

## SUBCHAPTER 30I - MINORITY BUSINESS PARTICIPATION GOAL

### SECTION .0100 - GOOD FAITH EFFORTS

#### 01 NCAC 30I .0101 POLICY

Each public entity which places a public construction project out for bid and which is subject to G.S. 143-128.2 shall require bidders to undertake good faith efforts to recruit minority business participation in the project. Bidders must earn at least 50 points from the good faith efforts listed in Rule .0102, or comply with the requirements of G.S. 143-128.2 (c)(1)(a), in order for their bids to be considered responsive. Notwithstanding this Rule, the public entity may require that additional good faith efforts be taken, as indicated in its bid specifications.

*History Note: Authority G.S. 143-128.2(f), S.L. 2001-496, s. 3.1, 14(b).  
Temporary Adoption Eff. August 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### 01 NCAC 30I .0102 POINT VALUES FOR GOOD FAITH EFFORTS UNDERTAKEN.

Good faith efforts and their values include:

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. Value = 10 points.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. Value = 10 points.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. Value = 15 points.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = 10 points.
- (5) Attending any prebid meetings scheduled by the public owner. Value = 10 points.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. Value = 20 points.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. Value = 15 points.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. Value = 25 points.
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. Value = 20 points.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = 20 points.

*History Note: Authority: G.S. 143-128.2(f), S.L. 2001-496, s. 3.1, 14(b);  
Temporary Adoption Eff. August 1, 2002;  
Eff. August 1, 2004;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### SECTION .0200 – RESERVED FOR FUTURE CODIFICATION

**SECTION .0300 – RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN PUBLIC CONSTRUCTION CONTRACTS**

**01 NCAC 30I .0301 SCOPE**

The rules in this Section apply to minority business participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on State and local government construction projects as defined in G.S. 143-128.2(a).

*History Note: Authority G.S. 143-128.3(e); 143-128.2; Eff. February 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

**01 NCAC 30I .0302 DEFINITIONS**

As used in this section and G.S. 143-128.2 and G.S. 143-128.3:

- (1) "Bidder" means any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
- (2) "Contract" means 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.
- (3) "Contractor" means any person, firm, partnership, corporation, association, or joint venture which has contracted with the State of North Carolina to perform construction work or repair.
- (4) "Designer" means any person, firm, partnership, or corporation, which has contracted with the State of North Carolina to perform architectural or engineering work.
- (5) "HUB Office" means the North Carolina Department of Administration Office for Historically Underutilized Businesses.
- (6) "Owner" means the State of North Carolina, through the Agency/Institution and public entities named in the contract.
- (7) "Public Entity" means the State of North Carolina and all public subdivisions and local governmental units thereof.
- (8) "SCO" means the North Carolina Department of Administration State Construction Office.
- (9) "State Construction Project" means all projects within the jurisdiction of the State Construction Office pursuant to G.S. 143-341(3); including any State Agency project, Community College's project in the amount of three hundred thousand dollars (\$300,000) or more, and University System's project in the excess of two million dollars (\$2,000,000).
- (10) "Subcontractor" means a firm under contract with the prime contractor or construction manager at risk for supplying materials, labor, or materials and labor.

*History Note: Authority G.S. 143-128.3(e); Eff. February 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

**01 NCAC 30I .0303 ADJUSTMENTS TO GOAL**

The Secretary shall use the preceding year's minority business participation and the availability of businesses in each category as indicated by the firms identified as minority businesses by the Department of Administration in identifying appropriate percentage goals as required by G.S. 143-128.2(a).

*History Note: Authority G.S. 143-128.3(e); 143-128.2(a); Eff. February 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

**01 NCAC 30I .0304 OFFICE FOR HISTORICALLY UNDERUTILIZED BUSINESSES RESPONSIBILITIES**

(a) Interested businesses may register as a minority business as defined in G.S. 143-128.2(g). The information provided by the minority business shall be used by the HUB Office to:

- (1) Identify those areas of work for which there are minority businesses, and assist those public entities who are in the process of developing a minority business outreach plan for a particular project.
- (2) Make available to interested parties a list of registered minority business contractors and subcontractors.
- (3) Maintain a current list of minority businesses based upon information provided by the minority businesses.

(b) The HUB Office shall also:

- (1) Provide training and technical assistance to minority businesses on how to identify and obtain contracting and subcontracting opportunities through the State Construction Office and other public entities.
- (2) Provide training and technical assistance to public entities on how to identify and obtain minority contractor and subcontractor participation on projects subject to the goal requirements of G.S. 143-128.2.
- (3) Develop positive relationships with North Carolina trade and professional organizations by providing periodic meetings, such as networking and information sessions, obtaining input and feedback regarding minority business issues, legislation and policies, to improve the ability of minority businesses to participate in State construction projects.
- (4) Monitor public entity compliance with the goal requirements of G.S. 143-128.2.
- (5) Review and monitor corrective action plans for those public entities found to be out of compliance with G.S. 143-128.2.

*History Note: Authority G.S. 143-128.3(e); 143-128.2;  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0305 STATE CONSTRUCTION OFFICE RESPONSIBILITIES**

On State Construction Projects, the State Construction Office shall:

- (1) Attend the scheduled prebid conference, if requested, to clarify requirements of the General Statutes regarding minority-business participation, including the bidders' responsibilities.
- (2) Review the apparent low bidders' statutory compliance with the requirements listed in the proposal, if the bid is to be considered as responsive, prior to award of contracts. The State may reject any or all bids and waive informalities pursuant to G.S. 143-129.
- (3) Review minority business requirements at the Preconstruction conference.
- (4) Monitor contractors' compliance with minority business requirements in the contract documents during construction.
- (5) Resolve protests and disputes arising from implementation of the minority business participation outreach plan, in conjunction with the HUB Office.

