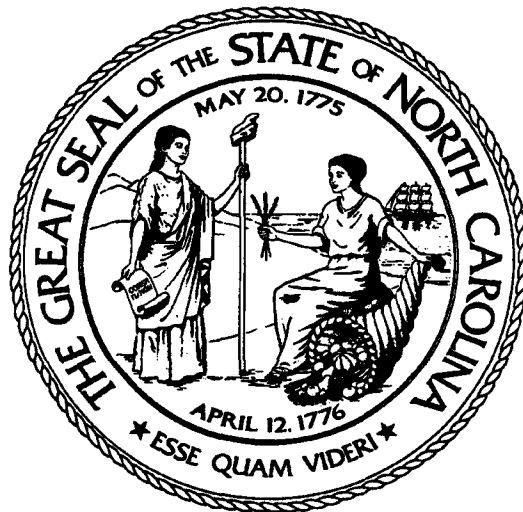


**LEGISLATIVE
RESEARCH COMMISSION**

STATE PURCHASING



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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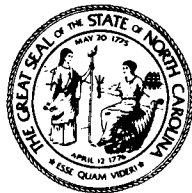
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LEGISLATIVE RESEARCH COMMISSION
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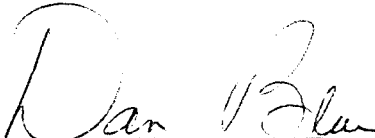


January 13, 1995


TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on State Purchasing. The report was prepared by the Legislative Research Commission's Committee on State Purchasing pursuant to G.S. 120-30.17(1).

Respectfully submitted,



Daniel T. Blue, Jr.
Speaker of the House



Marc Basnight
President Pro Tempore

Cochairmen
Legislative Research Commission



1993-1994

LEGISLATIVE RESEARCH COMMISSION

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of State Purchasing would have been authorized by Section 2.1 of the 2nd Edition of House Bill 1319 which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session.

Part II of the 2nd Edition of House Bill 1319 would allow studies authorized by that Part for the Legislative Research Commission to consider Senate Bill 1178 in determining the nature, scope and aspects of the study.] Section 3 of Senate Bill 1178, which would have set up an independent study commission to study purchasing, would have authorized the Commission to:

- "
- (1) Conduct an independent study of the State purchasing system;
 - (2) Examine the implementation of changes to the State purchasing system enacted by the 1993 General Assembly;
 - (3) Evaluate proposed changes made by the Government Performance Audit Committee which were not enacted by the 1993 General Assembly; and
 - (4) Propose revisions and updates to laws and regulations concerning the State purchasing system as it deems appropriate."

The relevant portions of the 2nd Edition of House Bill 1319 and Senate Bill 1178 are included in Appendix A. The Legislative Research Commission authorized this study in the Fall of 1993 under authority of G.S. 120-30.17(1) and grouped this study in its State and Local Government area under the direction of Senator J.K. Sherron. (House Bill 1319 was later amended and ratified in 1994 with the Legislative Research Commission studies 2nd Edition language deleted because the Legislative Research Commission had already acted on these matters).

COMMITTEE PROCEEDINGS

The Committee met three times (in February, December, and January). It appointed a subcommittee that met monthly during the fall of 1994. The subcommittee also appointed a drafting subcommittee consisting of staff counsel and two members of the subcommittee to put together legislation rewriting the State purchasing laws.

February 1, 1994

At its initial meeting, the Committee heard from several speakers who helped the Committee frame the issues it would be reviewing. Mr. Curtis Clark, Executive Director of GPAC (Government Performance Audit Committee), gave the Committee an overview of the GPAC recommendations concerning State purchasing and the Division of Purchase and Contract. GPAC had made several recommendations concerning purchasing to the 1993 General Assembly. Although most of the GPAC recommendations on purchasing had not been enacted, the recommendations were in part responsible for prompting the study of the State purchasing system.

Secretary Katie Dorsett, Secretary of the Department of Administration, and Mr. John Leaston, the State Purchasing Officer, briefed the Committee on the role of the Department in State purchasing. The Division of Purchase and Contract in the Department is the central procurement authority for the State, the local schools, and the community colleges, with authority for smaller purchases (\$10,000 for agencies and \$25,000 (now \$35,000) for some universities) remaining in the hands of the individual agencies. Mr. Leaston explained the role of the Board of Award, the procedures used

in evaluating products and making awards, and some of the terminology used in purchasing. Mr. Leaston also walked the Committee through the requisition and purchasing process.

Mr. Dan Stewart, Director of Correction Enterprises, spoke the Committee about the purpose and role of Correction Enterprises and the types of products it makes. There was a great deal of discussion among the Committee and with Mr. Stewart concerning the rehabilitative value of Correction Enterprise jobs, the use of the profits generated by Correction Enterprises, and the feasibility of working these inmates in other jobs that do not compete with private industry.

Mr. Jon Giles, President of Interior Systems, Inc. and representing the State Contract Furniture Vendors Association, spoke to the Committee on the concerns of the furniture industry about the award of furniture contracts, the manner in which specifications are prepared, and the furniture manufacturing of Correction Enterprises. Most of the discussion centered on the use of multiple versus single awards for furniture contracts, and Mr. Giles noted that their industry surveys showed overwhelming support among State agencies for the use of multiple awards for furniture.

September 15, 1994 (Subcommittee)

The Committee was unable to meet during the remainder of the spring and in the summer because of the special session on crime and the short session. The Committee appointed a subcommittee to look at the issues on State purchasing in more depth. The

subcommittee held its first meeting, primarily an organizational meeting, on September 15, 1994.

Mr. Linwood Jones, staff counsel, briefed the Committee on its charge and shared with the Committee a plan to completely revise North Carolina's State purchasing laws, using the ABA's Model Procurement Code as the primary source for the revisions. Mr. Jones noted that the State purchasing law were very old and disorganized and that statutory authority for modern purchasing practices needed to be spelled out.

Mr. Leaston briefed the subcommittee on the organization of the Division of Purchase and Contract and again reviewed its role in purchasing on behalf of agencies, schools, and community colleges. Ms. Frayda Bluestein, a faculty member of the Institute of Government specializing in purchase and contract law, also briefed the Committee on some local purchasing matters that the local governments were interested in, especially where those local purchasing decisions interplayed with the use by locals of the State term contracts.

Mr. Willis Holding, a member of the Committee and subcommittee and former State Purchasing Officer for the State of North Carolina, shared some background on the development of North Carolina's purchasing laws and the development of more modernized purchasing practices and laws through the work of the National Association of State Purchasing Officials and the American Bar Association. Both Mr. Jones and Mr. Holding noted that the ABA's Model Procurement Code, which Mr. Holding helped draft in the 1970s, would be instrumental in shaping the subcommittee's rewrite of the State purchasing laws if it were to take on that task.

The subcommittee voted to proceed with the rewrite of the State purchasing laws. Mr. Jones noted that the issues concerning Correction Enterprises and the use of multiple awards for furniture contracts might need to be addressed with separate legislation in the event that the overall rewrite became too difficult to manage during this short time period. The subcommittee authorized Mr. Jones, Mr. Holding, and Mr. Max Baldwin, another subcommittee member who also served in the past as the State Purchasing Officer, to prepare the revisions for the subcommittee's review.

October 10, 1994 (Subcommittee)

Mr. Leaston and Mr. Bill Pope, Chief Engineer of the Standards Section of the Division of Purchase and Contract, spoke to the subcommittee about the development of product specifications. Mr. Pope explained how specifications were formed, and there was considerable discussion on the role of specifications in the recent denial of award to a furniture manufacturer for a desk contract. There was brief discussion about the use of Qualified Products Lists (QPLs), followed by discussions on the percentage of out-of-state furniture manufacturers doing State contract business.

Mr. Tom Morgan, Government Relations Coordinator for the North Carolina Association of Furniture Manufacturers, recommended to the subcommittee the restoration of a multiple award system for furniture contracts because of the need for agency flexibility in securing compatible office furniture. Mr. Morgan noted that purchasing agents in each agency are qualified to make purchasing decisions and are under a budget that requires them to make economically prudent decisions when purchasing.

Mr. Andy Mitchell, Executive Vice President of Masco Home Furnishings, briefly noted Masco was looking more closely at pursuing State contract business and expressed some interest in exploring options with the Department of Correction to provide product finishing services through inmate labor. Mr. Dan Stewart of Correction Enterprises also addressed the Committee on several issues, including some concerns they have on purchasing raw materials for Correction Enterprise operations. Mr. Stewart reviewed with the subcommittee Correction Enterprises' rankings nationally, how its profits are used, and the overall objectives of the Correction Enterprises program.

Mr. Tom Runkle, Deputy State Controller for Information Resources Management (IRM), presented an overview of the Information Resources Management Commission and its oversight over information technology purchases by State executive branch agencies (with certain exceptions in among the education agencies). The Commission develops the technical specifications and guidelines for the purchase of information technology by these agencies. The Commission ensures that the technical aspects of these purchases at least meet minimum standards developed by the Commission.

Mr. Jones reported that the drafting subcommittee consisting of Mr. Holding, Mr. Baldwin, and himself was making significant progress in developing a draft bill and would be ready with a working draft by late November.

December 1, 1994 (Subcommittee)

Mr. Jones began the meeting by reviewing the draft bill with the subcommittee. The draft had been mailed earlier to both subcommittee and committee members and

had also been released to the Department of Administration and the Correction Enterprises for their comments. A detailed explanation of the draft bill is contained in Mr. Jones' memorandum dated December 1, 1994 (see Appendix).

Mr. Leaston and Mr. Stewart provided written comments to the subcommittee in response to the proposed legislation. The comments of the Department of Administration were directed to all three major parts of the bill, while the comments of Correction Enterprises were directed, appropriately, to Part III of the proposed bill. Their comments are included in the Appendix.

The subcommittee discussed the proposed legislation for approximately 7 hours before adjourning. Concern was expressed, particularly about the main portion of the bill (Part I), for the need for more time for review of the impact of GATT and NAFTA on purchasing, more in-depth look at the GPAC recommendations, review of the pending disparity study, review of several procurement issues that surfaced during the revisions, and circulation of the draft among the agencies for comments and reaction. Interest was expressed in continuing the study next year.

December 16, 1994 (Committee and Subcommittee)

Mr. Jones discussed with both the subcommittee and the full committee the draft legislation that the subcommittee had been working on. It was noted that Part I of the legislation would need additional study and work (see December 1st subcommittee proceedings).

The subcommittee and committee discussed Parts II and III of the legislation and indicated an interest in redrafting the legislation concerning the following:

- (1) Reauthorize the study for next year.
- (2) Draft the multiple award legislation (Part II) to give some flexibility to the State Purchasing Officer to use single awards when absolutely necessary.
- (3) Change the \$1,000,000 production limit for woodworking and upholstery to a limit on the number of inmates assigned to those areas.

January 4, 1994 (Committee)

Mr. Jones presented the draft report and draft legislation to the Committee. A total of 9 pieces of legislation covering 5 areas of concern were considered. Four of the bills were alternative versions presented for the Committee's consideration. The Committee adopted 5 pieces of legislation, with minor changes made to some. The Committee also noted, in voting on these bills, that changes could be made to the bills as needed during the legislative session.

The bills approved by the Committee are included in this report. An explanation of the bills is also included.

Note: The major rewrite of the purchasing laws that the Committee delayed for additional study next year by the LRC (and the comments of the Departments of Administration and Correction to that rewrite) are included in the appendices to this report and should not be confused with the 5 drafts that have been adopted by the Committee. The draft rewrite of the State purchasing laws is included for reference

only and as a starting point from which the next LRC Purchasing Committee, if authorized, can begin its work. In addition, three of the five bills adopted by the Committee are derived from language that was originally set out in the major rewrite.

FINDINGS AND RECOMMENDATIONS

1. The General Assembly should reauthorize the study on State Purchasing. The current study committee has developed a draft rewrite that would improve and modernize the State's purchasing laws, but additional time and study is needed to refine the draft and seek agency comment.
2. The State should create a State Procurement Policy Council to adopt rules concerning State Purchasing. The Council should consist of the State Controller (or designee), the State Treasurer (or designee), 2 private citizens with large-scale purchasing experience, 2 public members at large from private industry, and the Secretary of Administration (or designee). The Secretary or the Secretary's designee should chair the Council. The Council should also monitor the administration of the State's purchasing laws and make or recommend to the legislature, as appropriate, necessary changes.
3. The State should establish a presumption that 3 or more awards should be made for each category of furniture on furniture requirements contracts, with the State Purchasing Officer vested with the discretion to award less than 3 if he or she determines it is in the best interests of the State not to award 3 or more and documents this in writing, with the approval of the Board of Award.
4. The General Assembly should provide for more oversight and regulation of Correction Enterprises by requiring legislative approval of new enterprises, creating a board to oversee the operation of Correction Enterprises and any product expansion and

capital investments, limiting the number of inmates and employees in furniture production, and modifying the preference law with respect to furniture at first, and possibly other commodities later.

5. The General Assembly should allow State agencies, public schools, and community colleges to buy items "off contract" when those items can be obtained locally at a cheaper price and the savings are documented to the State. Off-contract purchases should be reported to the Department of Administration so that the effects of "off-contract" purchasing can be monitored. The monetary limit on an off-contract purchase should be the agency's delegation limit.

EXPLANATION OF DRAFT LEGISLATION

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY STATE PURCHASING.

This bill reauthorizes a study of state purchasing issues by the LRC after the 1995 long session. The new study committee would report to the 1996 short session.

AN ACT TO CREATE A STATE PROCUREMENT POLICY COUNCIL.

This bill creates the State Procurement Policy Council to adopt rules governing State purchasing and to oversee the administration of the State purchasing program. The Council would consist of the Secretary of Administration, the State Controller, the State Treasurer, two private citizens with large-scale purchasing experience, and two members from private industry. The three public officials may have designees serve in their place. The Council does not replace the Board of Award nor will it be involved with the award of contracts.

This type of Council is recommended by the Model Procurement Code and is one of the pieces of the rewrite that the subcommittee worked on.

**AN ACT TO PROVIDE FOR THE AWARD OF STATE REQUIREMENTS
CONTRACTS FOR FURNITURE.**

This bill requires at least 3 awards per category for each furniture requirements contract unless the State Purchasing Officer determines that it is not in the best interests of the State to make awards to 3 or more vendors. This essentially establishes a presumption that multiple awards (3 or more) are appropriate for each category on the furniture contracts unless the State Purchasing Officer determines otherwise. When making a determination that less than 3 awards should be made, the State Purchasing Officer must document the reasons for this determination with approval from the Board of Award.

The bill shifts the burden to the State Purchasing Officer to justify why multiple awards should not be used, but gives him the flexibility to use a single award or two awards when necessary.

AN ACT CONCERNING THE OPERATION OF CORRECTION ENTERPRISES.

This bill removes from the Governor and gives to the legislature control over Correction Enterprises' expansion into new industries and services, creates a board to oversee and regulate expansion and capital investments by Correction Enterprises, establishes criteria that should be reviewed before expansion takes place, limits the number of inmates and employees working in furniture, and allows agencies other than the Department of Correction to buy their furniture needs from private sources without giving preference to Correction Enterprises.

AN ACT AUTHORIZING LIMITED PURCHASING OF GOODS AND SERVICES FROM NON-CERTIFIED SOURCES.

This draft would allow agencies, schools, and community colleges to purchase from local vendors, rather than from the State contract, when the same product can be obtained from the local vendor cheaper and does not cost more than \$10,000 (or \$35,000 for certain universities). The \$10,000 and \$35,000 caps are the bid value benchmarks currently in place in our purchasing laws.

The use of these local sources who are not certified on the State term contracts would be monitored. Agencies would be required to justify the use of these sources and document the cost savings. These cost savings are to be reported to the Department of Administration, which will then report them annually to the General Assembly.

The bill also contains a clause that allows the Division of Purchase and Contract to continue its current policy of negotiating certain term contracts so that agencies can purchase small-value items off-contract from local sources. When the State term contract already allows such purchases, the purchasing agency would not have to go through the other hoops set out in the bill.

RECOMMENDED LEGISLATION

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

Senate
THIS IS A DRAFT 5-JAN-95 12:39:16
95-RN-001

Short Title: Purchasing Study

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION
3 TO STUDY STATE PURCHASING.
4 Whereas, the Legislative Research Commission authorized a study
5 of State purchasing following the 1993 session of the General Assembly; and
6 Whereas, the committee authorized to study the issue appointed a
7 subcommittee to review the issues and prepare a legislative response; and
8 Whereas, the subcommittee has prepared draft legislation in
9 response to the issues but feels that additional time is necessary to review
10 substantive issues in the draft, to see the impact of GATT and NAFTA on
11 purchasing, to review the results of the State procurement disparity study, to
12 study the GPAC purchasing recommendations in more depth, and to circulate
13 the final draft to using agencies for reaction and comments; and
14 Whereas, it is the intent of the Committee that its work to date be
15 preserved and that the General Assembly resume the study of purchasing and
16 correction enterprises after the 1995 long session and report on an expedited
17 basis to the General Assembly with legislation for the 1996 session;
18 Now therefore, the General Assembly of North Carolina enacts:
19 Section 1. The Legislative Research Commission may study issues
20 involving State purchasing and the operation of Correction Enterprises.
21 Sec. 2. To the extent practical, the Commission shall use the
22 materials and resources developed during the 1993-94 study of State
23 purchasing by the LRC Committee on State Purchasing.

1 Sec. 3. There is appropriated from the General Fund to the
2 General Assembly the sum of twenty thousand dollars (\$20,000) for fiscal year
3 1995-96 to be allocated to the Legislative Research Commission for a study of
4 State purchasing.

5 Sec. 4. The Commission shall make a final report to the 1995
6 session (1996 regular session).

7 Sec. 5. This act shall become effective July 1, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

Senate
THIS IS A DRAFT 5-JAN-95 12:37:40
95-RN-005

Short Title: Procurement Council

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO CREATE A STATE PROCUREMENT POLICY COUNCIL.

