

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 1447

Short Title: Small Business Procurement Act.

(Public)

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Sponsors: Representative Shaw.

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Referred to: State Government.

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June 3, 1996

A BILL TO BE ENTITLED

1  
2 AN ACT TO REQUIRE THE SECRETARY OF ADMINISTRATION TO SET  
3 BUSINESS SIZE STANDARDS AND APPLY THEM TO THE PROCUREMENT  
4 PROCEDURES TO PROMOTE INCREASED PROCUREMENTS FROM SMALL  
5 AND MEDIUM-SIZED BUSINESSES.

Whereas, current procurement procedures provide for the consolidation of estimates for supplies, materials, equipment, and contractual services which provides an institutional bias towards awarding State contracts to large businesses; and

Whereas, in this era of large corporate merging, restructuring, and downsizing with the attendant employee reductions, it is the small and medium-sized businesses that are providing for the new employment opportunities and economic growth in North Carolina; and

Whereas, the development of small and medium-sized businesses should be encouraged in North Carolina; Now, therefore,

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 143-52 reads as rewritten:

8 "**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**  
9 **bids; awarding of contracts.**

10 As feasible, the Secretary of Administration will compile and consolidate all such  
11 estimates of supplies, materials, equipment and contractual services needed and required

1 by State departments, institutions and agencies to determine the total requirements of any  
2 given commodity. Where such total requirements will involve an expenditure in excess  
3 of the expenditure benchmark established under the provisions of G.S. 143-53.1 and  
4 where the competitive bidding procedure is employed as hereinafter provided, sealed bids  
5 shall be solicited by advertisement in a newspaper of statewide circulation at least once  
6 and at least 10 days prior to the date designated for opening of the bids and awarding of  
7 the contract: Provided, other methods of advertisement may be adopted by the Secretary  
8 of Administration when such other method is deemed more advantageous for certain  
9 items or commodities. Regardless of the amount of the expenditure, under the  
10 competitive bidding procedure it shall be the duty of the Secretary of Administration to  
11 solicit bids direct by mail from qualified sources of supply. Except as otherwise provided  
12 under this Article, contracts for the purchase of supplies, materials or equipment shall be  
13 based on competitive bids and acceptance made of the lowest and best bid(s) most  
14 advantageous to the State as determined upon consideration of the following criteria:  
15 prices offered; the quality of the articles offered; the general reputation and performance  
16 capabilities of the bidders; the substantial conformity with the specifications and other  
17 conditions set forth in the request for bids; the suitability of the articles for the intended  
18 use; the personal or related services needed; the transportation charges; the date or dates  
19 of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the  
20 purchase in question, which if controlling shall be made a matter of record. Competitive  
21 bids on such contracts shall be received in accordance with rules and regulations to be  
22 adopted by the Secretary of Administration, which rules and regulations shall prescribe  
23 for the manner, time and place for proper advertisement for such bids, the time and place  
24 when bids will be received, the articles for which such bids are to be submitted and the  
25 specifications prescribed for such articles, the number of the articles desired or the  
26 duration of the proposed contract, and the amount, if any, of bonds or certified checks to  
27 accompany the bids. Bids shall be publicly opened. Any and all bids received may be  
28 rejected. Each and every bid conforming to the terms of the invitation, together with the  
29 name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all  
30 such records with the name of the successful bidder indicated thereon shall, after the  
31 award of the contract, be open to public inspection. Provided, that trade secrets, test data  
32 and similar proprietary information may remain confidential. A bond for the faithful  
33 performance of any contract may be required of the successful bidder at bidder's expense  
34 and in the discretion of the Secretary of Administration. After contracts have been  
35 awarded, the Secretary of Administration shall certify to the departments, institutions and  
36 agencies of the State government the sources of supply and the contract price of the  
37 supplies, materials and equipment so contracted for. Prior to adopting other methods of  
38 advertisement under this section, the Secretary of Administration may consult with the  
39 Advisory Budget Commission. Prior to adopting rules and regulations under this section,  
40 the Secretary of Administration may consult with the Advisory Budget Commission.

