

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 742

Short Title: Construction Bidding and Procedures.

(Public)

Sponsors: Representative Carpenter.

Referred to: Business and Labor.

April 3, 1995

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET CONCERNING GOVERNMENT CONSTRUCTION CONTRACTS, TO INCREASE THE THRESHOLD DOLLAR AMOUNTS, TO PROVIDE ADDITIONAL MEANS TO DISQUALIFY A NONPERFORMING CONTRACTOR, TO PROVIDE FOR AN EXPEDITER, AND TO PROVIDE FOR A UNIFORM SYSTEM OF PUBLIC CONSTRUCTION AND ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 480 of the 1989 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ratification and shall expire on June 30, 1995. ratification."

Sec. 2. Section 3 of Chapter 480 of the 1989 Session Laws is repealed.

Sec. 3. G.S. 143-128 reads as rewritten:

"§ 143-128. Separate specifications for building contracts; responsible contractors.

(a) Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county or municipality, when the entire cost of such work shall exceed one hundred thousand dollars (\$100,000) three hundred thousand dollars (\$300,000) must have prepared

1 separate specifications for each of the following subdivisions or branches of work to be
2 performed:

- 3 (1) Heating, ventilating, air conditioning and accessories (separately or
4 combined into one conductive system) and/or refrigeration for cold
5 storage (where the cooling load is 15 tons or more of refrigeration), and
6 all work kindred thereto.
- 7 (2) Plumbing and gas fittings and accessories, and all work kindred thereto.
- 8 (3) Electrical wiring and installations, and all work kindred thereto.
- 9 (4) General work relating to the erection, construction, alteration, or repair
10 of any building above referred to, which work is not included in the
11 above-listed three subdivisions or branches.

12 All such specifications must be so drawn as to permit separate and independent
13 bidding upon each of the subdivisions or branches of work enumerated above. The above
14 enumeration of subdivisions or branches of work shall not be construed to prevent any
15 officer, board, department, commission or commissions from preparing additional
16 separate specifications and awarding additional separate contracts for any other category
17 of work when it is deemed in the best interest of such officer, board, department,
18 commission or commissions to do so.

19 All contracts hereafter awarded by the State or by a county or municipality, or a
20 department, board, commissioner, or officer thereof, for the erection, construction,
21 alteration or repair of buildings, or any parts thereof, shall award the respective work
22 specified separately to responsible and reliable persons, firms or corporations regularly
23 engaged in their respective lines of work. When the estimated cost of work to be
24 performed in any single subdivision or branch is less than ~~ten thousand dollars (\$10,000),~~
25 twenty-five thousand dollars (\$25,000), the same may be included in the contract for one
26 of the other subdivisions or branches of the work, irrespective of total project cost.

27 Each separate contractor shall be directly liable to the State of North Carolina, or to
28 the county or municipality, and to the other separate contractors for the full performance
29 of all duties and obligations due respectively under the terms of the separate contracts and
30 in accordance with the plans and specifications, which shall specifically set forth the
31 duties and obligations of each separate contractor. For the purpose of this section, the
32 wording 'separate contractor' is hereby deemed and held to mean any person, firm or
33 corporation who shall enter into a contract with the State, or with any county or
34 municipality, for the erection, construction, alteration or repair of any building or
35 buildings, or parts thereof.

36 All public authorities coming within the requirements of this section may assign
37 responsibility for expediting any of the contracts for work to one responsible and reliable
38 person, firm, or corporation which may be one of the prime contractors.

39 All public authorities coming within the requirements of this section shall have the
40 authority to purchase and erect prefabricated or relocatable buildings or portions thereof
41 without complying with the provisions hereof, except that portion of the work which
42 must be performed at the construction site.

1 (b) Notwithstanding the provisions of subsection (a) of this section, the State, a
2 county, municipality, department, board, commission, public hospital, or other public
3 body, or an officer thereof may use the single-prime contract system and may prequalify
4 bidders for all construction contracts.