3 The General Assembly of North Carolina enacts:

4 Section 1. Article 3 of Chapter 143 of the General Statutes is
5 amended by adding the following new section:

6 "§ 143-50.1. State Procurement Policy Council.

7 (a) The State Procurement Policy Council is created. The Council shall
8 consist of seven members. The General Assembly shall appoint four members,
9 two of whom shall be private citizens experienced in large scale purchasing and
10 two of whom shall be public members from private industry. Of the General
11 Assembly's four appointments, one public member and one member with
12 large-scale purchasing experience shall be appointed upon the recommendation
13 of the President Pro Tempore of the Senate, and one public member and one
14 member with large-scale purchasing experience shall be appointed upon the
15 recommendation of the Speaker of the House of Representatives. The State
16 Treasurer and the State Controller or their designees shall serve as ex officio
17 members. The Secretary of Administration or the Secretary's designee shall
18 serve as the chair of the Council.

19 (b) The Department shall provide staff and meeting space for the Council.

20 (c) The Council shall adopt and revise, as necessary, rules to implement the
21 provisions of this Article. The Council shall also monitor policy and the
22 administration of this Article but shall not exercise authority over the award or

1 administration of a contract executed or bid protest or contract controversy
2 claim filed under this Article.

3 (d) The Council shall meet quarterly and upon the call of the chair. A
4 majority of the Council shall constitute a quorum.

5 (e) The initial public member appointed by the General Assembly upon the
6 recommendation of the Speaker of the House of Representatives and the initial
7 member with purchasing experience appointed by the General Assembly upon
8 the recommendation of the President Pro Tempore of the Senate shall each
9 serve an initial term ending June 30, 1997. The initial public member
10 appointed by the General Assembly upon the recommendation of the President
11 Pro Tempore of the Senate and the initial member with purchasing experience
12 appointed by the General Assembly upon the recommendation of the Speaker
13 of the House of Representatives shall each serve an initial term ending June 30,
14 1997. Thereafter, their successors shall serve three-year terms. No member
15 appointed by the General Assembly may serve more than two complete
16 consecutive terms. A vacancy in a legislative appointment shall be filled in
17 accordance with G.S. 120-122.

18 Sec. 2. G.S. 120-23 is amended by adding a new subdivision to
19 read:

20 "(63) The State Procurement Policy Council."

21 Sec. 3. This act becomes effective July 1, 1995. The rules of the
22 Secretary and Department of Administration adopted pursuant to Article 3 of
23 Chapter 143 of the General Statutes and in effect as of the effective date of this
24 act, including their application to public schools and community colleges,
25 remain in effect until modified by the State Procurement Policy Council;
26 except that the Secretary may adopt rules on or after the effective date of this
27 act if the proposed rule was published prior to that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

Senate
THIS IS A DRAFT 5-JAN-95 13:56:25
95-RN-004

Short Title: Furniture Contracts

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE AWARD OF STATE REQUIREMENTS
3 CONTRACTS FOR FURNITURE.
4 The General Assembly of North Carolina enacts:
5 Section 1. To ensure agencies access to sufficient sources of
6 furniture supply and service, to provide agencies the necessary flexibility to
7 obtain furniture that is compatible with interior architectural design and needs,
8 to provide small and disadvantaged businesses additional opportunities to
9 participate on State requirements contracts, and to restore the traditional use of
10 multiple award contracts for purchasing furniture requirements, each State
11 furniture requirements contract shall be awarded on a multiple award basis,
12 subject to the following conditions:
13 (1) Competitive, sealed bids must be solicited for the contract in
14 accordance with Article 3 of Chapter 143 of the General
15 Statutes unless otherwise provided for by the State Purchasing
16 Officer pursuant to that Article.
17 (2) Subject to the provisions of this section, bids shall be
18 evaluated and the contract awarded in accordance with Article
19 3 of Chapter 143 of the General Statutes.
20 (3) For each category of goods under each State requirements
21 furniture contract, awards shall be made to at least 3 qualified
22 vendors unless the State Purchasing Officer determines that 3
23 qualified vendors are not available or that it is in the best

1 interest of the State to make fewer awards. The State
2 Purchasing Officer, subject to the approval of the Board of
3 Award, shall state his reasons in writing for making fewer
4 awards and the written documentation shall be maintained as
5 part of the bid file and subject to public inspection.

- 6 (4) Each agency purchasing under the contract shall make the
7 most economical purchase that meets its needs.

8 Sec. 2. Each agency shall report to the Department of
9 Administration, in the manner prescribed by the State Purchasing Officer, its
10 purchases from each multiple award furniture requirements contract. The
11 Department shall compile the information for review by the Secretary. The
12 Secretary shall submit a report to the General Assembly, no later than July 1,
13 1997, on the use of multiple award contracts for furniture.

14 Sec. 3. For purposes of this section, 'furniture requirements
15 contract' means State requirements contracts for casegoods, classroom
16 furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer
17 furniture, mobile and folding furniture, upholstered seating, commercial dining
18 tables, and related items.

19 Sec. 4. This act is effective upon ratification and applies to
20 contracts for which bids or offers are solicited on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

Senate
THIS IS A DRAFT 5-JAN-95 12:35:06
95-RN-003

Short Title: Correction Enterprises

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE OPERATION OF CORRECTION
3 ENTERPRISES.
4 The General Assembly of North Carolina enacts:
5 Sec. 1. G.S. 66-58 reads as rewritten:
6 "§ 66-58. Sale of merchandise by governmental units.
7 (a) Except as may be provided in this section, it shall be unlawful for any
8 unit, department or agency of the State government, or any division or
9 subdivision of any such unit, department or agency, or any individual
10 employee or employees of any such unit, department or agency in his, or her,
11 or their capacity as employee or employees thereof, to engage directly or
12 indirectly in the sale of goods, wares or merchandise in competition with
13 citizens of the State, or to engage in the operation of restaurants, cafeterias or
14 other eating places in any building owned by or leased in the name of the
15 State, or to maintain service establishments for the rendering of services to the
16 public ordinarily and customarily rendered by private enterprises, or to
17 contract with any person, firm or corporation for the operation or rendering of
18 any such businesses or services on behalf of any such unit, department or
19 agency, or to purchase for or sell to any person, firm or corporation any article
20 of merchandise in competition with private enterprise. The leasing or
21 subleasing of space in any building owned, leased or operated by any unit,
22 department or agency or division or subdivision thereof of the State for the

1 purpose of operating or rendering of any of the businesses or services herein
2 referred to is hereby prohibited.

3 (b) The provisions of subsection (a) of this section shall not apply to:

4 (1) Counties and municipalities.

5 (2) The Department of Human Resources, the Department of
6 Environment, Health, and Natural Resources, or the
7 Department of Agriculture for the sale of serums, vaccines,
8 and other like products.

9 (3) The Department of Administration, except that said agency
10 shall not exceed the authority granted in the act creating the
11 agency.

12 (4) The State hospitals for the insane.

13 (5) The Department of Human Resources.

14 (6) The North Carolina School for the Blind at Raleigh.

15 (7) The North Carolina Schools for the Deaf.

16 (8) The Greater University of North Carolina with regard to its
17 utilities and other services now operated by it nor to the sale
18 of articles produced incident to the operation of instructional
19 departments, articles incident to educational research, articles
20 of merchandise incident to classroom work, meals, books, or
21 to articles of merchandise not exceeding twenty-five cents
22 (25¢) in value when sold to members of the educational staff
23 or staff auxiliary to education or to duly enrolled students or
24 occasionally to immediate members of the families of
25 members of the educational staff or of duly enrolled students
26 nor to the sale of meals or merchandise to persons attending
27 meetings or conventions as invited guests nor to the operation
28 by the University of North Carolina of an inn or hotel and
29 dining and other facilities usually connected with a hotel or
30 inn, nor to the hospital and Medical School of the University
31 of North Carolina, nor to the Coliseum of North Carolina
32 State College, and the other schools and colleges for higher
33 education maintained or supported by the State, nor to the
34 comprehensive student health services or the comprehensive
35 student infirmaries maintained by the constituent institutions
36 of the University of North Carolina.

37 (9) The Department of Environment, Health, and Natural
38 Resources, except that said Department shall not construct,
39 maintain, operate or lease a hotel or tourist inn in any park
40 over which it has jurisdiction. The North Carolina Wildlife
41 Resources Commission may sell wildlife memorabilia as a
42 service to members of the public interested in wildlife
43 conservation.

44 (10) Child-caring institutions or orphanages receiving State aid.

- 1 (11) Highlands School in Macon County.
- 2 (12) The North Carolina State Fair.
- 3 (13) Rural electric memberships corporations.
- 4 (13a) State Farm Operations Commission.
- 5 (13b) The Department of Agriculture with regard to its lessees at
- 6 farmers' markets operated by the Department.
- 7 (13c) The Western North Carolina Agricultural Center.
- 8 (14) Nothing herein contained shall be construed to prohibit the
- 9 engagement in any of the activities described in subsection (a)
- 10 hereof by a firm, corporation or person who or which is a
- 11 lessee of space only of the State of North Carolina or any of
- 12 its departments or agencies; provided such leases shall be
- 13 awarded by the Department of Administration to the highest
- 14 bidder, as provided by law in the case of State contracts and
- 15 which lease shall be for a term of not less than one year and
- 16 not more than five years.
- 17 ~~(15) The State Department of Correction is authorized to purchase~~
- 18 ~~and install automobile license tag plant equipment for the~~
- 19 ~~purpose of manufacturing license tags for the State and local~~
- 20 ~~governments and for such other purposes as the Department~~
- 21 ~~may direct.~~
- 22 ~~The Commissioner of Motor Vehicles, or such other authority~~
- 23 ~~as may exercise the authority to purchase automobile license~~
- 24 ~~tags is hereby directed to purchase from, and to contract with,~~
- 25 ~~the State Department of Correction for the State automobile~~
- 26 ~~license tag requirements from year to year.~~
- 27 ~~The price to be paid to the State Department of~~
- 28 ~~Correction for such tags shall be fixed and agreed upon~~
- 29 ~~by the Governor, the State Department of Correction,~~
- 30 ~~and the Motor Vehicle Commissioner, or such authority~~
- 31 ~~as may be authorized to purchase such supplies.~~
- 32 (16) ~~Laundry services performed by the Department of Correction~~
- 33 ~~may be provided only for agencies and instrumentalities of the~~
- 34 ~~State which are supported by State funds and for county or~~
- 35 ~~municipally controlled and supported hospitals presently~~
- 36 ~~being served by the Department of Correction, or for which~~
- 37 ~~services have been contracted or applied for in writing, as of~~
- 38 ~~May 22, 1973. In addition to the prior sentence, laundry~~
- 39 ~~services performed by the Department of Correction may be~~
- 40 ~~provided for the Governor Morehead School and the North~~
- 41 ~~Carolina School for the Deaf.~~
- 42 ~~Such services shall be limited to wet-washing, drying and~~
- 43 ~~ironing of flatwear or flat goods such as towels, sheets and~~
- 44 ~~bedding, linens and those uniforms prescribed for wear by~~

~~such institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.~~

(17) The North Carolina Air Cargo Airport Authority or a lessee of the Authority.

~~(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.~~

(c) The provisions of subsection (a) shall not prohibit:

(1) The sale of products of experiment stations or test farms.

(2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.

(3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students and their immediate families, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.

(4) The operation of lunch counters by the Department of Human Resources as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.

- 1 (5) The operation of a snack bar and cafeteria in the State
2 Legislative Building.
- 3 (6) The maintenance by the prison system authorities of eating
4 and sleeping facilities at units of the State prison system for
5 prisoners and for members of the prison staff while on duty,
6 or the maintenance by the highway system authorities of
7 eating and sleeping facilities for working crews on highway
8 construction or maintenance when actually engaged in such
9 work on parts of the highway system.
- 10 (7) The operation by penal, correctional or facilities operated by
11 the Department of Human Resources or by the State
12 Department of Agriculture, of dining rooms for the inmates
13 or clients or members of the staff while on duty and for the
14 accommodation of persons visiting such inmates or clients,
15 and other bona fide visitors.
- 16 (8) The sale by the Department of Agriculture of livestock,
17 poultry and publications in keeping with its present livestock
18 and farm program.
- 19 (9) The operation by the public schools of school cafeterias.
- 20 ~~(10) Sale by any State correctional or other institution of farm,~~
21 ~~dairy, livestock or poultry products raised or produced by it~~
22 ~~in its normal operations as authorized by the act creating it.~~
- 23 (11) The sale of textbooks, library books, forms, bulletins, and
24 instructional supplies by the State Board of Education, State
25 Department of Public Instruction, and local school authorities.
- 26 (12) The sale of North Carolina flags by or through the auspices of
27 the Department of Administration, to the citizens of North
28 Carolina.
- 29 ~~(13) The operation by the Department of Correction of forestry~~
30 ~~management programs on State-owned lands, including the~~
31 ~~sale on the open market of timber cut as a part of such~~
32 ~~management program.~~
- 33 ~~(14) The operation by the Department of Correction of facilities to~~
34 ~~manufacture and produce traffic and street name signs for use~~
35 ~~on the public streets and highways of the State.~~
- 36 ~~(15) The operation by the Department of Correction of facilities to~~
37 ~~manufacture and produce paint for use on the public streets~~
38 ~~and highways of the State.~~
- 39 (13) The operation of the Correction Enterprises Program in
40 accordance with the provisions of G.S. 148-70.1 and 148-
41 70.2.

42 (d) A department, agency or educational unit named in subsection (b) shall
43 not perform any of the prohibited acts for or on behalf of any other
44 department, agency or educational unit.

1 (e) Any person, whether employee of the State of North Carolina or not,
2 who shall violate, or participate in the violation of this section, shall be guilty
3 of a Class 1 misdemeanor.

4 ~~(f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the~~
5 ~~Department of Correction of facilities for the manufacture of any product or~~
6 ~~the providing of any service pursuant to G.S. 148-70 not regulated by the~~
7 ~~provisions of subsection (c) hereof, shall be subject to the prior approval of the~~
8 ~~Governor, with biennial review by the General Assembly, at the beginning of~~
9 ~~each fiscal year commencing after October 1, 1975. The Department of~~
10 ~~Correction shall file with the Director of the Budget quarterly reports detailing~~
11 ~~prison enterprise operations in such a format as shall be required by the~~
12 ~~Director of the Budget.~~

13 ~~(g)~~ (f) The North Carolina School of Science and Mathematics may engage
14 in any of the activities permitted by G.S. 66-58(b)(8) and (c)(3).

15 Sec. 2. G.S. 148-70 reads as rewritten:

16 "§ 148-70. Management and care of inmates; ~~prison industries;~~
17 ~~disposition of products of inmate labor. inmates; private enterprises.~~

18 (a) The State Department of Correction in all contracts for labor shall
19 provide for feeding and clothing the inmates and shall maintain, control and
20 guard the quarters in which the inmates live during the time of the contracts;
21 and the Department shall provide for the guarding and working of such
22 inmates under its sole supervision and control. The Department may make such
23 contracts for the hire of the inmates confined in the State prison as may in its
24 discretion be proper.

25 ~~In accordance with the provisions of Article 11 of Chapter 66 of the General~~
26 ~~Statutes, the Department may use the labor of inmates confined in the State~~
27 ~~prison in work on farms and manufacturing, either within or without the State~~
28 ~~prison. The Department may dispose of the products of the labor of the~~
29 ~~inmates, either in farming or in manufacturing or in other industry at the State~~
30 ~~Prison System to any public institution owned, managed, or controlled by the~~
31 ~~State, or to any county, city or town in this State, or to any federal, state, or~~
32 ~~local public institution in any other state of the union. Provided however, no~~
33 ~~manufacturing or other industry shall be established, supervised or controlled~~
34 ~~by the Department unless specifically approved by the Governor pursuant to~~
35 ~~G.S. 66-58(f).~~

36 ~~All agencies shall give preference to Department of Correction products in~~
37 ~~purchasing articles, products, and commodities which these departments,~~
38 ~~institutions, and agencies require and which are manufactured or produced~~
39 ~~within the State prison system by and offered for sale to them by the~~
40 ~~Department of Correction, and no article or commodity available from the~~
41 ~~Department of Correction shall be purchased by any such State department,~~
42 ~~institution, or agency from any other source unless the prison product does not~~
43 ~~meet the standard specifications and the reasonable requirements of the~~
44 ~~department, institution, or agency as determined by the Secretary of~~

~~1 Administration, or the requisition cannot be complied with because of an
2 insufficient supply of the articles or commodities required. The provisions of
3 Article 3 of Chapter 143 of the General Statutes respecting contracting for the
4 purchase of all supplies, materials and equipment required by the State
5 government or any of its departments, institutions or agencies under
6 competitive bidding shall not apply to articles or commodities available from
7 the Department of Correction, but the Department of Correction shall be
8 required to keep the price of such articles or commodities substantially in
9 accord with that paid by governmental agencies for similar articles and
10 commodities of equivalent quality as determined by the Secretary by reference
11 to competitive bidding as required by law.~~

12 (b) In addition, the Secretary of Correction may lease one or more buildings
13 or portions of buildings on the grounds of any State correctional institution or
14 location under Department of Correction control, together with the real estate
15 needed for reasonable access to such buildings, for a term not to exceed 20
16 years, to a private corporation for the purpose of establishing and operating a
17 factory for the manufacture and processing of products or any other
18 commercial enterprise deemed by the Secretary to provide employment
19 opportunities for inmates in meaningful jobs for wages. A lease entered into
20 pursuant to this section may include provisions for the remodeling or
21 construction of buildings. Each lease shall be approved by the Governor and
22 Council of State and may be entered into only after consultation with the Joint
23 Legislative Commission on Governmental Operations. Each lease negotiated
24 and concluded pursuant to this section shall include and shall be valid only so
25 long as the lessee adheres to the following provisions:

26 (1) All persons employed in the factory or other commercial
27 enterprise operated in or on the leased property, except the
28 lessee's supervisory employee and necessary training
29 personnel, shall be inmates who are approved for such
30 employment by the Secretary or his designee.

