

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-412
SENATE BILL 862

AN ACT TO PROVIDE GREATER FLEXIBILITY TO THE UNIVERSITY OF NORTH CAROLINA AND OTHER AGENCIES IN NEGOTIATING CERTAIN CONTRACTS AND CAPITAL PROJECTS, TO INCREASE THE BENCHMARK FOR PURCHASES BY THE UNIVERSITY OF NORTH CAROLINA AND OTHER STATE AGENCIES, AND TO AUTHORIZE EMPLOYEE PAYROLL DEDUCTIONS FOR CERTAIN DISCRETIONARY PRIVILEGES OF UNIVERSITY SERVICE AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 116 of the General Statutes is amended by adding two new sections to read:

"§ 116-31.10. Powers of Board regarding certain purchasing contracts.

Notwithstanding G.S. 143-53.1 or G.S. 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than two hundred fifty thousand dollars (\$250,000). The Board shall set the benchmark for each institution from time to time. In setting an institution's benchmark in accordance with this section, the Board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The Board shall also consult with the Director of the Division of Purchase and Contract and the Director of the Budget prior to setting the benchmark.

"§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and capital improvements.

(a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with respect to the design, construction, or renovation of buildings, utilities, and other property developments of The University of North Carolina requiring the estimated expenditure of public money of five hundred thousand dollars (\$500,000) or less:

- (1) Conduct the fee negotiations for all design contracts and supervise the letting of all construction and design contracts.
- (2) Develop procedures governing the responsibilities of The University of North Carolina and its affiliated and constituent institutions to perform the duties of the Department of Administration and the Director or Office of State Construction under G.S. 133-1.1(d) and G.S. 143-341(3).

(3) Develop procedures and reasonable limitations governing the use of open-end design agreements, subject to G.S. 143-64.34 and the approval of the State Building Commission.

(b) The Board may delegate its authority under subsection (a) of this section to a constituent or affiliated institution if the institution is qualified under guidelines adopted by the Board and approved by the State Building Commission and the Director of the Budget.

(c) The University shall use the standard contracts for design and construction currently in use for State capital improvement projects by the Office of State Construction of the Department of Administration.

(d) A contract may not be divided for the purpose of evading the monetary limit under this section."

Section 2. G.S. 143-52 reads as rewritten:

"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper ~~of statewide circulation~~ widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. ~~opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply.~~ Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number

of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated ~~or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection.~~ and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 3. G.S. 143-53(a) reads as rewritten:

- "(a) The Secretary of Administration may adopt rules governing the following:
- (1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.
 - (2) Prescribing ~~routine~~ routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. ~~143-53.1-143-53.1~~ or G.S. 116-31.10.

The purchasing delegation for securing offers, (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, community college, and public school administrative unit shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special

responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.

- (3) Defining contractual services for the purposes of G.S. ~~143-49(3)~~. 143-49(3) and G.S. 143-49(5).
 - (4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.
 - (5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.
 - (6) Prescribing conditions under which partial, progressive and multiple awards may be made.
 - (7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.
 - (8) Providing conditions under which bids may be rejected in whole or in part.
 - (9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.
 - (10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.
 - (11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.
 - (12) Repealed by Session Laws 1987, c. 827, s. 216."
- Section 4. G.S. 143-53.1 reads as rewritten:

"§ 143-53.1. Setting of benchmarks; increase by Secretary.

On and after July 1, ~~1990, 1997~~, the expenditure benchmark procedures prescribed by G.S. 143-52 with respect to competitive ~~bid procedures~~ bids and the bid value benchmark authorized by G.S. ~~143-53(2)~~ 143-53(a)(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ~~ten thousand dollars (\$10,000); no more than twenty-five thousand dollars (\$25,000);~~ provided, the Secretary of Administration may, in his or her discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, ~~1992, 1999~~, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase. For a special responsibility constituent institution of The University of North Carolina, the benchmark prescribed in this section shall be ~~thirty-five thousand dollars (\$35,000).~~ as provided in G.S. 116-31.10."

Section 5. G.S. 143-64.34 as amended by S.L. 1997-314 reads as rewritten:

"§ 143-64.34. Exemption of certain ~~State Capital Improvement Projects.~~ projects.

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than one hundred thousand dollars (\$100,000) are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars (\$300,000) is exempt from this Article if:

- (1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;
- (2) The open-end design agreement has been publicly announced; and
- (3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."

Section 5.1. Effective July 1, 2001, G.S. 143-64.34, as amended by Section 5 of this act, reads as rewritten:

"§ 143-64.34. Exemption of certain projects.

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than hundred thousand dollars (\$100,000) are exempt from the provisions of this Article.

