

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 764
HOUSE BILL 136

AN ACT TO REGULATE CONTRACTORS, SUBCONTRACTORS, AND SUPPLIERS IN
DEALING WITH GOVERNMENTAL AGENCIES, AND TO MAKE COMBINATIONS
IN RESTRAINT OF TRADE A FELONY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 133 of the General Statutes is amended by adding a new Article 3 to be entitled "Regulation of Contractors for Public Works", to be codified and to read as follows:

"§ 133-20. Definition. — (a) The term 'governmental agency' shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term 'person' shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term 'subsidiary' is used as defined in G.S. 55-2(9).

"§ 133-21. Government contracts; violation of G.S. 75-1 and G.S. 75-2. — Every person who shall engage in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provisions of G.S. 75-1 and G.S. 75-2 shall be guilty of a felony under this section where the combination, conspiracy, or other unlawful act in restraint of trade involves:

(a) a contract for the purchase of equipment, goods, services or materials or for construction or repair let or to be let by a governmental agency;

(b) a subcontract for the purchase of equipment, goods, services or materials or for construction or repair with a prime contractor or proposed prime contractor for a governmental agency.

"§ 133-22. Conviction; punishment. — (a) Upon conviction of violating G.S. 133-21, any person shall be punished as a Class H felon. The court may also impose a fine of up to one hundred thousand dollars (\$100,000) on any convicted individual and a fine of up to one million dollars (\$1,000,000) on any convicted corporation. Any fine imposed pursuant to this section shall not be deductible on a State income tax return for any purpose.

(b) For a period of up to three years from the date of conviction, said period to be determined in the discretion of the court, no person shall be eligible to enter into a contract with any governmental agency, either directly as a contractor or indirectly as a subcontractor, if that person has been convicted of violating G.S. 133-21.

(c) In the event an individual is convicted of violating G.S. 133-21, the court may, in its discretion, for a period of up to three years from the date of conviction, provide that the individual shall not be employed by a corporation as an officer, director, employee or agent, if that corporation engages in public construction or repair contracts with a governmental agency, either directly as a contractor or indirectly as a subcontractor.

(d) The court shall also have authority to direct the appropriate contractor's licensing board to suspend the license of any contractor convicted of violating G.S. 133-21 for a period of up to three years from the date of conviction.

"§ 133-23. Individuals convicted may not serve on licensing boards. — No individual shall be eligible to serve as a member of any contractor's licensing board who has been convicted of criminal charges involving either:

- (a) a conspiracy in restraint of trade in the courts of this State in violation of G.S. 75-1, G.S. 75-2, or G.S. 133-21, or similar charges in any federal court or in any other state court; or
- (b) bribery or commercial bribery in violation of G.S. 14-218 or G.S. 14-353 in the courts of this State, or of similar charges in any federal court or the court of any other state.

"§ 133-24. Suspension from bidding. — Any governmental agency shall have the authority to suspend for a period of up to three years from the date of conviction any person and any subsidiary or affiliate of any person from further bidding to the agency and from being a subcontractor to a contractor for the agency and from being a supplier to the agency if that person or any officer, director, employee or agent of that person has been convicted of charges of engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of any other state.

A governmental agency may order a temporary suspension of any contractor, subcontractor, or supplier or subsidiary or affiliate thereof charged in an indictment or an information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of this or any other state until the charges are resolved.

The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency.

"§ 133-25. Civil damages; liability; release. — (a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or G.S. 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within three years of the date of accrual of the cause of action.

"§ 133-26. Reporting of violations of G.S. 75-1 or G.S. 75-2. — Any person having knowledge of acts committed in violation of G.S. 75-1 or G.S. 75-2 involving a contract with a governmental agency who reports the same to that governmental agency and assists in any resulting proceedings may receive a reward as set forth herein. The governmental agency is authorized to pay to the informant up to twenty-five percent (25%) of any civil damages that it collects from the violator named by the informant by reason of the information furnished by the informant. The information and knowledge to be reported includes but is not limited to any agreement or proposed agreement or offer or request for agreement among contractors, subcontractors or suppliers to rotate bids, to share the profits with a contractor not the low bidder, to sublet work in advance of bidding as a means of preventing competition, to refrain from bidding, to submit prearranged bids, to submit complimentary bids, to set up territories to restrict competition, or to alternate bidding.

"§ 133-27. Noncollusion affidavits. — Noncollusion affidavits may be required by rule of any governmental agency from all prime bidders. Any such requirement shall be set forth in the invitation to bid. Failure of any bidder to provide a required affidavit to the governmental agency shall be grounds for disqualification of his bid. The provisions of this section are in

addition to and not in derogation of any other powers and authority of any governmental agency.

"§ 133-28. Perjury; punishment. — Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class H felon.

"§ 133-29. Gifts and favors regulated. — (a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) has a contract with a governmental agency; or
- (2) has performed under such a contract within the past year; or
- (3) anticipates bidding on such a contract in the future to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:
 - (1) preparing plans, specifications, or estimates for public contract; or
 - (2) awarding or administering public contracts; or
 - (3) inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) preparing plans, specifications, or estimates for public contracts; or
- (2) awarding or administering public contracts; or
- (3) inspecting or supervising construction willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift.

"§ 133-30. Cost estimates; bidders' lists. — Any governmental agency responsible for letting public contracts may promulgate rules concerning the confidentiality of:

- (1) the agency's cost estimate for any public contracts prior to bidding; and
- (2) the identity of contractors who have obtained proposals for bid purposes for a public contract.

If the agency's rules require that such information be kept confidential, an employee or officer of the agency who divulges such information to any unauthorized person shall be subject to disciplinary action. This section shall not be construed to require that cost estimates or bidders' lists be kept confidential."

Sec. 2. The second sentence of G.S. 75-1 is rewritten to read as follows: "Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy shall be guilty of a Class H felony."

Sec. 3. If any provision of this act or the application of it to any person or circumstances is held invalid, the invalidity does not affect any other provision of the act which

can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 4. This act shall become effective 60 days after ratification and shall be prospective in its application.

In the General Assembly read three times and ratified, this the 2nd day of July, 1981.