31 (2) The factory or other commercial enterprise operated in or on
32 the leased property shall observe at all times such practices
33 and procedures regarding security as the lease may specify or
34 as the Secretary may stipulate.

35 (3) The factory or other commercial enterprise operated on the
36 leased property shall be deemed a private enterprise and
37 subject to all the laws and lawfully adopted rules of this State
38 governing the operation of similar business enterprises
39 elsewhere, except that the provisions of G.S. 66-58 shall not
40 apply to the industries or products of such private enterprise.

41 The Secretary shall adopt rules for the administration and management of
42 personnel policies for prisoner workers including wages, working hours, and
43 conditions of employment.

1 Except as prohibited by applicable provisions of the United States Code,
2 inmates of correctional institutions of this State may be employed in the
3 manufacture and processing of products and services for introduction into
4 interstate commerce, so long as they are paid no less than the prevailing
5 minimum wage."

6 Sec. 3. Chapter 148 of the General Statutes is amended by adding
7 the following new sections:

8 "§148-70.1 Correction Enterprises.

9 (a) Creation; use of labor.-- The Correction Enterprises program is created
10 within the Department of Correction. Correction Enterprises may use the
11 labor of inmates confined in the State prison system in work authorized under
12 this section, either within or without the correctional facilities in the State
13 prison system.

14 (b) Authorized enterprises.-- Correction Enterprises may operate the
15 following enterprises, subject to the applicable provisions of this section and
16 G.S. 148-70.2. No other enterprises may be operated except as provided in
17 subsection (h) of this section:

- 18 (1) License tag manufacturing.
- 19 (2) Laundry services.
- 20 (3) Sign manufacturing.
- 21 (4) Paint manufacturing.
- 22 (5) Printing and duplication.
- 23 (6) Sewing.
- 24 (7) Metal products manufacturing and installation.
- 25 (8) Tailoring.
- 26 (9) Shirt manufacturing.
- 27 (10) Janitorial products manufacturing.
- 28 (11) Upholstery.
- 29 (12) Woodworking.
- 30 (13) Reupholstery and mattress manufacturing.
- 31 (14) Drapery manufacturing.
- 32 (15) Canning.
- 33 (16) Meat processing.
- 34 (17) Agricultural operations.
- 35 (18) Manpower services.
- 36 (19) Packaging and distribution.
- 37 (20) Forestry management.

38 (c) Restrictions; special provisions.-- The following restrictions or special
39 provisions are applicable to laundry services, upholstery, woodworking, and
40 open market sales:

- 41 (1) Laundry services.-- Laundry services may be provided only
42 for agencies and instrumentalities of the State which are
43 supported by State funds and for county or municipally
44 controlled and supported hospitals presently being served by

1 the Department of Correction, or for which services have been
2 contracted or applied for in writing, as of May 22, 1973. In
3 addition, laundry services performed by the Department of
4 Correction may be provided for the Governor Morehead
5 School and the North Carolina School for the Deaf.

6 Such services shall be limited to wet-washing, drying and
7 ironing of flatwear or flat goods such as towels, sheets and
8 bedding, linens and those uniforms prescribed for wear by
9 such institutions and further limited to only flat goods or
10 apparel owned, distributed or controlled entirely by such
11 institutions and shall not include processing by any dry-
12 cleaning methods; provided, however, those garments and
13 items presently being serviced by wet-washing, drying and
14 ironing may in the future, at the election of the Department
15 of Correction, be processed by a dry-cleaning method.

16 (2) Upholstery and woodworking.-- The Department of
17 Correction shall obtain its woodworking and upholstery
18 requirements and those of its correctional facilities from
19 Correction Enterprises, subject to the provisions of G.S. 148-
20 70.2. Notwithstanding the provisions of G.S. 148-70.2, all
21 other State agencies may, but are not required to, purchase
22 their woodworking and upholstery requirements from
23 Correction Enterprises.

24 The number of inmates and employees assigned to the
25 woodworking and upholstery plants shall not exceed the
26 number working in those plants as of July 1, 1994.

27 (3) Open market sales.-- Open market sales are permitted only
28 for timber cut as a part of the forest management program
29 and crops, livestock, poultry, and other products produced in
30 agricultural operations.

31 (e) Correction Enterprises Board.-- The Correction Enterprises Board is
32 created. The Board shall consist of the members of the State Procurement
33 Policy Council, as set out in G.S. 143-50.1, the Secretary of Correction or the
34 Secretary's designee, and a representative of private industry appointed by the
35 Governor. A majority of the Board shall constitute a quorum. The Board may
36 meet at facilities provided by the Department of Administration or the
37 Department of Correction.

38 The initial private industry representative appointed by the Governor shall
39 serve an initial term ending June 30, 1996. Thereafter, his successors shall
40 serve three-year terms.

41 (f) Expansion; production increases; capital investment.-- Effective January
42 1, 1996, each significant production increase, new product, or capital
43 investment requires prior approval by the Correction Enterprises Board.

1 Before granting approval, the Board shall determine the impact of the proposal
2 on private vendors, after considering the following applicable factors:

3 (1) The size of the government market and the private market for
4 the product.

5 (2) The projected growth in the government market's demand for
6 the product.

7 (3) The projected ability of the government market to sustain
8 both Correction Enterprises and private vendors.

9 (4) The proportion of the government market served by small and
10 disadvantaged vendors.

11 (g) New enterprises.-- The chair of any standing legislative committee to
12 which a bill authorizing the operation of a new enterprise has been assigned
13 may request the Corrections Enterprises Board to analyze the need and merit
14 of the new enterprise. The Board's analysis shall be based on the factors listed
15 in subsection (f) and the following:

16 (1) The rehabilitative value of the proposed enterprise;

17 (2) The inmate population and the placement needs of the State
18 correctional system.

19 (3) The availability and feasibility of alternative labor placements,
20 such as road crews and other prison labor outside of
21 Correction Enterprises.

22 (g) Emergency.-- When necessary to comply with legal requirements for
23 prison population or inmate rehabilitation, the Governor may authorize a new
24 enterprise, new products, increased production, or capital investment without
25 prior approval of the Board or General Assembly, provided that the Joint
26 Legislative Commission on Governmental Operations is informed in writing
27 within 30 days of the emergency authorization and the legal need therefor.

28 **148-70.2. Market and Use of Correction Enterprise products.**

29 (a) Market.-- The goods and services provided by Correction Enterprises
30 may be offered only to State and local government agencies in this State or
31 other states, political subdivisions of this State or other states, and the United
32 States and its governmental agencies.

33 (b) State agency use.-- A State agency shall purchase its requirements for a
34 product from Correction Enterprises if:

35 (1) Correction Enterprises produces the product;

36 (2) the product produced by Correction Enterprises meets the
37 applicable standards, specifications, tests, sample submissions,
38 and other requirements imposed on private vendors of the
39 product, as determined by the State Purchasing Officer; and

40 (3) Correction Enterprises has sufficient quantities of the product
41 and can meet the agency's reasonable delivery needs.

42 The State Purchasing Officer shall certify Correction Enterprises as a
43 source on each State contract for which Correction Enterprises produces a
44 product meeting the criteria of this subsection. Correction Enterprises shall

1 not bid against private vendors. The Secretary of Administration, in
2 accordance with rules adopted by the Corrections Enterprises Board, shall
3 establish the prices for all products consistent with the prices generally paid by
4 agencies for those products in the public market.

5 Sec. 3. G.S. 148-2(b) reads as rewritten:

6 "(b) All revenues from the sale of articles and commodities manufactured or
7 produced by ~~prison enterprises~~ Correction Enterprises shall be deposited with
8 the State Treasurer to be kept and maintained as a special revolving working-
9 capital fund designated "Prison Correction Enterprises Fund." Revenue in the
10 Prison Correction Enterprises Fund shall be applied first to capital and
11 operating expenditures, including salaries and wages of supervisory personnel,
12 necessary to develop and operate prison industrial and forestry enterprises to
13 provide diversified employment for prisoners, and incentive wages for
14 ~~non-Prison non-Correction Enterprises~~ Inmates, inmates. Of the remaining
15 revenue in the Fund, five percent (5%) of the net profits, before expansion
16 costs, shall be credited to the Crime Victims Compensation Fund established in
17 G.S. 15B-23 as soon as practicable after profits have been determined for the
18 previous year, and at the direction of the Governor, the remainder shall be
19 used for other purposes within the State prison ~~system~~ system, subject to the
20 approval of the Correction Enterprises Board pursuant to G.S. 148-70.1, or
21 shall be transferred to the General Fund. The provisions of this section shall
22 not apply to revenues generated from private prison enterprises conducted
23 pursuant to G.S. 148-70 except for lease and rental income."

24 Sec. 4. This act becomes effective January 1, 1996, provided that
25 the Correction Enterprises Board shall be appointed within 60 days after
26 ratification of this act and may adopt rules thereafter.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

Senate
THIS IS A DRAFT 5-JAN-95 12:33:32
95-RN-002

Short Title: Purchase Off Contract

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING LIMITED PURCHASING OF GOODS AND
3 SERVICES FROM NON-CERTIFIED SOURCES.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 3 of Chapter 143 of the General Statutes is
6 amended by adding the following new section:
7 "§143-55.1. Purchases from other sources.
8 (a) Notwithstanding the provisions of G.S. 143-55, a State agency, public
9 school unit, or community college may purchase from a local vendor the same
10 good or service that is listed on a State requirements contract, when the local
11 vendor is not a certified on the State requirement contract for that good or
12 service, subject to the following conditions:
13 (1) The cost of the goods or services from the local vendor,
14 including the delivery costs and administrative costs incurred
15 in negotiating, preparing, and executing the contract with the
16 local vendor, is less than the cost under the State term
17 contract.
18 (2) The cost of the purchase does not exceed the bid value
19 benchmark established pursuant to G.S. 143-53.1.
20 (3) The agency documents in writing the cost savings to the State
21 and reports the savings to the Department of Administration
22 annually.

1 (b) This section does not impair the contractual terms and conditions of
2 State term contracts that allow purchases to be made from non-certified sources
3 without meeting the requirements of subsection (a).

4 (c) The Department shall report to the General Assembly annually on and
5 after July 1, 1996, the cost savings realized pursuant to this section."

6 Sec. 2. This act is effective upon ratification and applies to
7 contracts for which bids or offers are solicited on or after that date.

APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

.....
(89) State Purchasing (S.B. 1178 - Sherron).....

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

APPENDIX B

STATE PURCHASING COMMITTEE MEMBERSHIP 1993 - 1994

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APPENDIX C

THIS IS A DRAFT 5-JAN-95 12:09:37

A BILL TO BE ENTITLED
AN ACT TO REVISE THE STATE PURCHASING LAWS AND THE
OPERATION OF CORRECTION ENTERPRISES.

The General Assembly of North Carolina enacts:

Sec. 1.1. This act shall be known as the Procurement Act of 1995.

PART I -- STATE PURCHASING LAW REVISIONS

Sec. 1.2. Article 3 of Chapter 143 of the General Statutes is repealed, except for G.S. 143-63.1, which is recodified as G.S. 143-63.6. Article 3A of Chapter 143 of the General Statutes is amended by adding the following heading prior to G.S. 143-63.6: "Part 3. Disposition of firearms."

Sec. 1.3. Chapter 143 of the General Statutes is amended by adding a new Article 3 to read as follows:

"Article 3
Purchases and Contracts

Part 1. General

§ 143-48. Title and purpose.

(a) This Article is the North Carolina State Procurement Code.

(b) The purposes of this Article are:

- (1) To simplify, clarify, and modernize the law governing procurement by the State.**
- (2) To permit the continued development of procurement policies and practices.**
- (3) To provide for increased public confidence in the procedures followed in State procurement.**
- (4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this State;**
- (5) To provide increased economy in State procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the State.**
- (6) To foster effective broad-based competition within the free enterprise system.**

- (7) To provide safeguards for the maintenance of a procurement system of quality and integrity.
- (8) To aid and assist small and disadvantaged businesses in State procurement.

§ 143-49. Good faith requirement.

All parties involved in the negotiation, performance, or administration of contracts subject to this Article shall act in good faith.

§ 143-50. Definitions.

As used in this Article,

() 'Agency' means a State agency, a community college, or a local school administrative unit.

() 'Contractor' means any person having a contract with an agency.

() 'Council' means the State Procurement Policy Council.

() 'Department' means the Department of Administration.

() 'Invitation for Bids' means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

() 'Procure' means to purchase, lease, lease-purchase or otherwise acquire supplies, materials, equipment, or services.

() 'Products' means supplies, material, and equipment.

() 'Request for proposals' means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

() 'Responsible bidder' and 'responsible offeror' mean a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability to assure good faith performance.

() 'Responsive bidder' means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids.

() 'Secretary' means the Secretary of Administration.

() 'Requirements contract' means

() 'Services' means the furnishing of time, labor, or effort in the performance of a contract, which does not consist primarily of the procurement of products or the performance of consulting services. 'Services' includes printing but does not include professional services performed by attorneys, physicians, accountants, and similar professionals.

() 'Specification' or 'purchase description' means any description of the physical or functional characteristics of a product or service, including, where applicable, requirements relating to samples, prototypes, inspection, testing, warranty, and packaging.

() 'State agency' means a department, institution, board, commission, or other unit of the State.

§143-51. Applicability.

(a) Except as otherwise provided, this Article applies to every expenditure of public funds for procurement by an agency, regardless of the source of the funds, except that an agency may comply with the terms and conditions of a grant, gift, bequest, or cooperative agreement.

(b) When a procurement involves the expenditure of federal assistance or contract funds, the agency shall comply with the applicable federal law and regulations governing the procurement.

(c) This Article does not apply to the following agencies:

- (1) The North Carolina Low-Level Radioactive Waste Management Authority.
- (2) The North Carolina Global Transpark Authority.
- (3) The North Carolina Hazardous Waste Management Commission.
- (4) The North Carolina State Bar Council.

(d) This Article does not apply to procurements for the following:

- (1) The receipt, storage, and distribution of spiritous liquor by the Alcohol Beverage Control Commission.
- (2) Data processing and data communications equipment, supplies, and services for the General Assembly under G.S. 143-29.3.
- (3) The printing and vending of the reports and advance sheets of the Supreme Court and the Court of Appeals by the Administrative Officer of the Courts under G.S. 7A-6.
- (4) The administration, grading and processing of insurance licensing examinations under G.S. 58-33-30.
- (5) Highway construction or repair, as defined in G.S. 136-28.1.
- (6) Building construction or repair.
- (7) Liability insurance under Article 32 of Chapter 58 of the General Statutes.
- (8) A capitation arrangement or prepaid health service arrangement, as defined in G.S. 58-50-50, implemented or administered by the Department of Human Resources or its delegates pursuant to the Medicaid waiver provisions of 42 U.S.C. §1396n, or to the Medicaid program authorizations under Chapter 108A of the General Statutes.
- (9) Services and printing for community colleges and local school administrative units.

(e) An agency exempt under subsection (c) and an agency making a procurement exempt under subsection (d) may procure products and services through the Department of Administration.

(f) The Council may, by regulation, exempt from this Article any other type of procurement when it finds exemption to be in the best interest of the State.

Part 2. Organization§143-52. Powers; duties

(a) Except as otherwise provided by law, all rights, powers, and duties concerning procurement of products and services for agencies are vested in the Secretary. The Secretary shall perform the following duties:

- (1) Procure or supervise the procurement of all products and services for agencies in accordance with this Article.
- (2) Exercise general supervision over the storerooms and stores of all State agencies and to have supervision of inventories of all tangible personal property belonging to State agencies; provided that each State agency remains accountable for products under its control.
- (3) Dispose of State and federal surplus property in accordance with Article 3A of this Chapter.
- (4) Establish and enforce standards and specifications for products and services.
- (5) Consolidate estimated needs of agencies' requirements to obtain the benefits of volume procurement.
- (6) Canvass sources of supply and certify sources of supply to the agencies.

(b) The Secretary shall appoint a State Purchasing Officer who is qualified by educational background and professional experience in public procurement and shall delegate those powers and duties necessary to enable the State Purchasing Officer to administer this Article.

§ 143-53. State Procurement Policy Council.

(a) The State Procurement Policy Council is created. The Council shall consist of five members. The General Assembly shall appoint two members, each of whom shall be a private citizen experienced in large scale purchasing. Of the General Assembly's two appointments, one shall be made upon the recommendation of the President Pro Tempore of the Senate and the other upon the recommendation of the Speaker of the House of Representatives. The State Treasurer and the State Controller shall serve as ex officio members. The Secretary of Administration or the Secretary's designee shall serve as the chair of the Council.

(b) The Department shall provide staff and meeting space for the Council.

(c) The Council shall adopt and revise, as necessary, rules to implement the provisions of this Article. The Council shall also monitor policy and the administration of this Article but shall not exercise authority over the award or administration of a contract executed or bid protest or contract controversy claim filed under this Article.

(d) The Council shall meet quarterly and upon the call of the chair. A majority of the Council shall constitute a quorum.

(e) The initial member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve an initial term ending June 30, 1997. The initial member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall serve an initial term ending June 30, 1998. Thereafter, their successors shall serve three-year terms. No member appointed by the General Assembly may serve more than two complete consecutive terms. A vacancy in a legislative appointment shall be filled in accordance with G.S. 120-122.

§ 143-53.1. Board of Award.

The Board of Award is created and shall consist of members designated by the Advisory Budget Commission. The Board shall serve as an informal advisory board on the award of contracts brought before it by the State Purchasing Officer, in accordance with rules adopted by the Council.

**Part 3. Specifications, Source Selection
and Contract Formation.**

143-54. Specifications.

(a) Pursuant to applicable rules, the State Purchasing Officer shall maintain a program for preparing, reviewing, modifying, revising, and monitoring the specifications and standards for products and services required by agencies. The program shall adhere to the following criteria:

- (1) Purchase specifications shall seek to promote overall economy for the purpose intended, shall encourage full competition, and shall not be unduly restrictive.
- (2) Any type of purchase specification may be used as defined and deemed suitable in accordance with the program.
- (3) In developing specifications, expert advice and assistance of using agencies may be obtained.
- (4) The preparation and utilization of specifications may be delegated to agencies.
- (5) Specifications and standards shall be written and revised as necessary to encourage the procurement of products with recycled content when economically practicable.
- (6) The program's policies and procedures shall be in writing.