~~(b) A capital improvement project of the University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars (\$300,000) is exempt from this Article if:~~

- ~~(1) The architectural, engineering, or surveying services to be rendered are under an open-end design agreement;~~
- ~~(2) The open-end design agreement has been publicly announced; and~~
- ~~(3) The open-end design agreement complies with procedures adopted by the University and approved by the State Building Commission under G.S. 116-31.11(a)(3)."~~

Section 6. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

- a. To examine and approve all plans and specifications for the construction or renovation of:
 1. All State buildings; and
 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
- b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11."

Section 7. G.S. 143-135.3 reads as rewritten:

"§ 143-135.3. Adjustment and resolution of State board construction contract claim.

(a) The word 'board' as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. 'A contract for construction or repair work,' as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.

'Contractor' as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(d) As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid."

Section 8. G.S. 150B-1(f) reads as rewritten:

"(f) ~~Exemption from All But Judicial Review for The University of North Carolina. — No Except as provided in G.S. 143-135.3, no~~ Article in this Chapter except Article 4 applies to The University of North Carolina."

Section 9. G.S. 143-3.3 is amended by adding a new subsection to read:

"(k) Payroll Deduction for University of North Carolina System Employees to Pay for Discretionary Privileges of University Service. — Subject to rules adopted by the State Controller, if a constituent institution of The University of North Carolina approves a payroll deduction plan under this subsection, an employee of the constituent institution may authorize, in writing, the periodic deduction from the employee's salary or wages paid for employment by the constituent institution, of one or more designated lump sums to be applied to the cost of corresponding discretionary privileges available at employee expense from the employing institution. Discretionary privileges from the employing institution that may be paid for through this subsection include parking privileges, athletic passes, use of recreational facilities, admission to campus concert series, and access to other institutionally hosted or provided entertainments, events, and facilities."

Section 10. G.S. 143-135.1 reads as rewritten:

"§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities.

(a) Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration or by The University of North Carolina or one of its affiliated or constituent institutions pursuant to G.S. 116-31.11 shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements.

(b) Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of ~~Administration~~, Administration or, with respect to projects under G.S. 116-31.11, The University of North Carolina, and any and all recommendations made by them shall be given ~~consideration by the Department of Administration.~~ consideration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of ~~Administration~~, Administration, or with respect to projects under G.S. 116-31.11, The University of North Carolina.

(c) Notwithstanding any law to the contrary, including any local act, no county or municipality may impose requirements that exceed the North Carolina State Building Code regarding the design or construction of buildings constructed by the State of North Carolina."

Section 11. G.S. 133-1.1(d) reads as rewritten:

"(d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects (i) wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector, ~~or on projects (ii) that are exempt from the State Building Code.~~ Code, or (iii) that are subject to G.S. 116-31.11 and the completed project is inspected by the State Electrical Inspector and by The University of North Carolina or its constituent or affiliated institution."

Section 12. (a) The Office of State Budget and Management and the State Building Commission shall evaluate the process and quality of construction completed under G.S. 116-31.11 as enacted by this act. The evaluation shall include an analysis of the time required to complete projects, project savings or costs, necessary increases or decreases in staffing, if any, and any other benefits or detriments regarding the

delegation of authority under G.S. 116-31.11. The evaluation shall also include recommendations regarding the continuance of the delegated powers, continuance with modifications, expansion, or discontinuance. The Office of State Budget and Management and the State Building Commission shall jointly report their findings and recommendations to the Board of Governors of The University of North Carolina and to the General Assembly by April 15, 2001.

(b) The Board of Governors of The University of North Carolina shall report to the Joint Legislative Commission on Governmental Operations, the State Building Commission, and the Director of the Budget no later than December 1, 1997, on the procedures it intends to implement pursuant to G.S. 116-31.11, as enacted in Section 1 of this act. The State Building Commission shall report to the General Assembly no later than June 1, 1998, with respect to action taken pursuant to G.S. 116-31.11(a)(3) and (b).

Section 13. The Office of State Budget and Management shall evaluate the effectiveness and efficiency of the increase of the purchasing benchmark and its delegation to the special responsibility constituent institutions under G.S. 116-31.10 and other agencies under G.S. 143-53.1 and G.S. 143-53(a)(2). In its evaluation, the Office of State Budget and Management shall consider such factors as costs of goods and services purchased, administrative costs, effective time for completion of the purchasing process, agency satisfaction, vendor reactions, and other factors it deems appropriate. The Office of State Budget and Management shall report its findings and recommendations to the General Assembly by April 15, 2001.

Section 14. This section and Section 12(b) of this act are effective when they become law. Section 5.1 becomes effective July 1, 2001. The remainder of this act becomes effective January 1, 1998. Sections 6, 7, 8, 10, and 11 of this act and G.S. 116-31.11, as enacted by Section 1 of this act, expire July 1, 2001.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:32 a.m. this 21st day of August, 1997