

§ 159-123. Sale of bonds by sealed bids; private sales.

(a) Bonds issued by units of local government shall be sold by the Local Government Commission after advertisement and upon sealed bids, except as otherwise authorized by subsection (b) of this section.

(b) The following classes of bonds may be sold at private sale:

- (1) Bonds that a State or federal agency has previously agreed to purchase.
- (2) Any bonds for which no legal bid is received within the time allowed for submission of bids.
- (3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Article 7A of this Chapter.
- (4) Refunding bonds issued pursuant to G.S. 159-78.
- (5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- (6) Bonds the ownership of which results in a tax credit to the owners thereof pursuant to the provisions of the federal income tax laws if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.
- (7) Project development financing debt instruments.
- (8) General obligation bonds issued pursuant to the Local Government Bond Act that have been rated by a nationally recognized credit rating agency at a credit rating below "AA" (or comparable category if stated differently) or that are unrated and that are not described in subdivisions (1) through (7) of this subsection.
- (9) Bonds that are part of an issue in which the interest payments on some or all of the bonds is intended to be subsidized by payments from the federal government pursuant to the provisions of the federal tax laws, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(c) When the issuing unit wishes to have a private sale of bonds, the governing board of the issuing unit shall adopt and file with the Commission a resolution requesting that the bonds be sold at private sale without advertisement to any purchaser or purchasers thereof, at such prices as the Commission determines to be in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or one or more persons designated by resolution of the governing board of the issuing unit to approve such prices. Upon receipt of a resolution requesting a private sale of bonds, the Commission may offer them to any purchaser or purchasers without advertisement, and may sell them at any price the Commission deems in the best interest of the issuing unit, subject to the approval of the governing board of the issuing unit or the person or persons designated by resolution of the governing board of the issuing unit to approve such prices. For purposes of this subsection, any resolution of the governing board of the issuing unit which designates a person or persons to approve any price or prices shall also establish a minimum purchase price and a maximum interest rate or maximum interest cost and such other provisions relating to approval as it may determine. Notwithstanding any provisions of this Chapter to the contrary, general obligation bonds issued pursuant to Article 4 of this Chapter may be sold at private sale at not less than ninety-eight percent (98%) of the face value of the bonds plus one hundred percent (100%) of accrued interest.

(d) This section shall not apply to funding or refunding bonds when the governing board of the issuing unit and the holders of the debt to be funded or refunded have agreed to exchange the original obligations for new ones at the same or an adjusted rate of interest. This section also

shall not apply to debt instruments that the State has previously agreed to purchase pursuant to Chapter 159G of the General Statutes.

(e) The issuing unit shall have the authority, subject to approval by the Commission, to select and retain the financial consultants, underwriters and bond attorneys to be associated with the bond issue. If the issuing unit shall affirmatively find that the underwriter, financial consultant or bond attorney selected and retained has adequately provided, in similar financial transactions, services of a nature and sophistication comparable to those required for the issuance and sale of the bonds in question and possesses the expertise necessary to perform the services required, approval of a financial consultant, underwriter or bond attorney shall not be withheld by the Commission solely for the reason that the underwriter, financial consultant or bond attorney has not had prior experience in the issuance and sale of a particular type, class or size of bond issue for which the underwriter, financial consultant or bond attorney is retained.

(f) The Commission shall not reject an application for approval of a bond issue because of the issuing units' selection of financial consultants, underwriters or bond attorneys so long as the selection is made in accordance with G.S. 159-123(e). Nothing herein shall limit or otherwise modify the role or powers of the Commission and its staff to review, approve, sell or participate in the sale of bonds pursuant to this Article. (1931, c. 60, ss. 17, 19; c. 296, s. 1; 1933, c. 258, s. 1; 1969, c. 943; 1971, c. 780, s. 1; 1977, c. 201, s. 4; 1985, c. 723, s. 1; 1987, c. 585, s. 3; c. 796, s. 4; 1989, c. 756, s. 5; 1991 (Reg. Sess., 1992), c. 1007, s. 43; 2000-69, s. 2; 2003-403, s. 8; 2009-140, s. 5; 2010-125, s. 1; 2020-3, s. 4.30(f).)