(b) The requirement of this Article regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including, but not limited to, those prepared by architects, engineers, designers, and draftsmen for public contracts.

(c) When requested, State laboratories and similar State facilities shall provide their services to the Department for the preparation of specifications and the testing of products and, unless otherwise agreed, shall be reimbursed by the Department for the cost of the services provided.

§143-55. Methods of Source Selection

Unless otherwise authorized by law, all contracts for the procurement of products and services for agencies shall be awarded by competitive sealed bidding through formal advertisement, as provided under G.S. 143-56, except when:

- (1) the State Purchasing Officer determines in writing that multi-step sealed bidding or competitive negotiation is more practicable and advantageous to the State; or
- (2) the contract is a nonadvertised procurement, as provided in G.S. 143-58.

§143-56. Competitive sealed bidding.

(a) Invitation for bids.-- An Invitation for Bids shall be issued and shall include a purchase description and the contractual terms and conditions applicable to the procurement. The Invitation for Bids shall also designate the criteria that will be used in evaluating bids.

(b) Notice.-- The Invitation for bids shall be advertised in a newspaper of statewide circulation at least 10 days prior to the date designated for the opening of the bids. The Secretary may use additional methods of notification when it is advantageous to do so.

(c) Bid Opening and Posting.-- Submissions shall be handled only by authorized employees of the Department. Bids shall be publicly opened in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. Each bid, with the name of the bidder, shall be entered as a matter of record, and the record, with the name of the successful bidder, shall, after award of the contract, be open to public inspection. However, trade secrets, test data, and related proprietary information may remain confidential if properly requested and identified by the bidder and approved in writing by the State Purchasing Officer.

(d) Bid acceptance; correction; withdrawal; rejection.-- Bids shall be accepted and evaluated without alteration or correction, except that inadvertently erroneous bids may be corrected or withdrawn under rules adopted by the Council. However, no changes in bid price or conditions are permissible that would be prejudicial to the State or to equitable competition. Each correction or withdrawal shall be supported by a written determination of the State Purchasing Officer.

Any and all bids may be rejected in whole or in part. The reasons for rejection shall be documented in the bid record. When bids are unsatisfactory, the intended procurement may be canceled or a new Invitation for Bids may be issued. If there is not sufficient time for or no advantage is seen in readvertisement, the procurement may be made in the State's interest under procedures authorized by the Council.

(e) Bid evaluation and award.-- The contract shall be awarded to the responsive and responsible bidder whose bid is most economical for the purpose intended, according to the criteria set forth in the Invitation for Bids. An award may not be based on factors not included in the Invitation for Bids. The determination as to a bidder's responsiveness and responsibility shall be governed by rules, as shall the use and number of multiple awards.

(f) Bonds.-- The Secretary may require the posting of bid security and performance guarantees.

§ 143-57. Multi-stepped bidding; competitive negotiation.

(a) Authorization.-- When the State Purchasing Officer determines, in writing, that the use of competitive sealed bidding is either not practicable or

not advantageous to the State, a contract may be entered into by multi-step sealed bidding or competitive negotiation.

(b) Application; use.-- Multi-step sealed bidding is especially suitable for the procurement of highly technical requirements. Competitive negotiation is appropriate for unusual requirements such as research and development work and experimental projects.

- (1) When multi-step sealed bidding is used, the Invitation for Bids shall provide that unpriced technical proposals and price bids are to be submitted separately. Revisions in technical proposals may be allowed if needed to bring proposals within the range of acceptability. The sealed price bids shall then be opened and evaluated, without change or alteration, as prescribed for competitive sealed bidding in G.S. 143-56.
- (2) When competitive negotiation is used, sealed proposals shall be solicited through a Request for Proposals. Under rules adopted for the purpose, negotiation of both the content and prices of the proposals is authorized, up to a point established for best and final offers, after which no further discussions or changes shall be permitted unless the time established is extended alike for all qualified offerors.

(c) Governing provisions.-- The following requirements apply to multi-step sealed bidding and competitive negotiation:

- (1) Public Notice.-- Public notice shall be given as prescribed for competitive sealed bidding in G.S. 143-56(b).
- (2) Opening and posting.-- Offers shall be publicly opened at the time and place stated in the solicitation document, but only the names of the offerors, not the content of proposals or prices, shall be made public prior to the award of the contract.
- (3) Withdrawal; rejection.-- Offers may be withdrawn in accordance with rules established by the Council. The reason for each withdrawal shall be documented in writing. Offers may be rejected in the manner provided for the rejection of sealed bids under G.S. 143-56(d).
- (4) Negotiation; non-disclosure.-- Discussions with offerors shall be conducted individually. Information regarding an offeror's proposal shall not be disclosed to a competitor prior to award of the contract, except as provided in subdivision (1) of this subsection for the public opening of price bids.
- (5) Evaluation and award.-- Proposals and prices of qualified offerors shall be evaluated in accordance with procedures and criteria set forth in the solicitation document, with award made to the responsible offeror whose offer is most

economical and advantageous for the intended purpose. The contract file shall contain the basis on which the award was determined.

If one or more offers submitted is initially satisfactory and advantageous, award may be made accordingly without discussion or negotiation.

143-58. Procurement without formal advertising.

(a) General.-- Competitive sealed bidding through formal advertising is not required for informal, sole source, and emergency procurements. A procurement without formal advertising shall be conducted in accordance with this Article, the applicable rules of the Council, and guidelines issued by the State Purchasing Officer.

(b) Informal procurement.-- Informal procurements are authorized as follows:

- (1) Competitive quotations.-- Requirements involving expenditures less than the statutory formal advertising threshold shall be purchased through either:
 - a. procedures established for competitive sealed bidding or sealed proposals, but without the need for public notice and public opening; or
 - b. competitive written quotations by means of a Request for Quotations sent to a representative number of prospective suppliers.
- (2) Small purchases.-- Quotations may be obtained by telephone for small purchases that do not exceed a value established by the State Purchasing Officer.

Requirements shall not be artificially divided to bring them under the informal procurement procedure

(c) Sole source procurement.-- Sole source procurements are authorized as follows:

- (1) Sole source procurement.-- Where a proposed acquisition can be satisfied by only one supplier, as determined in writing by the State Purchasing Officer, procurement may be made through a Request for Quotation or by direct negotiation. Cost or pricing analysis shall be utilized as necessary to ascertain that the proposed price is reasonable and acceptable.
- (2) Unsolicited offers.-- When a seller offers a product or service on its own initiative, acceptance shall be subject to the written approval of the State Purchasing Officer. Each unsolicited offer shall contain sufficient information to permit evaluation of the need and usefulness of the product or service, be subject to comparisons and tests by the State, be subject to

competitive solicitations if practicable, and comply with rules adopted by the Council for unsolicited offers.

(d) Emergency procurement.-- In case of an emergency or pressing need arising from unforeseen causes, including, but not limited to, threat to the public health or safety, delay by breakdown in machinery, and unanticipated volume of work, emergency procurements may be made under applicable rules adopted by the Council.

(e) Documentation.-- Reasons and other pertinent information regarding actions taken on sole source procurements and emergency procurements shall be documented and made a matter of record.

143-59. Prequalification of suppliers.

Prospective suppliers may be prequalified for particular types of products and services. Solicitation mailing lists of potential contractors shall include, but are not limited to, prequalified suppliers. Prequalification is not a conclusive determination of responsibility.

143-60. Multi-term contracts; lease with option to buy; installment financing.

(a) Unless otherwise provided by law, a contract for products or services may be entered into for any period of time deemed to be in the best interest of the State provided the period of the contract and the conditions of renewal and extension, if any, are designated in the solicitation. Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds.

When funds are not appropriated or otherwise made available for continuation of performance in a subsequent fiscal period, the contract shall be cancelled. Reasonable costs of cancellation may be paid from any funds available for such purposes, subject to pricing and cost analysis and audit of contractor books by the State to determine reasonableness of cancellation charges.

(b) The Council may adopt rules governing the use of leases with options to purchase and the use of installment financing.

§ 143-61. Agency delegation.

(a) The State Purchasing Officer may delegate to an agency the authority to procure products or services directly.

(b) Except as otherwise specified by the State Purchasing Officer or by law, an agency may directly procure its products and services, in accordance with the provisions of this Article and the rules of the Council, under any of the following circumstances:

(1) The estimated cost of the procurement does not exceed the statutory formal advertising threshold.

- (2) The procurement is for published books, maps, periodicals, or similar materials; perishables; or any other requirement for which direct procurement has been delegated to the agency by the State Purchasing Officer.
- (3) The procurement will be made through a hospital group purchasing program that offers purchasing services at discount prices to two or more hospital facilities.

(c) The statutory formal advertising threshold shall be ten thousand dollars (\$10,000) for an agency and thirty-five thousand dollars (\$35,000) for an agency that is a constituent institution of the University of North Carolina and has received approval from the University of North Carolina Board of Governors for this higher statutory threshold. The Council may increase the thresholds by the percentage of increase in the Consumer Price Index for the preceding fiscal year.

(d) An agency making a direct procurement shall adhere to the requirements of G.S. 143-58. The State Purchasing Officer shall monitor agency compliance with this Article and may withdraw or modify an agency's delegation under this section.

(e) Except as otherwise provided by contractual terms and conditions, agency needs for products and services available on State requirements contracts shall be procured under those contracts.

(f) Each agency shall have the powers and make the determinations under G.S. 143-63.5 (contract validity) and 143-63.8 (bid protests) with respect to products and services under its delegation.

Part 4. Procurement Policies

§143-62. Small and disadvantaged business enterprises; disabled business enterprises.

(a) To provide the Department information on small and disadvantaged business participation in State procurement contracts, each agency and each private, nonprofit corporation other than an institution of higher education or a hospital to which the General Assembly appropriates five hundred thousand dollars (\$500,000) or more during a fiscal year shall annually report to the Department, in the manner prescribed by the State Purchasing Officer, the percentage of bids or quotations received from and contracts awarded to small businesses, disadvantaged businesses, and disabled business enterprises, as defined by the Council. The Department shall annually compile the information and report it to the General Assembly in summary form.

(b) Payments received by a disabled business enterprise under a State procurement contract shall be directed to the training and employment of and payment of competitive wages to handicapped employees.

§143-63. Recycled products.

(a) In order to promote and encourage the use of products with recycled content, the State Purchasing Officer, in cooperation with the Department of Environment, Health, and Natural Resources, shall perform the following duties:

- (1) Develop guidelines for minimum recycled content, identify products meeting the guidelines, and distribute to agencies a list of available products.
- (2) Establish goals, when deemed practicable, for the purchase of products with recycled content. Goals shall be established for the procurement of paper and paper products with recycled content, taking into consideration availability, cost, and agency needs.

(b) Each agency shall report to the Department of Environment, Health, and Natural Resources its purchases of products with recycled content. The Department of Environment, Health, and Natural Resources shall prepare a summary of these reports and submit the summary annually to the Joint Legislative Commission on Governmental Operations.

§143-63.1. North Carolina products.

(a) Preference shall be given to the procurement of products or services produced in North Carolina or provided through North Carolina residents as long as there is no sacrifice or loss in price or quality.

(b) To the extent quality and availability allow, specifications shall be based on products and services produced in North Carolina or provided through North Carolina residents.

§143-63.2. State-produced goods; surplus.

(a) State agencies shall, to the extent practicable, use byproducts generated by and available for distribution from other State agencies.

(b) State agencies shall procure surplus products from federal, State, or local governments or their disposal agencies only in accordance with rules adopted by the Council.

§143-63.3. Cooperative Purchasing

(a) The following may participate on State requirements contracts:

- (1) A governmental entity, including a county, city, town, or a political subdivision of the State.
- (2) A nonprofit corporations operating a charitable hospital.
- (3) A local nonprofit community sheltered workshop or center meeting standards established by the Division of Vocational Rehabilitation of the Department of Human Resources.

(4) A private, nonprofit agency licensed or approved by the Department of Human Resources as a child-placing agency or residential child-care facility.

(5) A nonprofit volunteer fire department, lifesaving, or rescue squad.

(b) An entity listed under subsection (a) that participates in a State term contract has the same contractual duties, obligations, and responsibilities as an agency under the contract.

(c) The Department may also provide assistance to these entities in the preparation of specifications, the testing and inspection of products, market condition advice, and related matters.

(d) The Council may by rule prescribe for procurements by two or more levels or agencies of government, or otherwise with funds other than state-appropriated.

Part 5. Administration and Ethics.

143-63.4. Requisitions.

(a) Except as otherwise provided by law, each agency shall requisition its products and services only through sources certified by the State Purchasing Officer. A copy of the requisition order shall be furnished to the State Purchasing Officer upon request. A violation of this subsection by an agency purchasing official is a Class 1 misdemeanor.

(b) The Department is authorized to reject an agency's requisition in accordance with rules adopted by the Council.

143-63.5. Validity of awards and contracts.

(a) Except as otherwise provided in this section or by law, a procurement contract entered into in violation of this Article is void.

(b) If prior to award, the State Purchasing Officer or agency head determines that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award shall be revised to comply with the law or cancelled.

(c) If after an award the State Purchasing Officer or the agency head determines a solicitation or award of a contract to be in violation of law, the contract may be ratified if (i) all parties acted in good faith, (ii) ratification of the contract would not undermine the purposes of this Article, and (iii) the violation was insignificant or otherwise did not prevent substantial compliance with this Article.

(d) When a contract is voidable under this section and the contractor has not acted in violation of this Article, the State Purchasing Officer or agency head may (i) ratify the contract if ratification is in the best interests of the State or

(ii) void the contract and award the contractor compensation for actual expenses reasonably incurred under the contract, plus a reasonable profit.

(e) When a contract is voidable under this section and the contractor has acted in violation of this Article, the State Purchasing Officer or agency head may (i) void the contract or (ii) ratify the contract without prejudice to the State's right for damages if ratification is in the best interests of the State.

143-63.6. Ethics; conflicts of interest.

(a) General.-- Public contracting is a public trust. Participants in the procurement process should conduct themselves in such a manner as to foster public confidence in the integrity of the process.

(b) Beneficial interests.-- No State official or employee who participates in the preparation of purchase specifications, the evaluation of bids, or the award of contracts shall:

- (1) Act as an agent or representative of a bidder or supplier in connection with the proposed contract.
- (2) Have a personal beneficial interest in the contract.
- (3) Accept or receive a contingent fee, gratuity, kickback, or other consideration relating to a contract.

(c) Personal use.-- Products and services shall not be procured under State contracts for the personal ownership or private use of public officials or employees.

(d) Ethical standards.-- The Council shall adopt rules regarding ethical standards to discourage favoritism and further safeguard the integrity of the procurement process, including the involvement of prospective suppliers in the development of specifications. Any effort to influence a public official or employee to breach these standards shall itself be a breach of the standards.

(e) Violation.-- A violation of this section is a Class G felony.

§143-63.7. Certification of competitiveness; reports of anti-competitive practices.

(a) Each bidder shall certify that its bid is submitted competitively and without collusion. False certification is a Class I felony.

(b) When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Attorney General.

§143-63.8. Bid protests; contract controversies.

(a) The State Purchasing Officer shall attempt to informally resolve each bid protest involving the solicitation or award of a contract and each contract dispute, including alleged breach of contract. The State Purchasing Officer is authorized to settle bid protests and contract controversies in accordance with rules adopted by the Council. If the protest or controversy claim is not settled

or resolved, the State Purchasing Officer shall render a decision within 30 days of the filing of the protest or claim, stating the reason for the decision, and this decision shall be the final agency decision.

Sec. 1.5. Notwithstanding the provisions of G.S. 143-63.6, an employee may procure products or services for the mutual benefit of the employee and the agency if:

- (1) The agency had in effect, as of May 31, 1983, established policies permitting procurement by a class or classes of persons in order to provide for the mutual benefit of the persons and the agency, or the public benefit or convenience; and
- (2) The employee complies with the policies and reimburses the agency.

Sec. 1.6. G.S. 58-50-50 reads as rewritten:

"§ 58-50-50. Preferred provider; definition.

The term "preferred provider" as used in Articles 1 through 64 of this Chapter with respect to contracts, organizations, policies or otherwise means a person, who has contracted for, or a provider of health care services who has agreed to accept special reimbursement or other terms for health care services from any person; or an insurer subject to the provisions of Articles 1 through 64 of this Chapter or other applicable law for health care services on a fee for service basis, or in exchange for providing health care services to beneficiaries of a plan administered pursuant to Articles 1 through 64 of this Chapter, except that the term "preferred provider" as used in Articles 1 through 64 of this Chapter does not apply to any prepaid health service or capitation arrangement implemented or administered by the Department of Human Resources or its representatives, pursuant to 42 U.S.C. § 1396n or Chapter 108A of the General Statutes, or to any provider of health care services participating in such a prepaid health service or capitation arrangement. Except where specifically prohibited either by G.S. 58-50-55 or by regulations promulgated by the Department of Insurance, not inconsistent with Articles 1 through 64 of this Chapter, the contractual terms and conditions for special reimbursements shall be those which the insurer, health care provider and the preferred provider find to be mutually agreeable.

For purposes of this section and G.S. 143-51,

- (1) 'Capitation arrangement' means means an agreement whereby the Department of Human Resources pays a periodic per enrollee fee to a contract entity that provides medical services to Medicaid recipients during their enrollment period.
- (2) 'Prepaid health service' means services provided to Medicaid recipients that are paid on the basis of a prepaid capitation fee, pursuant to an agreement between the Department of Human Resources and a contract entity."

Sec. 1.7. G.S. 120-23 is amended by adding a new subdivision to read:

"(63) The State Procurement Policy Council."