5 If the public body chooses to use the single-prime contract system, it must also seek
6 bids for the project under subsection (a) of this section and award the contract to the
7 lowest responsible bidder or bidders for the total project.

8 For the single-prime contract system all bidders must identify on their bid the
9 contractors they have selected for the subdivisions or branches of work for:

- 10 (1) Heating, ventilating, and air conditioning;
- 11 (2) Plumbing;
- 12 (3) Electrical; and
- 13 (4) General.

14 No contractor whose bid is accepted shall substitute any person as subcontractor in
15 the place of the subcontractor listed in the original bid, except with the consent of the
16 awarding authority for good cause shown by the contractor.

17 (c) The State shall have a verifiable ten percent (10%) goal for participation by
18 minority businesses in the total value of work for each project for which a contract or
19 contracts are awarded pursuant to this section. Each city, county, or other public body
20 shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal
21 for participation by minority businesses in the total value of work for which a contract or
22 contracts are awarded pursuant to this section.

23 As used in this subsection:

- 24 (1) The term 'minority-business' means a business:
 - 25 a. In which at least fifty-one percent (51%) is owned by one or
26 more minority persons, or in the case of a corporation, in which
27 at least fifty-one percent (51%) of the stock is owned by one or
28 more minority persons; and
 - 29 b. Of which the management and daily business operations are
30 controlled by one or more of the minority persons who own it.
- 31 (2) The term 'minority person' means a person who is a citizen or lawful
32 permanent resident of the United States and who is:
 - 33 a. Black, that is, a person having origins in any of the black racial
34 groups in Africa;
 - 35 b. Hispanic, that is, a person of Spanish or Portugese culture with
36 origins in Mexico, South or Central America, or the Caribbean
37 Islands, regardless of race;
 - 38 c. Asian American, that is, a person having origins in any of the
39 original peoples of the Far East, Southeast Asia and Asia, the
40 Indian subcontinent, the Pacific Islands;
 - 41 d. American Indian or Alaskan Native, that is, a person having
42 origins in any of the original peoples of North America; or
 - 43 e. Female.

1 (3) The term 'verifiable goal' means for purposes of the separate prime
2 contract system, that the awarding authority has adopted written
3 guidelines specifying the actions that will be taken to ensure a good
4 faith effort in the recruitment and selection of minority businesses for
5 participation in contracts awarded under this section; and

6 (4) The term 'verifiable goal' means for purposes of the single-prime
7 contract system, that the awarding authority has adopted written
8 guidelines specifying the actions that the prime contractor must take to
9 ensure a good faith effort in the recruitment and selection of minority
10 businesses for participation in contracts awarded under this section; the
11 required actions must be documented in writing by the contractor to the
12 appropriate awarding authority.

13 (d) The State and its political subdivisions shall award public contracts pursuant to
14 this section without regard to race, religion, color, creed, national origin, sex, age, or
15 handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be
16 construed to require contractors or awarding authorities to award contracts or
17 subcontracts to or to make purchases of materials or equipment from minority-business
18 contractors or minority-business subcontractors who do not submit the lowest responsible
19 bid or bids."

20 Sec. 4. G.S. 143-129(a) reads as rewritten:

21 "(a) No construction or repair work requiring the estimated expenditure of public
22 money in an amount equal to or more than ~~fifty thousand dollars (\$50,000)~~ one hundred
23 thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment
24 requiring an estimated expenditure of public money in an amount equal to or more than
25 twenty thousand dollars (\$20,000), except in cases of group purchases made by hospitals
26 through a competitive bidding purchasing program or in cases of special emergency
27 involving the health and safety of the people or their property, shall be performed, nor
28 shall any contract be awarded therefor, by any board or governing body of the State, or of
29 any institution of the State government, or of any county, city, town, or other subdivision
30 of the State, unless the provisions of this section are complied with. For purposes of this
31 Article, a competitive bidding group purchasing program is a formally organized program
32 that offers purchasing services at discount prices to two or more hospital facilities. The
33 limitation contained in this paragraph shall not apply to construction or repair work
34 undertaken during the progress of a construction or repair project initially begun pursuant
35 to this section. Further, the provisions of this section shall not apply to the purchase of
36 gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to
37 G.S. 143-131."

