any questions about the Statewide Uniform Certification Program, contact the HUB Office.

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.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-64.31.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_143-48.4.html
- www.doa.state.nc.us/hub/swuc.htm
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.3.html
- ncrules.state.nc.us/ncac/title%2001%20-%20administration/chapter%2044%20-%20office%20for%20historically%20underutilized%20businesses/chapter%2044%20rules.html
- ncadmin.nc.gov/contact/division