PART II -- MULTIPLE AWARDS

Sec. 2.1. To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

- (1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article.
- (2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.
- (3) The number of vendors to whom the contract is awarded shall be equal to a majority of the responsive and responsible bids received, unless the State Purchasing Officer has determined that additional vendors are necessary.
- (4) Each agency purchasing under the contract shall make the most economical purchase that meets its needs.

Sec. 2.2. Each agency shall report to the Department of Administration, in the manner prescribed by the State Purchasing Officer, its purchases from each multiple award furniture requirements contract. The Department shall compile the information for review by the Secretary and the State Procurement Policy Council. The Council shall submit a report to the General Assembly, no later than July 1, 1997, on the use of multiple award contracts for furniture.

Sec. 2.3. For purposes of this section, 'furniture requirements contract' means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items. All other terms used in this section are as defined in Article 3 of Chapter 143 of the General Statutes.

PART III -- CORRECTION ENTERPRISES

Sec. 3.1. G.S. 66-58 reads as rewritten:

"§ 66-58. Sale of merchandise by governmental units.

(a) Except as may be provided in this section, it shall be unlawful for any unit, department or agency of the State government, or any division or subdivision of any such unit, department or agency, or any individual employee or employees of any such unit, department or agency in his, or her, or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of goods, wares or merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of services to the public ordinarily and customarily rendered by private enterprises, or to contract with any person, firm or corporation for the operation or rendering of any such businesses or services on behalf of any such unit, department or agency, or to purchase for or sell to any person, firm or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased or operated by any unit, department or agency or division or subdivision thereof of the State for the purpose of operating or rendering of any of the businesses or services herein referred to is hereby prohibited.

(b) The provisions of subsection (a) of this section shall not apply to:

- (1) Counties and municipalities.
- (2) The Department of Human Resources, the Department of Environment, Health, and Natural Resources, or the Department of Agriculture for the sale of serums, vaccines, and other like products.
- (3) The Department of Administration, except that said agency shall not exceed the authority granted in the act creating the agency.
- (4) The State hospitals for the insane.
- (5) The Department of Human Resources.
- (6) The North Carolina School for the Blind at Raleigh.
- (7) The North Carolina Schools for the Deaf.
- (8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students

nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State College, and the other schools and colleges for higher education maintained or supported by the State, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

- (9) The Department of Environment, Health, and Natural Resources, except that said Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.
- (10) Child-caring institutions or orphanages receiving State aid.
- (11) Highlands School in Macon County.
- (12) The North Carolina State Fair.
- (13) Rural electric memberships corporations.
- (13a) State Farm Operations Commission.
- (13b) The Department of Agriculture with regard to its lessees at farmers' markets operated by the Department.
- (13c) The Western North Carolina Agricultural Center.
- (14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided such leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.
- ~~(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.~~
~~The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with,~~

~~the State Department of Correction for the State automobile license tag requirements from year to year.~~

- ~~The price to be paid to the State Department of Correction for such tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase such supplies.~~

- (16) ~~Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.~~

~~Such services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by such institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.~~

- (17) ~~The North Carolina Air Cargo Airport Authority or a lessee of the Authority.~~
- (18) ~~The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.~~

(c) The provisions of subsection (a) shall not prohibit:

- (1) The sale of products of experiment stations or test farms.
- (2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.
- (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase "operation of endowment funds" shall include the operation by public postsecondary educational institutions of campus stores, the

profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of such stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students and their immediate families, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.

- (4) The operation of lunch counters by the Department of Human Resources as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.
- (5) The operation of a snack bar and cafeteria in the State Legislative Building.
- (6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.
- (7) The operation by penal, correctional or facilities operated by the Department of Human Resources or by the State Department of Agriculture, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting such inmates or clients, and other bona fide visitors.
- (8) The sale by the Department of Agriculture of livestock, poultry and publications in keeping with its present livestock and farm program.
- (9) The operation by the public schools of school cafeterias.
- ~~(10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.~~

- (11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.
- (12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.
- ~~(13) The operation by the Department of Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of such management program.~~
- ~~(14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.~~
- ~~(15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.~~
- (13) The operation of the Correction Enterprises Program in accordance with the provisions of G.S. 148-70.1 and 148-70.2.

(d) A department, agency or educational unit named in subsection (b) shall not perform any of the prohibited acts for or on behalf of any other department, agency or educational unit.

(e) Any person, whether employee of the State of North Carolina or not, who shall violate, or participate in the violation of this section, shall be guilty of a Class 1 misdemeanor.

~~(f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70 not regulated by the provisions of subsection (c) hereof, shall be subject to the prior approval of the Governor, with biennial review by the General Assembly, at the beginning of each fiscal year commencing after October 1, 1975. The Department of Correction shall file with the Director of the Budget quarterly reports detailing prison enterprise operations in such a format as shall be required by the Director of the Budget.~~

~~(g)~~ (f) The North Carolina School of Science and Mathematics may engage in any of the activities permitted by G.S. 66-58(b)(8) and (c)(3).

Sec. 3.2. G.S. 148-70 reads as rewritten:

"§ 148-70. Management and care of inmates; ~~prison industries; disposition of products of inmate labor.~~ inmates; private enterprises.

(a) The State Department of Correction in all contracts for labor shall provide for feeding and clothing the inmates and shall maintain, control and guard the quarters in which the inmates live during the time of the contracts;

and the Department shall provide for the guarding and working of such inmates under its sole supervision and control. The Department may make such contracts for the hire of the inmates confined in the State prison as may in its discretion be proper.

~~In accordance with the provisions of Article 11 of Chapter 66 of the General Statutes, the Department may use the labor of inmates confined in the State prison in work on farms and manufacturing, either within or without the State prison. The Department may dispose of the products of the labor of the inmates, either in farming or in manufacturing or in other industry at the State Prison System to any public institution owned, managed, or controlled by the State, or to any county, city or town in this State, or to any federal, state, or local public institution in any other state of the union. Provided however, no manufacturing or other industry shall be established, supervised or controlled by the Department unless specifically approved by the Governor pursuant to G.S. 66-58(f).~~

~~All agencies shall give preference to Department of Correction products in purchasing articles, products, and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system by and offered for sale to them by the Department of Correction, and no article or commodity available from the Department of Correction shall be purchased by any such State department, institution, or agency from any other source unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the Secretary of Administration, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of Article 3 of Chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Department of Correction, but the Department of Correction shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the Secretary by reference to competitive bidding as required by law.~~

(b) In addition, the Secretary of Correction may lease one or more buildings or portions of buildings on the grounds of any State correctional institution or location under Department of Correction control, together with the real estate needed for reasonable access to such buildings, for a term not to exceed 20 years, to a private corporation for the purpose of establishing and operating a factory for the manufacture and processing of products or any other commercial enterprise deemed by the Secretary to provide employment opportunities for inmates in meaningful jobs for wages. A lease entered into

pursuant to this section may include provisions for the remodeling or construction of buildings. Each lease shall be approved by the Governor and Council of State and may be entered into only after consultation with the Joint Legislative Commission on Governmental Operations. Each lease negotiated and concluded pursuant to this section shall include and shall be valid only so long as the lessee adheres to the following provisions:

- (1) All persons employed in the factory or other commercial enterprise operated in or on the leased property, except the lessee's supervisory employee and necessary training personnel, shall be inmates who are approved for such employment by the Secretary or his designee.
- (2) The factory or other commercial enterprise operated in or on the leased property shall observe at all times such practices and procedures regarding security as the lease may specify or as the Secretary may stipulate.
- (3) The factory or other commercial enterprise operated on the leased property shall be deemed a private enterprise and subject to all the laws and lawfully adopted rules of this State governing the operation of similar business enterprises elsewhere, except that the provisions of G.S. 66-58 shall not apply to the industries or products of such private enterprise.

The Secretary shall adopt rules for the administration and management of personnel policies for prisoner workers including wages, working hours, and conditions of employment.

Except as prohibited by applicable provisions of the United States Code, inmates of correctional institutions of this State may be employed in the manufacture and processing of products and services for introduction into interstate commerce, so long as they are paid no less than the prevailing minimum wage."

Sec. 3.3. Chapter 148 of the General Statutes is amended by adding the following new sections:

"§148-70.1 Correction Enterprises.

(a) Creation; use of labor.-- The Correction Enterprises program is created within the Department of Correction. Correction Enterprises may use the labor of inmates confined in the State prison system in work authorized under this section, either within or without the correctional facilities in the State prison system.

(b) Authorized enterprises.-- Correction Enterprises may operate the following enterprises, subject to the applicable provisions of this section and G.S. 148-70.2. No other enterprises may be operated except as provided in subsection (h) of this section:

- (1) License tag manufacturing.**

- (2) Laundry services.
- (3) Traffic sign manufacturing.
- (4) Paint manufacturing.
- (5) Printing and duplication.
- (6) Sewing.
- (7) Metal products manufacturing and installation.
- (8) Tailoring.
- (9) Shirt manufacturing.
- (10) Janitorial products manufacturing.
- (11) Upholstery.
- (12) Woodworking.
- (13) Reupholstery and mattress manufacturing.
- (14) Drapery manufacturing.
- (15) Canning.
- (16) Meat processing.
- (17) Agricultural operations.
- (18) Manpower services.
- (19) Packaging and distribution.
- (20) Forestry management.

(c) Restrictions; special provisions.-- The following restrictions or special provisions are applicable to laundry services, upholstery, woodworking, and open market sales:

- (1) Laundry services.-- Laundry services may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.
Such services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by such institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by such institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.
- (2) Upholstery and woodworking.-- The Department of Correction shall obtain its woodworking and upholstery

requirements and those of its correctional facilities from Correction Enterprises, subject to the provisions of G.S. 148-70.2. Notwithstanding the provisions of G.S. 148-70.2, all other State agencies may, but are not required to, purchase their woodworking and upholstery requirements from Correction Enterprises.

Effective for the 1995-96 fiscal year, the combined gross sales of woodworking and upholstery products, excluding sales to the Department of Correction and its institutions and interplant sales within Correction Enterprises, shall not exceed one million dollars (\$1,000,000). The Corrections Enterprises Board may adjust this limit for subsequent fiscal years in accordance with subsection (f) of this section.

- (3) Open market sales.-- Open market sales are permitted only for timber cut as a part of the forest management program and crops, livestock, poultry, and other products produced in agricultural operations.

(e) Correction Enterprises Board.-- The Correction Enterprises Board is created. The Board shall consist of the members of the State Procurement Policy Council, as set out in G.S. 143-53, the Secretary of Correction or the Secretary's designee, and a representative of private industry appointed by the Governor. A majority of the Board shall constitute a quorum. The Board may meet at facilities provided by the Department of Administration or the Department of Correction.

The initial private industry representative appointed by the Governor shall serve an initial term ending June 30, 1996. Thereafter, his successors shall serve three-year terms.

(f) Expansion; production increases; capital investment.-- Effective January 1, 1996, each significant production increase, new product, or capital investment requires prior approval by the Correction Enterprises Board. Before granting approval, the Board shall determine the impact of the proposal on private vendors, after considering the following applicable factors:

- (1) The size of the government market and the private market for the product.
- (2) The projected growth in the government market's demand for the product.
- (3) The projected ability of the government market to sustain both Correction Enterprises and private vendors.
- (4) The proportion of the government market served by small and disadvantaged vendors.

(g) New enterprises.-- The chair of any standing legislative committee to which a bill authorizing the operation of a new enterprise has been assigned may request the Corrections Enterprises Board to analyze the need and merit

of the new enterprise. The Board's analysis shall be based on the factors listed in subsection (f) and the following:

- (1) The rehabilitative value of the proposed enterprise;
- (2) The inmate population and the placement needs of the State correctional system.
- (3) The availability and feasibility of alternative labor placements, such as road crews and other prison labor outside of Correction Enterprises.

(g) Emergency.-- When necessary to comply with legal requirements for prison population or inmate rehabilitation, the Governor may authorize a new enterprise, new products, increased production, or capital investment without prior approval of the Board or General Assembly, provided that the Joint Legislative Commission on Governmental Operations is informed in writing within 30 days of the emergency authorization and the legal need therefor.

148-70.2. Market and Use of Correction Enterprise products.

(a) Market.-- The goods and services provided by Correction Enterprises may be offered only to State and local government agencies in this State or other states, political subdivisions of this State or other states, and the United States and its governmental agencies.

(b) State agency use.-- A State agency shall purchase its requirements for a product from Correction Enterprises if:

- (1) Correction Enterprises produces the product;
- (2) the product produced by Correction Enterprises meets the applicable standards, specifications, tests, sample submissions, and other requirements imposed on private vendors of the product, as determined by the State Purchasing Officer; and
- (3) Correction Enterprises has sufficient quantities of the product and can meet the agency's reasonable delivery needs.

The State Purchasing Officer shall certify Correction Enterprises as a source on each State contract for which Correction Enterprises produces a product meeting the criteria of this subsection. Correction Enterprises shall not bid against private vendors. The Secretary of Correction, in accordance with rules adopted by the Corrections Enterprises Board, shall establish the prices for all products consistent with the prices generally paid by agencies for those products in the public market.

Sec. 3.3. G.S. 148-2(b) reads as rewritten:

"(b) All revenues from the sale of articles and commodities manufactured or produced by ~~prison enterprises~~ Correction Enterprises shall be deposited with the State Treasurer to be kept and maintained as a special revolving working-capital fund designated "Prison Correction Enterprises Fund." The ~~Prison Correction~~ Enterprises Fund shall be used for capital and operating

expenditures, including salaries and wages of supervisory personnel, necessary to develop and operate prison industrial and forestry enterprises to provide diversified employment for prisoners. When, in the opinion of the Governor, the Prison Correction Enterprises Fund has reached a sum in excess of requirements for these purposes, the excess shall be used for other purposes within the State prison ~~system~~ system, subject to the approval of the Correction Enterprises Board pursuant to G.S. 148-70.1, or shall be transferred to the general fund as the Governor may direct. The provisions of this section shall not apply to revenues generated from private prison enterprises conducted pursuant to G.S. 148-70 except for lease and rental income."

PART IV -- STUDIES

The Correction Enterprises Board shall study the impact and feasibility of allowing private industries to use the labor of inmates in the production of goods. The Board shall also study the need for exempting Correction Enterprises from the State procurement laws with respect to its purchase of raw materials.

The Board shall report to the Joint Legislative Commission on Governmental Operations no later than February 1, 1996.

PART V -- EFFECTIVE DATE

Sec. 5.1. Part I of this act, except for the creation of the State Procurement Policy Council, becomes effective January 1, 1996, and applies to the solicitation and award of contracts occurring on or after that date, unless the parties agree to be bound by the provisions of Part I at an earlier date. G.S. 143-53, creating the State Procurement Policy Council and authorizing the adoption of rules by the Council, is effective on ratification. The members of the Council and the remaining members of the Correction Enterprises Board shall be appointed no later than October 1, 1995.

Part II of this act is effective on ratification and applies to solicitations and awards on or after that date.

Part III of this act becomes effective January 1, 1996, provided that the creation of the Correction Enterprises Board and its rule-making authority, as authorized by G.S. 148-70.1, are effective on ratification

Part IV of this act and this part are effective on ratification.

APPENDIX D



North Carolina General Assembly

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December 1, 1994

MEMORANDUM

TO: Subcommittee on State Purchasing

FROM: Linwood Jones, Staff Counsel

RE: Explanation of Draft Bill and Comments

Previously, you were sent by mail a draft bill concerning State purchasing and Correction Enterprises. I solicited comments from the two agencies most affected by the bill -- the Department of Administration and Correction Enterprises -- and I have attached a copy of the bill and their written comments.

Please note that the draft is still undergoing primarily technical revisions and the correction of errors, which I expect to complete in time to send out a final draft to all Committee members before the final meeting later this month. The draft before you today is identical to what you were sent in the mail. There are a few other substantive matters being reviewed in Part I, including, for example, issues on the voidability of contracts, the use of reciprocal bid preferences, the bid protest process, and the disposition of proceeds from agency surplus. I will also need to incorporate those comments from the Department of Administration and Correction Enterprises that the subcommittee accepts.

This memorandum explains the 5 parts of the draft. Part I of the bill is the major rewrite of the State purchasing laws. Part II involves multiple awards for furniture contracts. Part III involves Correction Enterprises. Part IV provides for studies of various matters. Part V contains the effective dates of various pieces of the legislation.

PART I -- STATE PURCHASING LAW REVISIONS

Sec. 1.1. This section names the legislation the "Procurement Act of 1995."

Sec. 1.2. This section repeals the current State purchasing law in Article 3 of Chapter 143 of the General Statutes, with the exception of one statute concerning the sale and disposition of surplus weapons owned by the State. This statute is moved to a more appropriate location.

Sec. 1.3. This section goes from page 1 to page 15 of the bill and contains the rewrite of Article 3. Even though the draft uses most of the same statutory section numbers as the current law, there is absolutely no relationship between the old and the new. It was impossible to match the two because of the extent to which the material has been reorganized in the draft. Each of the statutory sections is briefly discussed below:

Part 1. General.

§143-48. Title and purpose.

The title "North Carolina State Procurement Code" reflects the Code's applicability to State purchasing, including, as under current law, purchasing for local schools and community colleges. Cities, counties, hospital authorities, and other local entities will continue to be governed, when purchasing, by G.S. 143-129 and other applicable provisions of law.

The statement of purposes is drawn primarily from the Model Procurement Code.

143-49. Good faith requirement.

The good faith requirement is drawn from the Model Procurement Code. It imposes an obligation on both sides -- the State and the vendors -- to act in good faith.

143-50. Definitions.

There is no central definitional section in the current law. Existing definitions are scattered throughout Article 3. The new G.S. 143-50 creates a central definitional section, common among modern statutory drafts. The Model Procurement Code's use of definitional sections in each of its 12 articles was deemed to be unwieldy and unnecessary for the North Carolina Code. Fewer terms are used and defined in the North Carolina Code as compared to the Model Procurement Code. The terms that are defined, however, are critical. Terms like "responsive bidder" and "responsible bidder" are essential terms in the North Carolina Code.