41 The Secretary shall establish business size standards for small and medium businesses  
42 in this State and shall establish procedures for the division of estimates of supplies,  
43 materials, equipment, and contractual services or for allowable consolidation of bids from

1 small and medium firms to provide opportunities for these businesses to bid on State  
2 contracts while still promoting sound purchasing management."

3 Sec. 2. G.S. 143-53(b) reads as rewritten:

4 "(b) In adopting the rules authorized by subsection (a) of this section, the Secretary  
5 shall include special provisions for the purchase of goods and services, which provisions  
6 are necessary to meet the documented training, work, or independent living needs of  
7 persons with disabilities according to the requirements of the Rehabilitation Act of 1973,  
8 as amended, and the Americans with Disabilities Act, as amended. The Secretary may  
9 consult with other agencies having expertise in meeting the needs of individuals with  
10 disabilities in developing these provisions. These special provisions shall establish  
11 purchasing procedures that:

12 (1) Provide for the involvement of the individual in the choice of particular  
13 goods, service providers, and in the methods used to provide the goods  
14 and services;

15 (2) Provide the flexibility necessary to meet those varying needs of  
16 individuals that are related to their disabilities;

17 (3) Allow for purchase outside of certified sources of supply and  
18 competitive bidding when a single source can provide multiple pieces of  
19 equipment, including adaptive equipment, that are more compatible  
20 with each other than they would be if they were purchased from  
21 multiple vendors;

22 (4) Permit priority consideration for vendors who have the expertise to  
23 provide appropriate and necessary training for the users of the  
24 equipment and who will guarantee prompt service, ongoing support, and  
25 maintenance of this equipment;

26 (5) Permit agencies to give priority consideration to suppliers offering the  
27 earliest possible delivery date of goods or services especially when a  
28 time factor is crucial to the individual's ability to secure a job, meet the  
29 probationary training periods of employment, continue to meet job  
30 requirements, or avoid residential placement in an institutional setting;

31 ~~and~~

32 (6) Allow consideration of the convenience of the provider's location for the  
33 individual with the ~~disability-disability; and~~

34 (7) Allow consideration for encouraging the use of small and medium-sized  
35 businesses through the division of requirements and the consolidation of  
36 bids from these firms.

37 In developing these purchasing provisions, the Secretary shall also consider the  
38 following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general  
39 reputation and performance capabilities, (iv) substantial conformity with specifications  
40 and other conditions set forth for these purchases, (v) the suitability of the goods or  
41 services for the intended use, (vi) the personal or other related services needed, (vii)  
42 transportation charges, and (viii) any other factors the Secretary considers pertinent to the  
43 purchases in question."

1           Sec. 3. G.S. 143-54 reads as rewritten:

2 **"§ 143-54. Certification that bids were submitted without collusion.**

3           The Director of Administration shall require bidders to certify that each bid is  
4 submitted competitively and without collusion. The combining of bids pursuant to rules  
5 issued under subdivision (7) of G.S. 143-53 shall not be collusion. False  
6 certification is a Class I felony."

7           Sec. 4. The Department of Administration shall report to the General  
8 Assembly, prior to the 1997 Session of the General Assembly on measures to encourage  
9 the use of small and medium-sized businesses to provide the supplies, materials,  
10 equipment, and contractual services required by the State. The study shall consider and  
11 propose new procedures and policies to eliminate the disincentives to small and medium-  
12 sized businesses from bidding on State contracts, such as expediting the prompt payment  
13 for completed contracts and elimination of any discounts for prompt payment.

14           In conducting this study, the Department of Administration shall contact the  
15 General Counsel of the United States Office of Small Business Advocacy to determine  
16 what has been done in other states to encourage small and medium-sized business  
17 participation in government contracts.

18           Sec. 5. This act is effective upon ratification.