*History Note: Authority G.S. 143-128.3(e);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

#### **01 NCAC 30I .0306 OWNER REQUIREMENTS**

(a) Before awarding a contract, an owner shall:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and implement outreach efforts to encourage minority business participation in these projects. The plan shall include education, recruitment, and interaction between minority businesses and non-minority businesses.
- (2) Attend the scheduled prebid conference and explain the minority goals and objectives of the State and specific to the owner.

- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office for Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include:
    - (A) A description of the work for which the bid is being solicited.
    - (B) The date, time, and location where bids are to be submitted.
    - (C) The name of the individual within the owner's organization who will be available to answer questions about the project.
    - (D) Where bid documents may be reviewed.
    - (E) Any special requirements that may exist.
  - (4) Utilize media likely to inform potential minority businesses of the bid being sought.
  - (5) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
  - (6) Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award.
  - (7) Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award.
  - (8) Forward documentation showing evidence of implementation of Owner's requirements, Subparagraphs (a)(1) through (a)(7) of this Rule, to the State Construction Office and the HUB Office upon request.
- (b) After a contract has been awarded an owner shall:
- (1) Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
  - (2) Submit the report to the HUB Office as required by G.S. 143-128.3(a).
- (c) All public entities that contract with a construction manager at risk shall report to the Office for Historically Underutilized Businesses the items enumerated in G.S. 143-64.31(b). The report shall include:
- (1) The owner approved minority business outreach plan of the construction manager at risk selected; and
  - (2) Documentation regarding the means by which minority businesses were contacted to solicit their participation in bid proposals if the 10% goal is not achieved.

*History Note: Authority G.S. 143-128.2(e); 143-128.3(e); 143-133.1(a); Eff. February 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

### **01 NCAC 30I .0307 DESIGNER REQUIREMENTS**

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer shall:

- (1) Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.
- (2) Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities and provide documentation of this assistance for the owner's records.
- (3) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals and forward the documentation to the owner in support of meeting the requirements.
- (4) Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) prior to recommendation of award.
- (5) During construction phase of the project, review payment applications for compliance with minority business utilization commitments and submit documentation that identifies payments to minority businesses along with monthly pay applications to the owner. Additionally, on State Construction Projects, forward copies to the State Construction Office.
- (6) Forward documentation showing evidence of implementation of Items (1) through (5) of this Rule to the owner, State Construction Office and HUB Office upon request.

*History Note: Authority G.S. 143-128.3(e); 143-128.2;  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,  
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### **01 NCAC 301 .0308 CONTRACTOR REQUIREMENTS**

This Rule applies to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods. These requirements apply to all contractors performing as contractors and first-tier subcontractors under construction manager at risk on state projects. The contractors shall:

- (1) Attend the scheduled prebid conference.
- (2) Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification shall include:
  - (a) A description of the work for which the bid is being solicited.
  - (b) The date, time and location where bids are to be submitted.
  - (c) The name of the individual within the company who shall be available to answer questions about the project.
  - (d) Where bid documents may be reviewed.
  - (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify no less than three minority businesses within a 75 mile radius of the project.

- (4) During the bidding process, comply with the contractor(s) requirements listed in the owner's minority business participation outreach plan.
- (5) Identify on the bid, the minority businesses that will be utilized on the project with the corresponding total dollar value of the bid and an affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
- (6) Forward documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor requirements to the State Construction Office and HUB Office upon request.
- (7) Upon being named the apparent low bidder, the Bidder shall provide one of the following to the Public Owner:
  - (a) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or
  - (b) if the percentage is not equal to the applicable goal, then an affidavit of all good faith efforts taken to meet the goal.

Failure to comply with the requirements of this Item shall be grounds for rejection of the bid and award to the next lowest responsible responsive bidder.

- (8) During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing of the circumstances involved. Additionally, on State Construction Projects, notify the State Construction Office, and the Director of the HUB Office in writing, of the circumstances involved. The prime contractor shall make good faith efforts to replace a minority business subcontractor with another minority business subcontractor.
- (9) If during the construction of a project additional subcontracting opportunities become available, make good faith efforts to solicit bids from minority businesses.

*History Note: Authority G.S. 143-128.3(e); 143-128.2(c);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22,  
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**01 NCAC 30I .0309      MINORITY BUSINESS RESPONSIBILITIES**

(a) Minority businesses seeking to be counted toward the minority business participation goals of G.S. 143-128.2 shall be certified or designated as minority business by the Department of Administration HUB Office or another certifying agency of the State of North Carolina, a local unit of government, or The Carolinas Minority Suppliers Development Council.

(b) Minority and HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

- (1) Attending the scheduled prebid conference.
- (2) Responding promptly whether or not they wish to submit a bid when contacted by owners or bidders.
- (3) Attending training and contractor outreach sessions given by owners, contractors and state agencies, when feasible.
- (4) Participating in Mentor/Protégé programs, training, or other business development programs offered by owners, contractors or state agencies.
- (5) Negotiating in good faith with owners or contractors.

*History Note: Authority G.S. 143-128.3(e);  
Eff. March 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

**01 NCAC 30I .0310      DISPUTE PROCEDURES**

Any business disputes arising under these Rules shall be resolved as set forth in G.S. 143-128(f1).

*History Note: Authority G.S. 143-128.3(e); 143-128(f1);  
Eff. February 1, 2006;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*