The current Article 3 says nothing about public schools and community colleges falling under the jurisdiction of the State purchasing system. Instead, they are brought under Article 3 by virtue of statutory references in their respective enabling legislation in Chapters 115C and 115D of the General Statutes. To make it clear from a reading of the new Code who is

covered, the Code defines "agency" to include State agencies, public schools, and community colleges. In some instances, public schools and community colleges are not subject to the same purchasing laws as State agencies -- for example, on printing contracts. To recognize this, the Code distinguishes between a "State agency" and an "agency."

The standard terminology "supplies, material, and equipment" under the current law is replaced by the simpler term "products." "Services" are separately defined, and it should be noted that professional services, such as those provided by a lawyer or doctor, are not considered a "service" and therefore do not fall under the provisions of the Code.

Three key terms are "responsive bidder," "responsive offeror" and responsible bidder. These three terms, along with the reference in the Code to "economical" procurement, replace the current and somewhat unwieldy language requiring awards to be based on price, quality, suitability, delivery, etc. The intent of the new language is the same as the old language -- to provide for the award of each contract to the best and lowest bid or proposal.

143-51. Applicability.

A few State agencies are currently exempt from the State purchasing laws, although the exact nature of their exemptions differ. These agencies are the North Carolina Low-Level Radioactive Waste Management Authority, the North Carolina Global Transpark Authority, the North Carolina Hazardous Waste Management Commission, and the North Carolina State Bar Council. These exemptions already exist in each agency's enabling legislation. The new Code provides a central cross-reference to allow the exemptions to be more readily located and identified.

In addition, certain types of procurement are, by statute, currently exempt from the State purchasing laws. These exemptions (and in some cases their statutory references) are contained in the rewrite. For example, highway construction and building construction are covered by their own bidding laws and are therefore exempt from the Code.

Despite the exemptions, there are instances in which an exempt agency or an agency making an exempt purchase may nevertheless want to use the services of the Department of Administration in making a procurement. The Code allows these agencies to do so.

Finally, the State Procurement Policy Council (discussed later) is authorized to make any other exemption that it finds to be in the best interest of the State. The Council would be expected to use this authority judiciously and only under special circumstances warranting exemption.

Part 2. Organization.

§143-52. Powers and duties.

The powers and duties enumerated in new G.S. 143-52 are essentially derived from the current statutory powers and duties of the Secretary. The Secretary's existing supply management authority was slightly modified in new G.S. 143-52(a)(2) to reflect the fact that the Secretary, despite general supervision powers, does not actually have "control" over agency stores and supplies. After listing the Secretary's duties, the new G.S. 143-52 requires the appointment of a State Purchasing Officer to execute those duties on behalf of the Secretary. Thereafter, most of the new statutes authorize the State Purchasing Officer, rather than the Secretary, to take certain actions. This formally recognizes the significant professional role of the State Purchasing Officer -- an appointed administrative officer -- in the procurement process, subject, of course to the continued oversight and direction of the Secretary -- an appointed Cabinet official.

Unlike the Model Procurement Code, the North Carolina Code does not specify the number of years of education or experience needed for one to qualify as a State Purchasing Officer. The general requirement found in G.S. 143-52(b) is very similar to the qualifications for another position appointed by the Secretary -- the Director of State Construction.

§143-52. State Procurement Policy Council.

The new Code creates a State Procurement Policy Council (hereinafter, "Council") to define the Department's administrative policies and procedures. The Council is given rule-making authority over State procurement and is empowered to adopt and revise rules, as necessary, to implement the provisions of the State procurement laws. The Council would be comprised of the Secretary of Administration or his or her designee (presumably, the State Purchasing Officer), the State Treasurer, the State Controller, and two private citizens with experience in large-scale purchasing. The Council can serve as a "buffer" to insulate the Secretary, the State Purchasing Officer, and the employees of Purchase and Contract from policy decisions. Nevertheless, the Secretary's input into State procurement policy is retained by making the Secretary (or his or her designee) the chair of the Council. Policy boards are common throughout State government and are recognized for their function in providing citizen input into the operation of their government.

§143-53.1. Board of Award.

The Board of Award, comprised of designated members of the Advisory Budget Commission and alternates specified by rule, currently advises the Secretary on the award of contracts. The Board of Award at one time possessed far more authority over purchasing matters, but it was made an advisory body in the early 1980s in light of a court decision prohibiting boards with legislative members from exercising executive functions.

Although the new State Procurement Policy Council will now oversee State purchasing policy and adopt the rules to implement the new law and policies, it was felt that the Board of Award should be retained, as an advisory body, to provide legislators an opportunity to see how the funds

they appropriate for agency products and services are expended. The Council would determine which types of contracts should be presented to and reviewed by the Board of Award. Not all contracts are currently reviewed by the Board, and the Government Performance Audit Committee ("GPAC") recommended discontinuing Board review of smaller contracts. The statutory flexibility given to the Council will allow it to review the GPAC recommendations and make any necessary changes on its own if it finds a need to do so.

Part 3. Specifications, Source Selection, and Contract Formation

§143-54. Specifications.

Not much is said in the current law about the development of specifications. However, because of their importance in the process, we felt that the new law should specifically address the fundamental elements of a sound program for developing specifications. Perhaps the most critical element is that the specifications not be written in a restrictive manner that eliminates or discourages competition. The new law carries this principle over to other public contracts, such as State building contracts, to ensure that specifications drafted by architects and engineers for building components that are procured separately from the building contract are not too restrictive. This addresses, for example, the problem of an architect drafting furniture specifications that are so restrictive that only one or two manufacturers can meet the specifications. The law also authorizes Purchase and Contract to use the services of State labs in testing products.

§143-55. Methods of Source Selection.

This section essentially serves as a brief "table of contents" to the most critical parts of the new law. The section requires competitive sealed bidding unless one of the recognized exceptions in the ensuing sections applies. Competitive sealed bidding is the cornerstone of public purchasing programs and is therefore highlighted as the principle law, with the exceptions applicable only if the appropriate statutory conditions are met.

§143-56. Competitive sealed bidding.

Much of the language in the new competitive sealed bidding law comes from the Model Procurement Code. Despite the new terminology and reorganization, however, the new law is in substance the same as the current G.S. 143-52. The basic principle is to purchase products of acceptable quality at the best price. The current law's reference to "price" and a number of other factors to be considered in evaluating a bid is not only unwieldy, but may also leave the impression that the lowest price is the determinative factor in awarding a contract. The new law more appropriately recognizes up front a bidder's responsiveness and responsibility as essential elements of a qualified bid. The most economical of these responsive and responsible bids will be awarded the contract. In practice, vendors would probably not see major changes in the manner in which contracts are awarded since quality, performance, and

other factors affecting a bidder's responsiveness and responsibility are already recognized by law and taken into consideration in the award of contracts.

§143-57. Multi-step bidding and competitive negotiation.

In some cases, competitive sealed bidding is simply not the most appropriate or feasible way to solicit prospective vendors. Multi-step bidding and competitive negotiation provide alternative means of soliciting competition. Very little is said in the current law about multi-step bidding or competitive negotiation although both are used frequently. This new law provides specific statutory authority and parameters for multi-step bidding and competitive negotiation. Because of their similarities, both are addressed in this section and share some common governing provisions.

Multi-step bidding is often used for purchases of products for which it is difficult to prepare specifications for bidding -- for example, highly technical equipment. Competitive negotiation is frequently used for service contracts and is carried out through the more commonly known "Requests for Proposals" ("RFPs").

§143-58. Procurement without formal advertising.

This section recognizes several other exceptions to competitive sealed bidding, all of which exist under current law. The first, "informal procurements," recognizes the need for securing competition in a more flexible manner when the dollar value of the procurement is not large. Informal procurement refers to a method of obtaining products or services through competitive means, but without the formal advertising and bidding required for sealed bids. As under current law, the informal procurement methods will be used for purchases of \$10,000 and under (\$35,000 and under for certain universities). Very small purchases (less than \$500 under current rules and even lower at some agencies) can be obtained without competition.

The second exception to competitive sealed bidding is "sole source" procurements. A sole source procurement is one for which there is only one supplier who is capable of supplying the required product or service in the time needed. The State Purchasing Officer must review agency declarations of sole source to be assured that other competitors are not available. A particular type of sole source procurement -- an unsolicited offer -- is also addressed.

The third exception is for emergencies. In addition to true emergencies, certain exigencies such as breakdown in machinery may create a need to procure supplies, material, or equipment immediately, leaving no time to seek competitive bids or proposals. As under current law, these emergency purchases are exempt from competitive solicitation requirements, although they are nevertheless subject to rules of the Council.

It should also be noted that G.S. 143-51(f) authorizes the Council to exempt any procurement from the State purchasing laws when it finds exemption in the best interest of the State.

§143-59. Prequalification.

This section allows prospective suppliers to be prequalified for particular types of products and services. The fact that a bidder or offeror was prequalified to bid or make a proposal does not mean that its bid or offer is automatically deemed "responsible" for purposes of being awarded a contract.

§143-60. Multi-term contracts; lease with option to buy; installment financing.

All contracts for the procurement of goods and services are contingent on the availability of funds to pay for them. This section statutorily recognizes what is already a standard contract clause. When a contract is cancelled because of the lack of funds in a succeeding fiscal year, the contractor's cancellation charges may be paid from any funds available for that purpose.

Installment financing involves financing the purchase of a product over several years, thus requiring the agency to pay interest in addition to the purchase price of the product. The Advisory Budget Commission has adopted guidelines on when installment financing can be used and what type of approval is required. The new law would allow the Council to establish rules governing the use of installment financing and leases with options to purchase.

§143-61. Agency delegation.

Agency delegation is a key component of the State purchasing system. Like most other states, North Carolina has a centralized State purchasing system but allows commodities to be purchased in a decentralized manner (directly by each agency) if they are under a certain dollar value. In North Carolina, agencies currently make purchases of \$10,000 and under (\$35,000 and under for certain universities). These same thresholds would continue to be recognized under the new law. However, the current authority of the Secretary to adjust these thresholds in accordance with inflation probably should not be retained because it has never been used and it is simpler to have the legislature raise the threshold every five or ten years rather than administratively increase it in smaller, unrounded amounts.

As under current law, agencies can also be delegated the authority to purchase certain types of commodities, regardless of the dollar value involved. An existing exemption that allows State hospitals to purchase from private group hospital purchasing organizations is also retained.

If an agency abuses its delegated authority, the authority can be withdrawn or modified. The State Purchasing Officer is required to monitor agency compliance with the State purchasing laws to determine whether the agencies are complying. The Department has recently created a "compliance team" to work with agencies in ensuring their compliance with the State purchasing laws. The team's focus is one of education rather than enforcement. In recognition of this focus, the draft revisions do not contain elaborate reporting procedures that require the State Purchasing Officer to report minor violations and technical irregularities among agency purchasing programs. However, the State Purchasing Officer is and will continue to be obligated by other laws to report evidence of fraud and other criminal misconduct as well as more serious, intentional violations to the State Auditor.

The new draft also requires that agencies must purchase from State term contracts unless those contracts allow purchasing from other sources. Recent concerns about the inability to buy lesser value items off contract can continue to be addressed through the contract's terms and conditions.

Part 4. Procurement Policies.

143-62. Small and disadvantaged business enterprises; disabled business enterprises.

This section continues the current reporting requirements that help the State determine the amount of procurement business going to small businesses, disadvantaged businesses, and disabled business enterprises. Please note that this section and perhaps others could change during the session, depending on the results and recommendations of the disparity study currently underway by MGT of America.

§143-63. Recycled products.

This section essentially repeats the current procurement recycling law with one exception -- the specific goals for the procurement of agency purchases of recycled paper were removed and replaced with a more flexible way of determining those goals. I will be discussing with the Office of Waste Reduction the need for legislatively-mandated goals, as opposed to administratively-mandated goals, and we may recommend restoring the legislative goals.

Note that one portion of this law was relocated to the new section on specifications (G.S. 143-54).

§143-63.1. North Carolina products.

This section rewrites the "tie bid" law that appears in the current law at G.S. 143-59. Under the "tie bid" law, a tie between two vendors offering the same price and quality can be broken in favor of the North Carolina vendor. Most states have similar tie bid laws.

This section also codifies a rule concerning the use of North Carolina products and services in developing specifications, but we will need to make some additional changes to this section in light of points raised by the Department of Administration about it.

§143-63.2. State-produced goods; surplus.

This section requires State agencies to use surplus items generated by other State agencies if those items meet their required needs. The preference for prison-made goods is contained in Part III of the draft. A proposed reciprocal preference law has been separately drafted.

§143-63.3. Cooperative Purchasing.

This section continues the cooperative purchasing arrangement that allows cities, counties, and certain nonprofit groups to participate on State requirements (term) contracts. As under current law, participants on the State contract must abide by the terms and conditions of the contract.

Part 5. Administration and Ethics

§143-63.4. Requisitions.

This section, like the current law, requires agencies to requisition their supplies and services only from those vendors that have been certified on the contract unless the law provides otherwise. In addition, the Department of Administration is authorized to reject an agency's requisition in accordance with rules adopted by the Council. This authority is superior to the current limited authority of the Department to challenge the quality level of agency requisitions.

§143-63.5. Validity of awards and contracts.

This section is still under review. The primary purpose of the section is to move away from the current law that makes contracts void if entered into in violation of law and substitute a voidability clause that would allow contracts to be ratified if the violation was not significant.

The provision in the current law holding the agency's executive officer personally liable for the costs of these illegal contracts was inadvertently omitted.

§143-63.6. Ethics; conflicts of interest.

This section prohibits State officials involved in the procurement process from having a personal beneficial interest in contracts, acting on behalf of bidders, and accepting any contingent fee or kickback relating to a contract. Additional ethical standards would be adopted by the Council.

The penalty is set at a Class G felony, which is one class lower than the current Class F felony for violating the financial interest law.

This section also prohibits, as under current law, the use of State contracts for personal benefit or ownership. However, note that section 1.5 of the bill makes an exception to allow employees of certain agencies to buy items on State contract for the mutual benefit of the agency and the employee. This exemption has existed under the current law since 1983 and is apparently used primarily for the purchase of computers by teachers and community college instructors. The May 31, 1983 grandfathering date replaces the reference in the current law to "theretofore established." (The date will probably be changed to the effective date of this 1983 law -- October 1, 1983 -- in lieu of the ratification date of May 31st).

§143-63.7. Certification of competitiveness; reports of anti-competitive practices.

As under current law, bidders must certify that their bids have been submitted competitively and without collusion. False certification is a Class I felony. This section also requires evidence of collusion among bidders to be submitted to the Attorney General's Office.

§143-63.8. Bid protests; contract controversies.

This section establishes the procedure for bid protests. Informal settlements of protests are encouraged, consistent with the general policy of this State as expressed in the Administrative Procedures Act (G.S. 150B-22). The State Purchasing Officer would handle the protest of bids and offers solicited by and contracts awarded by the Division of Purchase and Contract, and each agency would handle protests arising from contracts that do not come through the Division (see proposed G.S. §143-61(f)). We are still reviewing whether the decision of the agency or State Purchasing Officer should be contested under the APA or appealed directly to superior court.

Sec. 1.4. There is currently no section 1.4.

Sec. 1.5. See the discussion under proposed G.S. §143-63.6 (above) for an explanation of this section.

Sec. 1.6. This section merely removes two cumbersome definitions from the purchasing law and places them under the insurance law. The definitions still apply to the purchasing law, but their relationship to purchasing law generally is minimal and it was felt that their removal would help simplify the rewrite of Article 3.

Sec. 1.7. This section provides that legislators cannot serve on the State Procurement Policy Council. As explained before, legislators cannot serve on boards that engage in rule-making or other executive functions.

PART II -- MULTIPLE AWARDS

This Part deals specifically with multiple awards for furniture and seating contracts.

Sec. 2.1. This section sets out the basic reasons for requiring multiple awards on furniture and seating contracts and states the 4 basic conditions that must be met in order to make a multiple award for furniture or seating.

- (1) The contract must be competitively bid;
- (2) The bids will be evaluated as usual for responsiveness and responsibility;
- (3) The contract will be awarded to a majority of the qualified bidders; and
- (4) The agency that makes purchases under the contract must purchase the most economical piece of furniture or seating that meets its needs.

If necessary and approved by the State Purchasing Officer, more than a majority of the bidders can be placed on the contract. For example, if there are only three qualified bidders, and all three are needed in order to provide the volume of furniture needed by the State, the schools, and the community colleges, the State Purchasing Officer can approve of the award to all three.

Sec. 2.2. This section requires the use of multiple award furniture contracts to be monitored for 2 years, with information on their use to be reported back to the General Assembly in 1997. In the event that problems arise, the General Assembly will have an opportunity to reassess this legislation and take appropriate action.

Sec. 2.3. This section defines the types of furniture and seating contracts that would come under the multiple award requirement.

PART III -- CORRECTION ENTERPRISES

Sec. 3.1. This section amends G.S. 66-58, which has historically been referred to as the "Umstead Act." The Umstead Act regulates the types of businesses in which State agencies can engage in competition with private businesses. As you will note from the various provisions I have struck out in G.S. 66-58, the authority for the Correction Enterprise industries is scattered throughout and fragmented. Some of Correction Enterprises' industries were approved by the legislature (i.e., those listed in subsections (b) and (c)), but the majority of their enterprises were established with gubernatorial approval, as provided for in subsection (f).

The purpose of amending the Umstead Act is to consolidate all of the Correction Enterprises industries under one statutory authority. All of the businesses that are shown as deleted in this section have been restored in section 3.3 of the bill.

Sec. 3.2. This section, like the previous section, is merely removing material that is restored and reworked in section 3.3.

Sec. 3.3. This section contains the major changes concerning the operation of Correction Enterprises. First, all businesses in which Correction Enterprises wants to engage would require legislative approval. The existing businesses are grandfathered in, as shown on the list of 20 businesses in which Correction Enterprises now engages (see pages

23 and 24). Any expansion into new businesses would require this section to be amended to add to the list. With the exception of emergency situations, the Governor could no longer approve new enterprises.

