

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-338
SENATE BILL 404**

AN ACT TO MODERNIZE PROCUREMENT METHODS USED BY THE SECRETARY
OF ADMINISTRATION AND STATE DEPARTMENTS, INSTITUTIONS, AND
AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-49 reads as rewritten:

"§ 143-49. Powers and duties of Secretary.

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

- (1) To canvass sources of supply, including sources of ~~supply of materials and supplies~~ goods with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all ~~supplies, materials, equipment and other tangible personal property~~ goods required by the State government, or any of its departments, institutions or agencies under competitive bidding or ~~otherwise as hereinafter provided.~~ other suitable means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and acceptance of electronic bids. For purposes of this Article, the term "goods" includes, without limitation, all commodities, supplies, materials, equipment, and other tangible personal property.
- (2) To establish and enforce specifications which shall apply to all ~~supplies, materials and equipment~~ goods and services to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.
- (3) To purchase or to contract for, by sealed, competitive bidding or other suitable ~~means, all contractual services and needs~~ means authorized by the Secretary including, without limitation, negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1), and the solicitation, offer, and acceptance of electronic bids, all services of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.
- (3a) ~~When~~ To request, and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of any contract for contractual services exceeding a cost of one hundred thousand dollars (\$100,000) that requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. contractors. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors



for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection and G.S. 143-52.2 shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used ~~herein~~ in this subdivision shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

...

- (6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of ~~materials, supplies and equipment~~ goods and services under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract.

...

- (17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby."

SECTION 2. G.S. 143-51 reads as rewritten:

"§ 143-51. Reports to Secretary required of all agencies as to ~~needs,~~ needs and purchases.

(a) It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, estimates of all ~~supplies, materials, contractual services and equipment~~ goods and services needed and required by such department, institution or agency for such periods in advance as may be designated by the Secretary of Administration.

(b) In addition to the report required by subsection (a) of this section, all departments, institutions, or agencies of the State government shall furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, actual expenditures for all goods and services needed and required by the department, institution, or agency for such

periods after the expenditures have been made as may be designated by the Secretary of Administration."

SECTION 3. G.S. 143-52 reads as rewritten:

"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts; cost plus percentage of cost contracts strictly prohibited.

(a) ~~As feasible, the~~The Secretary of Administration ~~will~~shall compile and consolidate all such estimates of ~~supplies, materials, printing, equipment and contractual~~goods and 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 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. Except as otherwise provided under this Article, contracts for the purchase of ~~supplies, materials or equipment~~goods and services shall be based on competitive bids and ~~acceptance made of the lowest and best~~suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State ~~as shall be~~shall be determined upon consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); 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 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. When the dollar value of a contract for the purchase, lease, or lease/purchase of ~~equipment, materials, and supplies~~goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded. 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~~goods so contracted for.

...."

SECTION 4. G.S. 143-53 reads as rewritten:

"§ 143-53. Rules.

(a) The Secretary of Administration may adopt rules governing the following:

...

(3) ~~Defining contractual services for the purposes of G.S. 143-49(3) and G.S. 143-49(5).~~

...

(5) Prescribing conditions under which purchases and contracts for the purchase, installment or lease-purchase, rental or lease of ~~equipment, materials, supplies or goods and~~ services may be entered into by means other than competitive bidding, including, but not limited to, negotiation, reverse auctions, and acceptance of electronic bids. ~~Reverse auctions may only be utilized for the purchase or exchange of supplies, equipment, and materials as provided in G.S. 115C-522.~~ Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental, or lease of ~~equipment, materials, supplies, or goods and~~ services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars (\$10,000). The Division may levy a fee, not to exceed one dollar (\$1.00), for review of each waiver application.

...

(7) Prescribing conditions and procedures governing the purchase of used ~~equipment, materials and supplies.~~goods.

...."

SECTION 5. G.S. 143-55 reads as rewritten:

"§ 143-55. **Requisitioning for supplies by agencies; must purchase through sources certified.**

(a) Unless otherwise provided by law, ~~after where~~ sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for ~~all supplies, materials and equipment~~purchases required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase ~~any supplies, materials or equipment~~ from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration.

...."

SECTION 6. This act becomes effective July 1, 2011.

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:43 a.m. this 27th day of June, 2011