Second, new capital expenditures, increases in production, and the development and sale of new products would be subject to the oversight and approval of a new board -- the Corrections Enterprises Board. Before approving or disapproving, the Board would determine the impact of the proposal on private industry. The Board would consist of the 5 members of the State Procurement Policy Council plus two additional members (one from the private sector and the Secretary of Correction).

Third, when a bill proposing a new enterprise is introduced in the General Assembly, it should be accompanied by a report from the Correction Enterprises Board that explains the impact on private vendors, why other alternatives for these inmates were not feasible, and the expected rehabilitative value of the enterprise. Once the bill reaches committee, the committee chair can require such a report.

Fourth, production of furniture would be limited. Correction Enterprises would be allowed to produce all of the furniture it needs to satisfy the demands of the prison facilities and the Department of Correction, but sales to other agencies, cities, counties, etc. would be limited to \$1 million per year.

Fifth, the preference law, which requires State agencies to buy products from Correction Enterprises if those products meet the agencies' needs, is retained with one exception. The exception is for furniture. State agencies, except for the Department of Correction, would no longer be required to give preference to Correction Enterprises furniture. The reason for limiting the exception to furniture is because no one is quite sure what would happen to Correction Enterprises if the preference were completely removed for all products, especially since Correction Enterprises can sell only to a limited market. The removal of the preference on this one product should give us an idea of the impact on Correction Enterprises.

Sixth, the Governor is given emergency authority to step in, when legally compelled by prison population or inmate rehabilitation needs, and authorize new enterprises, new products lines, new capital investments, or increased production. ("Capital investments" refers to those made by Correction Enterprises from profits in its revolving fund, not legislative appropriations.)

Finally, it should be noted that Part III was intentionally drafted very restrictively to demonstrate about the most that can be done without financially impairing the operations of or shutting down Correction Enterprises. If enacted, it would be one of the most restrictive and inflexible laws governing any correction industry program in the United States. Perhaps some of this flexibility can be restored without breaching Part III's goals. (See the attached response from Correction Enterprises).

Sec. 3.3. (should be 3.4). This section merely reflects the proposed Correction Enterprises Board's approval authority over the use of prison industry profits for new capital investments and expansion.

PART IV -- STUDIES

This part requires studies by the Correction Enterprises Board of the need for exempting Correction Enterprises from the purchasing laws on the purchase of raw materials. Several other states apparently have these exemptions. The Board would also study the proposal to allow inmates to provide labor, at the prison sites, for the purpose of finishing or assembling products provided by the manufacturer. Apparently, several North Carolina manufacturers already ship unfinished products to South Carolina prison industries to have them finished by South Carolina inmates. There is currently no statutory authority for this type of operation in North Carolina.

PART V -- EFFECTIVE DATE

I assume the earliest this bill would pass would be in the early summer of 1995. In order to give the State Procurement Policy Council time to adopt new rules to implement Part I of this act, the Council would be created immediately (with time allowed for appointments to be made) but Part I would not become effective until January 1, 1996. The same is true of the Correction Enterprises Board and the changes concerning Correction Enterprises. The Board would come into existence immediately, but Part III would not be implemented until January 1, 1996, in order to give the Board time to prepare for implementation.

Part II (multiple awards) would take effect immediately and would apply to all furniture and seating requirements contracts that are advertised for bids on or after the date the bill is ratified.

APPENDIX E



North Carolina Department of Correction

Correction Enterprises

P. O. Box 29540

Chapanoke Road • Raleigh, North Carolina 27626-0540

James B. Hunt Jr., Governor

Danny C. Stewart, CPA
Enterprise Director

Franklin Freeman, Secretary

November 30, 1994

Memorandum

To: Linwood L. Jones
Staff Counsel

From: Dan C. Stewart
Enterprise Director

A handwritten signature in cursive script that reads "Dan".

Subject: Draft Proposal on Purchasing and Correction Enterprises

Thank you for the opportunity to comment on the proposed legislation dealing with Purchasing and Correction Enterprises. As you are aware, the proposal contains some substantive changes that would significantly affect the day-to-day operations of our division. While we are not opposed to change and in-fact encourage change among our management group, we try to investigate the ramifications to ensure that we do not make decisions that are detrimental to the Department's goals and objectives. With this methodology in mind, we have carefully reviewed the draft and noted potential pitfalls that would detract from operations rather than improve them.

Premise 1

In view of the fact that this entire Purchasing exercise has essentially been over:

- multiple-sourcing versus single sourcing of state contracts for office furniture and;
- fears of the office furniture manufacturers that Correction Enterprise will get more than the current 3% of the State expenditures for furniture,

we feel that the existing legislation regarding Correction Enterprise is sufficient and needs no amending. Even though the woodworking and upholstery plants have been operating almost twenty years, the office furniture manufacturers were virtually unaware of their existence until State Purchase and Contract listed Correction Enterprises as a vendor on the statewide furniture contract about three years ago. If it would relieve the anxiety levels of the office furniture manufacturers, we could insert the language denoted below limiting the number of employees and inmates to current levels in place of the language proposed in the draft.

Replace:

Page 24 Lines 42 through 43 and Page 25 Lines 1 through 13 or insert on Page 19 Line 13 (b)(19)

With:

- (2) **Upholstery and woodworking.** - The Department of Correction shall not increase the number of staff and inmates assigned to these two facilities without legislative approval.

It is an established fact that North Carolina Correction Enterprise is one of the most successful prison industry programs in the United States. Thus, it is difficult to understand why there would be interest in making changes that would have such a negative impact operationally. The proposed changes would significantly delay the ability of the Department to react to changing circumstances and increase the costs of operations considerably. Thus, North Carolina's prison industries could rapidly move from a profit picture of \$5-6 million dollars a year to the status of becoming the 12th state that has overall losses in prison industries that must be subsidized with taxpayer funds.

To put it in better perspective, I dare say that if any of the office furniture manufacturers were to have similar restrictions and requirements placed on their companies, they would not be in business for long. If we are going to conduct our operations using sound business principles, we do not need to impose more and more bureaucracy and hoops to jump through.

Lastly, only a few of the products that we produce are on State contract - notably upholstery, woodworking and a few cleaning products. Thus we are contemplating drastic changes that affect all of our operations to try and allay the fears of the office furniture industry.

In regards to purchasing legislation, there are two additional areas that the State would benefit from:

- (1) Exemption of Correction Enterprises from formal bidding for raw materials and supplies and
- (2) Group Purchasing with other states

Page 4 Line 9 (Purchasing Exemption)

Add:

- (10) **Raw materials and supplies for Correction Enterprises**

Comment: It can be amply demonstrated that the State (Correction Enterprises) pays an excessive amount for raw materials and supplies due to technical errors and omissions by bidders during formal bidding procurement procedures.

One recent example was for terry cloth. The low bid was Fieldcrest Cannon. Due to bid errors, the first four bidders were disqualified. The fifth lowest bidder was a distributor for Fieldcrest Cannon whose bid was 15% higher or \$ 20,580. Thus, this represents unnecessary cost to the State.

A number of states, including South Carolina and Texas, exempt raw materials and supplies from formal competitive bidding. In addition, the Governor's Blue Ribbon Commission on Governmental Reform in Virginia is currently making a similar recommendation to their state legislature for consideration in their Session beginning in January 1995.

Formal bidding also requires much longer lead times in purchasing raw materials and supplies in addition to requiring higher inventories which lessens the State's cash investment income. Several other negative by-products resulting from higher inventories are the in-

Linwood Jones
November 30, 1994

creased chance of damage in storage, obsolescence for limited shelf life materials and warehousing costs.

Page 12 Line 38 G.S. 143.63.3(a)(1) (Group Purchasing)

Comment: We are regularly contacted by out-of-state governmental entities who are participating more and more in group purchasing. Group purchasing can achieve savings for all governmental participants through greater purchasing power and the ability of vendors to cut their profit margins. While we have not participated in these group purchases, it would certainly be advantageous for the State to allow agencies to group purchase.

Add "or governmental entities of other States."

On Page 13 add after line 5 a new category.

"(6) If no State requirements contracts exist, a State agency may combine its needs with one or more states and purchase from the administering State's contract"

Premise 2

While we disagree with the necessity of making legislative changes affecting existing Correction Enterprise, we have made constructive suggestions to make areas of the draft more acceptable or operationally functional than the provisions would otherwise be.

Page 2 Line 43

Comment: Definition is incomplete.

Page 24 Line 2

Comment: Suggest deleting the word "Traffic" since we produce a large number of signs relating to buildings, parks, OSHA, safety signs, etc.

Page 24 Line 9

Comment: Suggest adding the words "and services" since we also service the chemical dispensers, dishwashing pumps and laundry pumps at various government facilities that use our janitorial chemicals.

Page 24 After Line 19

Add:

- (21) Computer Aided Drafting and Design (CADD) Service
- (22) Roofing Services
- (23) Athletic Equipment
- (24) Asbestos Removal Services
- (25) Braille Production
- (26) Modular Work Stations
- (27) Data Entry and Transcription Services
- (28) Box Carton Plant
- (30) Furniture Refurbishing
- (31) Energy Efficient Products

Page 24 Lines 42 through 43 and Page 25 Lines 1 through 13

Comment: While the \$1,000,000 limitation in the referenced section has been advocated by at least one furniture manufacturer, it is impractical from a variety of reasons.

First, as we have pointed out on a number of occasions, a large amount of work from woodworking is custom cabinets that do not compete with any of the furniture manufacturers active in this process. Yet no allowances are made for this important element.

Secondly, we also perform reupholstery services at the upholstery plant, yet no allowances have been made for this fact. This has no negative impact on office furniture manufacturers.

Thirdly, we are not in a position of being able to monitor such an arbitrary number of \$1,000,000. If we were, it would not make good public policy to send staff and inmates

home on May 15 or whatever date we managed to reach this arbitrary sales figure. We are already limited to the governmental market and have nowhere else to sell products except to surplus excess production through State Surplus to the private sector which I don't think is in the best interest of anyone.

Lastly, we would suggest that the following language would create the "insurance" that the furniture industry should accept and at the same time, not create a bureaucratic nightmare. Suggested wording would be:

- (2) Upholstery and woodworking. - The Department of Correction shall not increase the number of staff and inmates assigned to these two facilities without legislative approval.

This language would place definite limits on production since inmates turn over every 12 months. Without additional workers, there is of necessity a limited amount of production capability, especially in view of the fact that this is a continuous training program.

Page 25 Delete Lines 18 through 43; and, Page 26 Delete Lines 1 through 14.

Comment: An example of the negative potential of one proposed restriction of "production increases" is the area of DOT's needs. EPA changes are being debated that could significantly change the Division's transition from oil-based to latex traffic paint. Congress is also considering implementation dates to require metric sign messages. Tens of thousands of signs will have to be converted in a short time period. We do not have the time, nor does the State have the flexibility of telling the Federal Highway Administration - "We have to wait for a quarterly board meeting before we can increase production." There are many instances like this that we could recite if needed.

Alternative 1: One alternative to establishing a new board would be to use the current Board of Corrections as an Advisory Board. This group is in the best position of having an overall understanding of the Department of Correction and its mission, including prison industries.

Replace with:

(e) Correction Enterprises Advisory Board. - The Board of Corrections shall function as additionally as the Correction Enterprises Advisory Board.

(f) The Advisory Board shall make recommendations to the Governor, the Secretary of the Department of Correction and the Director of Correction Enterprises on ways to better integrate North Carolina Correction Enterprises into the business community and foster its growth while ensuring that competition with the private sector is minimized and the multiple aspects of the Department of Correction and Correction Enterprises mission are maintained.

The duties of the Advisory Board shall be consistent with the above recommendations, including, but not limited to:

- (1) Periodically meet with Correction Enterprises management and the Secretary of the Department of Correction to review operations;
- (2) Assist in making capital expenditure recommendations;
- (3) Review the annual report and operating statements;
- (4) Review Correction Enterprises' business plan;
- (5) Assist in determining product development areas and make recommendations of new industries;
- (6) Review market impact information; and
- (7) Advise the Secretary of the Department of Correction on matters related to Correction Enterprises.

(g) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70.1 not regulated by G.S. 66-58(c), shall be subject to the prior approval of the Governor, with biennial review by the General Assembly, at the beginning of each fiscal year. The Department of Correction shall file with the Director of the Budget quarterly reports detailing correction enterprise operations in such a format as shall be required by the Director of the Budget.

Alternative 2: After contacting 10 states with correction industry boards and reviewing their structure, a secondary suggestion is the following:

Replace with:

(e) Correction Enterprises Advisory Board. - The Correction Enterprises Advisory Board is created. The Board shall consist of the following twelve members:

- (1) One representative from the State Procurement Policy Council, as set out in G.S. 143-53;
- (2) One representative from manufacturing;
- (3) One representative from small business;
- (4) One representative from agriculture;
- (5) One representative who is qualified by education and experience in the field of criminology;
- (6) The State Budget Officer or his/her designee;
- (7) The Chairman of the Employment Security Commission or his/her designee;
- (8) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one member each of the largest two caucuses in their respective houses. The legislators so appointed shall serve as nonvoting members and shall serve two year terms, or

until they cease to be members of the house from which they were appointed, whichever comes first.

- (9) The Secretary of the Department of Correction or his/her designee, who would serve as chairman.

The Governor shall appoint the representatives from the State Procurement Policy Council, manufacturing, small business, agriculture, and criminology. The initial appointees by the Governor shall serve an initial term ending June 30, 1996. Thereafter, their successors shall serve three-year terms.

(f) The Advisory Board shall make recommendations to the Governor, the Secretary of the Department of Correction and the Director of Correction Enterprises on ways to better integrate North Carolina Correction Enterprises into the business community and foster its growth while ensuring that competition with the private sector is minimized and the multiple aspects of the Department of Correction and Correction Enterprises mission are maintained.

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- (3) Review the annual report and operating statements;
- (4) Review Correction Enterprises' business plan;
- (5) Assist in determining product development areas and make recommendations of new industries;
- (6) Review market impact information; and
- (7) Advise the Secretary of the Department of Correction on matters related to Correction Enterprises.

(g) Notwithstanding the provisions of G.S. 66-58(a), the operation by the Department of Correction of facilities for the manufacture of any product or the providing of any service pursuant to G.S. 148-70.1 not regulated by G.S. 66-58(c), shall be subject to the prior approval of the Governor, with biennial review by the General Assembly, at the beginning of each fiscal year. The Department of Correction shall file with the Director of the Budget quarterly reports detailing correction enterprise operations in such a format as shall be required by the Director of the Budget.

Page 26 line 38 through Page 27 line 10. Recommend deletion of changes to this section.

Comment: Please note that this section was amended by the 1994 Session (Senate Bill 1505 Page 110). The section now allows for 5 % of Enterprise profits to go to a Victim's Compensation Fund, payment for non-Enterprise inmate incentive wages, capital needs or transfers to the General Fund. There is no need to modify this section again.

Department management is sensitive to the private sector and attempts to have minimal effect on the private sector as evidenced by our small furniture operations. At the same time, we attempt to maximize the number of inmates working in productive activities and reduce the burden on the taxpayers of the State. Prison industries benefit user agencies with lower priced products, inmates pay for their training, incarceration costs are reduced and 100% of the profits stay in the State's coffers--all of which benefit the taxpayers of the State. This entire process requires "walking a fine line" and attempting to avoid what has become the NIMBY (Not In My Backyard) friction with affected businesses/individuals.

Correction Enterprises as a Work Program

The issue of the importance of Correction Enterprises versus alternative employment such as road squads has been raised. It is sometimes helpful to review such a scenario to determine the economic implications.

Example: The security staffing ratio for medium security road squads is 3 officers for an inmate work force of 12. The salary, fringe benefits, transportation, tools, clothing, incentive wages, etc. for this work crew approximate \$ 100,000 per year.

If the State were to convert the 1,900 inmates currently employed by Correction Enterprises to road squads, this would create 158 12-man work crews. At a cost of \$100,000 per crew per year, this computes to a cost of \$ 15.8 million a year for road-work. At the same time, North Carolina has one of the most successful Adopt-a-Highway Projects in the nation where private individuals police sections of State highways which partially negates the need for inmate labor on roads.

Correction Enterprises is self supporting through receipts. In Correction Enterprises, the cost of approximately 350 staff, support facilities and operating supplies is borne by the productivity of inmates -- costs that would otherwise be passed on to taxpayers.

The economic impact of Correction Enterprises on the cost of State government is positive. NCCE not only makes a profit, but also passes savings along to user government agencies. While savings vary depending on the prison industry, we estimate that savings are conservatively 10 % of sales which would be roughly \$ 5 million in savings per year to user agencies. To cite a few examples,

- Our laundry prices are 20-25% cheaper than neighboring South Carolina and Virginia prison industries.
- Printing prices are 25-45% cheaper than outside printers.
- Sign prices are considerably cheaper than other prison industries and our quality is among the best in the nation. For example, a 36" High Intensity stop sign is \$ 60.12 in North Carolina and \$ 80.33 in Georgia (33% higher).
- In a recent price comparison for metal and wood products on the Warren Prison construction project, Correction Enterprises quote was \$ 143,000 and the next lowest bid was \$244,000--a savings of \$ 99,000 or 69%.

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- An analysis of one of the chemical product lines produced by NCCE, dishwashing chemicals, revealed a savings of 48% over comparable purchases from outside vendors.

It is clear that the profits generated by NCCE are only one part of the savings generated for state and local government.

Training. Another significant contribution is the self-sustaining training program wherein inmate-produced goods and services generate enough income to pay for their training (supervision, raw materials and overhead) versus the taxpayer funded vocational and educational programs that the Department would otherwise have to pay.

Other Benefits. Other more intangible benefits include instilling a work ethic in inmates, and reducing idleness and inmate disruptions.

In conclusion, the annual economic impact is considerable and encompasses:

- \$ 940,000 transfer to the General Fund
- \$ 1,108,017 in payment of non-Enterprise incentive wages (unit duty inmates)
- \$ 3,000,000 capital contribution
- \$ 5,000,000 savings to user agencies
- \$10-15,000,000 cost of alternative work assignments or educational programs

Thus, the strategic importance of having an effective prison industry program can be seen from the above data.

cc: Kip Kautzky
John Leaston

APPENDIX F



North Carolina Department of Administration

James B. Hunt Jr., Governor
Katie G. Dorsett, Secretary

Division of Purchase and Contract
J. Arthur Leaston, State Purchasing Officer

December 1, 1994

TO: Linwood L. Jones

SUBJECT: Response to Proposed Legislation Part 11

As the proposed text under Part II -- In most cases, multiple awards have been the traditional method for establishing furniture contracts. This practice was followed for many years, but it was wrong because it clearly favored the salesperson rather than the taxpayer. Millions of dollars were unnecessarily spent thereby increasing the cost of operating State government.

Basically, in maintaining such a system where bidders knew in advance that bids would be awarded to a certain number of bidders, the State eliminated the incentive to offer a competitive price. This practice encourages the bidder to help himself to extra profits which are unwittingly paid for by the taxpayers of North Carolina. It does not even require a collusive effort on the part of the bidders, so it is perfectly legal. One result of the State's continued practice of multiple awards on furniture contracts was that for about four decades, all bidders provided the same discount of 40%, which is strong evidence that they did not see our Invitations For Bids as requiring competitive bids. Further strong evidence of this was provided when it was determined, at about the time the decision was made to revise our furniture purchasing methods, that other states received better discounts than the State of North Carolina for the same furniture. This was in spite of the fact that most of the furniture had been manufactured in North Carolina.

In practice the multiple award system, as described above, results in the final purchasing decisions being made locally by uninformed purchasers. After award it becomes a game of salesmanship without regard for price. The vendor's goal naturally is to use the best salesmanship to obtain the business for that line item, obtaining all he can and at the highest profit.

The salesman is in no way bound to act in the using agencies' best interest. If for example there are several manufacturers listed on the requested line



item, a salesman who is dealing in more than one of them could suggest to the field purchaser that he is out of stock of the low cost (and low profit) line and convince the purchaser to buy the higher priced (and higher profit) line to obtain a better delivery.

Paragraph (4) in the proposed legislation apparently attempts to deal with situations such as the above with the provision that, "Each agency purchasing under the contract shall make the most economical purchase that meets its needs." The Division has concluded that without an extensive oversight effort, this result cannot be relied upon. Many field purchasers are relatively new (and therefore more easily convinced by bidders using superior salesmanship), while some others wish to purchase from local vendors rather than deciding based on price, given any choice at all, while still others are simply brand conscious and may act primarily on that basis, again if given a choice. In reality, the proposed legislation establishes a system where bidders can exert undue influence for orders because centralized control has been removed from the process.

Over the past couple of years in furniture contracts, the Division has compared pricing received from the "old" method of multiple awards on each item against the "new" method of single awards on each item. The savings to the taxpayer is significant as shown by the following data, which reflects calculated annual savings for the new vs the old methods of award. There would be no logical reason to expect other than the trend these results show:

Wood casegoods \$260,000

Classroom furniture \$2,500,000

Ergonomic chairs \$126,000

Appliances \$70,000

Bookcases \$45,000

Computer furniture \$28,000

There has been much use made, in a negative manner, of the term "sole (or single) source." In our opinion the furniture industry is mistakenly implying that the State is setting up its furniture contracts with the intent to limit all the furniture on a particular contract to a single source of supply. "Sole source" as used by this Division is applied to situations where a particular product needed is actually available from only one source. Bidding in those situations is waived because it would make no sense to solicit bids on a product available from only a "sole source." This is of

course not at all the situation with furniture. Indeed most of our furniture contracts are established so that there are multiple line items, sometimes for different types of furniture, sometimes for different sizes, sometimes for different quality levels, with the result that even when only one vendor is awarded in each category, many vendors may be awarded on each total contract. Thus there is no intention and no result of what is being called "sole source." For example, in ergonomic chairs, which has four line items, a total of three different manufacturers were awarded.

Paragraph (3) in Part II of the proposed legislation specifies that a majority of the responsive bidders is to be awarded, whereas the preamble of Part II indicates that one of the justifications for multiple awards is "to ensure agencies access to sufficient sources of furniture supply and service." Consistent with the preamble, the Division has of its own accord on various commodities made multiple awards where such was necessary "to ensure agencies access to sufficient sources" within a line item. The Division has also applied this practice recently in furniture contracts (e.g. classroom furniture) and will continue to do so when necessary. However, the Division believes that it is not appropriate to enact a statute based on the assumption that it will always be in the State's best interest to so award on furniture contracts and furthermore which also assumes carte blanche that the appropriate number of contractors in each line item will always be at least the majority of the responsible bidders. Such a statute would not help the users, it would only serve to once again signal all bidders to take more profits, and thus would be to the detriment of the taxpayers. Therefore there will be an increased cost of operating state government. The decision of whether to multiple award, and if so to how many bidders, is better made on a contract by contract basis by the Division after consideration of the particular circumstances with input from using agencies. This position is consistent with a resolution of the National Association of State Purchasing Officials (NASPO) which expresses support for the use of multiple awards only in cases where single awards are not adequate. A complete discussion of this subject is provided in "State and Local Government Purchasing, 4th edition," 1994, by NASPO, pages 76-77. (Refer to General Statute 143-53 and Administrative Code .1201 for laws and regulations relating to partial and multiple awards.)

The preamble of Part II in part justifies multiple awards on furniture on the basis that it provides agencies with "the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs." The Division has accomplished this flexibility in another way, which has proven less costly than multiple awards on a single line item. Our method has simply been to create different line items for different design needs. A good

example of this is the wood casegoods contract, where four different styles are available: slab end panel, flush panel, post and panel, and traditional. Within each category (line item), competition is established and multiple awarding on each line item to obtain design flexibility is not necessary.

There has been much discussion that for years the furniture contracts have worked fine, no problems. Vendors were happy, manufacturers were happy, and using agencies were happy. Lately it has been stated by the furniture industry and perhaps implied through the Part II -- Multiple Awards proposed legislative action that Purchase and Contract has erred in its decision to proceed with its new "sole source" awards. It has been claimed that the Division has replaced a situation which was working perfectly with one in which vendors are having to lay off employees, manufacturers are losing profits, and using agencies are unhappy because they have less brand choice in furniture purchases. It is obvious however that the taxpayers' interest has been overlooked in this line of reasoning, and that is what is at the root of the Division's departure from the "traditional" award method.

Statements have also been directed against the Division for its consideration of out-of-state manufacturers. As the Division has changed its furniture purchasing methods, it has endeavored to provide North Carolina manufacturers with every chance to compete successfully against out-of-state manufacturers by tailoring its specifications where possible and feasible to benefit in-state manufacturers. For details, see the attached document dated November 29, 1994. Even without this action by the Division, it is logical to assume that our in-state manufacturers would have the advantage of lower freight costs. And perhaps more importantly, it would be reasonable in any case to expect that manufacturers located in the state of North Carolina, which is known nationally as the heart of the furniture industry, would after decades of success be knowledgeable about the latest methods of efficient manufacturing and marketing of their products, and thus would be in an excellent competitive position against out-of-state manufacturers.

Finally the Division has on practically all of the other 150 term contracts for other commodities endeavored to award on the basis of one contractor per line item (unless this would not provide an adequate supply to users). Just a few of the many examples are passenger automobiles, law enforcement automobiles, window air conditioners, storage batteries, fuels, fuel dispensing equipment, office copiers, facsimile machines, wire rope, and venetian blinds. Furthermore, in open market bids such as for heavy equipment for NC DOT, awards have always been made to a single bidder (never to multiple bidders) on a line item, with the result on heavy equipment that historically profit margins have been a mere few percent. Prices have been so low that on

occasion the bid prices we obtained have received attention nationally. It has been found that this proven purchasing practice results overall in lowest prices and satisfactory service. The Division saw no reason to treat furniture awards differently. The results as tabulated above have confirmed this, and we would like to continue saving money for the taxpayer, our employer.

RECOMMENDATIONS:

- (1) The decision on whether or not to multiple award on furniture contracts should be left to the Division of Purchase and Contract, as is the case for all other commodities, for the reasons explained in this document and consistent with the NASPO resolution cited herein.
- (2) If the final decision is made, however, to enact Part II -- Multiple Awards as written, then it is our recommendation that the State Procurement Policy Council establish rules, regulations, and guidelines for multiple awards for furniture.
- (3) If the final decision is made, however, to enact Part II -- Multiple Awards as written, then it is our recommendation that written justification be required from the agency in any and all cases where an agency purchases other than the lowest priced item.

**DIVISION OF PURCHASE & CONTRACT
STATUS OF
NORTH CAROLINA FURNITURE MANUFACTURERS**

November 29, 1994

Since January, 1993, representatives of the Division of Purchase & Contract have met on many occasions with representatives of the North Carolina Furniture Manufacturers to discuss specifications, product offerings, term contract content, etc. In addition, representatives of the Division of Purchase & Contract have visited the following North Carolina manufacturing facilities in order to work with these manufacturers in developing specifications that would allow their products to be sold to the State of North Carolina:

Miller Desk Company - High Point, NC
Accord Business Furniture - High Point, NC
The Hon Company - Louisburg, NC
DAR/RAN Furniture Company - High Point, NC
Girsberger Industries - Smithfield, NC
Boling Company - Siler City, NC
Myrtle Desk Company - High Point, NC
Steelecase Company - Fletcher, NC
Stroud Furniture Company - Siler City, NC
Blanton & Moore - Barium Springs, NC
Alma Desk Company - High Point, NC

Result: Virtually all of the wood furniture products and ergonomic chairs offered by these manufacturers meet the requirements of state specifications and are listed on State Qualified Products Lists which allows the manufacturers to bid their products to the State of North Carolina.

North Carolina Manufacturers listed on Qualified Products Lists:

<u>Manufacturer</u>	<u>Commodity</u>
Accord Business Furniture	Ergonomic Chairs
Girsberger Industries	Ergonomic Chairs
Miller Desk Company	Ergonomic Chairs, Wood Casegoods
Chairs By Cooke	Ergonomic Chairs
Creative Office Seating	Ergonomic Chairs
Hon Furniture Company	File Cabinets
DAR/RAN Furniture Company	Wood Casegoods
Boling Company	Wood Casegoods
Myrtle Desk Company	Wood Casegoods

North Carolina Manufacturers presently on State Contract:

<u>Manufacturer</u>	<u>Commodity</u>
Accord Business Furniture,	Ergonomic Chairs, Office Chairs
Alma Desk Company	Office Chairs, Wood Casegoods
Boling Company	Wood Casegoods
Carolina Seating Company	Office Chairs
Coventry House	Office Chairs
Gregson Furniture Industries	Office Chairs
High Point Manufacturing Company	Office Chairs
Miller Desk Company	Office Chairs, Wood Casegoods
Patrician Furniture Company	Office Chairs
St. Timothy Chair Company	Office Chairs
Stout Chair Company	Office Chairs
Myrtle Desk Company	Office Chairs

North Carolina Dealers presently participating in State Term Contracts for furniture:

Office Chairs (425-05)	184
Wood Casegoods (425)	123
Ergonomic Chairs (425-06)	45
Classroom Furniture (420)	12
File Cabinets (425-30)	7
Bookcases (425-03)	2

Significant purchase of furniture from a small North Carolina Manufacturer:

Chairs By Cooke - Morganton, NC, Ergonomic Chairs for the Department of Public Instruction
\$ 215,000

Changes in Specifications requested by NC Furniture Manufacturers:

Wood Casegoods:

Revised specification on traditional desks to allow Miller Desk Company to bid their standard product (Removed decorative molding requirement).

Maintained standard specification at a high quality level which prohibits inferior out of state products to be offered.

File Cabinets:

Added additional category to allow North Carolina dealers, such as MacThrift and O.G. Penegar to offer their manufacturer's standard product.

Ergonomic Chairs

Created additional categories to allow manufacturers to compete on a more even basis.

Wood Office Chairs:

Developing specification to allow several North Carolina manufacturers to offer their complete line of product (Carolina Business Furniture, Alma Desk Company, Patrician Furniture Company, Triune Business Furniture).

Classroom Furniture:

Contract was awarded to the following nine (9) North Carolina dealers:

Perfection Equipment Co., Siler City, NC
Interior Systems, West End, NC
Hughes Rankin Co., High Point, NC
Dixie Equipment Co., Liberty, NC
Learning Environments, Liberty, NC
Williams Seating, Siler City, NC
Universal Equipment Co., Raleigh, NC
JOY Distributors, Charlotte, NC
Southeastern Equipment Co., Siler City, NC

Note: There are no known North Carolina manufacturers of plastic and metal classroom furniture.

Benefits for North Carolina furniture manufacturers:

Recent bids for furniture have encouraged North Carolina furniture manufacturers to find ways to be more competitive and offer better values to the taxpayer. This improved competitiveness will also allow the North Carolina furniture industry to be able to compete better with out of state manufacturers in bidding for furniture contracts in other states.

Following is an example of the impact that one out of state furniture manufacturer (Steelcase, Inc.) has on North Carolina's economy (Information provided by Steelcase):

Steelcase Purchases From NC Manufacturers

Fabrics:

Chatham Fabrics, Elkin, NC \$5 Million per year

Collins & Aikman - Spindale, NC \$4 Million per year

Guilford Mills - Greensboro, NC \$200,000 per year

Foam:

Ultra Foam Company - Burgaw, NC \$1.5 Million per year

Other Data:

Components for ergonomic chairs are purchased from 41 companies in North Carolina

Actual assembly of chairs is done in Michigan.

Steelcase owns two companies in North Carolina:

Brayton (Lounge and other seating products)

Cartwright Lounge furniture)

Steelcase pays approximately \$20 million per year in payroll to NC citizens



North Carolina Department of Administration

James B. Hunt Jr., Governor
Katie G. Dorsett, Secretary

Division of Purchase and Contract
J. Arthur Leaston, State Purchasing Officer

December 1, 1994

TO: Linwood L. Jones

SUBJECT: Proposed Legislation: Part I and III
Requested Clarification/Changes

Part I

- Page 3 • Line 14-17: What is the intent? ALL funds, including Trust funds? Suggest rewording so "except" will not be taken as an exception.
- Line 17: What does it mean by "cooperative agreement"? Any similarities to page 13, line 12?
- Page 5 • Line 27: Do Board members have to be members of ABC?- Suggest replacing "member" with "persons". Need provision for alternate members for Board in the statute language. Is the SPO a member of the Board? Who takes minutes for the public record?
- Page 6 • Line 15: Add vendors as a source of advice and assistance.
- Line 26: How is "public contract" being applied here? Does it apply to Chapter 143, Article 3 only or include Article 8 also (Construction)?
 - Line 34: Delete service contracts and cover elsewhere.
 - Line 37: Require file be documented with determination it is practicable and advantageous, but not by the SPO every time; or provide for SPO or his designee.
- Page 7 • Line 5: Allow State Procurement Policy Council to decide if an alternative method of advertising is more advantageous.
- Line 9: Suggest saying "Opening of submissions ---" to clarify that this restriction applies only at this particular time.
 - Line 11: Do not require a witness, but require bid opening be open to the public
 - Line 12: Clarify what can be read at opening.
 - Line 14: Confidentiality- Suggest checking Public Records Act and the Trade Secrets Statute to see if language conflicts. Current rules do conflict. Recommend confidentiality be applied to P&C documents, including mailing lists, during preparation of bid and specifications?



- Line 17: Require written approval be in file, but not by the SPO every time; or provide for SPO or his designee.
- Line 18: In lieu of allowing the correction or withdrawal of "inadvertently erroneous" bids, allow the Council to adopt rules covering this subject. Including the part about the SPO's written determination.
- Line 27: Change word "or" to "and".
- Line 40: Change "multi-step sealed bidding" to "Request for Proposals".
- Line 42: Require file be documented with determination it is not advantageous, but not by the SPO every time; or provide for SPO or his designee.

Page 8 • Line 3: Need definition of "competitive negotiation" without limitation as to application.

- Line 7: Allow for revisions to technical and price proposals.
- Line 30: Appears to be in conflict with 143-56(d)- (Page 7, line 18).
- Line 38: Subdivision (1)?- Line 23 does not apply

Page 9 • Line 23: Need definition for Request for Quotation.

- Line 25: Clarify authority to establish limits for (1) No competition required, (2) telephone quotes, and (3) written Request for Quotes.
- Line 32: Need reasons for waiver of competition in addition to sole source (Ex.- Used equipment) Suggest allowing Council adopt rules regarding this matter.
- Line 33: Require written determination in file, but not by SPO every time; or provide for SPO or his designee.
- Line 38: Clarify intent/reason.

Page 10 • Line 28: Remove provision for costs to State for cancellation.

- Line 36: Clarify intent as to delegation and authority for establishing guidelines.
- Line 42: Remove the word "estimated".

Page 11 • Line 2: Remove (---other requirement for---)-redundant with line 36 on page 10?

- Line 12: Remove CPI provision for adjusting threshold.
- Line 16: Monitoring should be a separate paragraph.
- Line 28: Delete "small".
- Line 28: Require agencies to participate.
- Line 40: Suggest original wording of "provide assurances" be used.

Page 12 • Line 24: Hard to administer, especially on products provided through N.C. residents when the products could be produced anywhere. Specs should be based on need.

- Line 36: Add Community Health Centers.

Page 13 • Line 12: What does it mean? Would this provide for multi-state contracts handled by a State other than N.C.? Would it allow purchasing from GSA contracts?

- Page 14 • Line 1: Remove provision for awarding expenses and profit to a company.
- Line 12: Need to include public schools and community colleges.

- Page 15 • Line 3: To exempt P&C from OAH, the following needs to be added to 150B:
"150B-1(e)(11) The N.C. Department of Administration, Division of Purchase and Contract."

PART III

- Page 26 • Line 30: Provide for current method of listing of Corrections products on the microfiche, separate from any term contract. This allows the listing of all products.
- Line 33: Substitute the Secretary of Administration for the Secretary of Correction in regard to establishing prices.