38 Sec. 5. G.S. 143-129(b) reads as rewritten:

39 "(b) Advertisement of the letting of such contracts shall be as follows:

40 Where the contract is to be let by a board or governing body of the State government,
41 or of a State institution, as distinguished from a board or governing body of a subdivision
42 of the State, proposals shall be invited by advertisement at least one week before the time
43 specified for the opening of said proposals in a newspaper having general circulation in

1 the State of North Carolina. Provided that the advertisements for bidders required by this
2 section shall be published at such a time that at least seven full days shall lapse between
3 the date of publication of notice and the date of the opening of bids.

4 Where the contract is to be let by a county, city, town or other subdivision of the
5 State, proposals shall be invited by advertisement at least one week before the time
6 specified for the opening of said proposals in a newspaper having general circulation in
7 such county, city, town or other subdivision.

8 Such advertisement shall state the time and place where plans and specifications of
9 proposed work or a complete description of the apparatus, supplies, materials or
10 equipment may be had, and the time and place for opening of the proposals, and shall
11 reserve to said board or governing body the right to reject any or all such proposals.

12 Proposals shall not be rejected for the purpose of evading the provisions of this
13 Article. No board or governing body of the State or subdivision thereof shall assume
14 responsibility for construction or purchase contracts, or guarantee the payments of labor
15 or materials therefor except under provisions of this Article.

16 All proposals shall be opened in public and shall be recorded on the minutes of the
17 board or governing body and the award shall be made to the lowest responsible bidder or
18 bidders, taking into consideration quality, performance and the time specified in the
19 proposals for the performance of the contract. The responsible board or governing body
20 may reject the bid of a bidder on the basis of quality or performance if the bidder has,
21 within the previous year, demonstrated a lack of quality or performance in performing a
22 contract awarded by that awarding authority. The responsible board or governing body
23 may disqualify a contractor from bidding on contracts of the awarding authority if the
24 contractor failed to perform satisfactorily on past or current contracts awarded by that
25 awarding authority; provided that the awarding authority shall provide for a definite
26 length of disqualification not to exceed three years, provide notice and an appeal process,
27 and describe the procedure by which contractors may seek requalification.

28 In the event the lowest responsible bids are in excess of the funds available for the
29 project, the responsible board or governing body is authorized to enter into negotiations
30 with the lowest responsible bidder above mentioned, making reasonable changes in the
31 plans and specifications as may be necessary to bring the contract price within the funds
32 available, and may award a contract to such bidder upon recommendation of the
33 Department of Administration in the case of the State government or of a State institution
34 or agency, or upon recommendation of the responsible commission, council or board in
35 the case of a subdivision of the State, if such bidder will agree to perform the work at the
36 negotiated price within the funds available therefor. If a contract cannot be let under the
37 above conditions, the board or governing body is authorized to readvertise, as herein
38 provided, after having made such changes in plans and specifications as may be
39 necessary to bring the cost of the project within the funds available therefor. The
40 procedure above specified may be repeated if necessary in order to secure an acceptable
41 contract within the funds available therefor.

42 No proposal shall be considered or accepted by said board or governing body unless
43 at the time of its filing the same shall be accompanied by a deposit with said board or

1 governing body of cash, or a cashier's check, or a certified check on some bank or trust
2 company insured by the Federal Deposit Insurance Corporation in an amount equal to not
3 less than five percent (5%) of the proposal. In lieu of making the cash deposit as above
4 provided, such bidder may file a bid bond executed by a corporate surety licensed under
5 the laws of North Carolina to execute such bonds, conditioned that the surety will upon
6 demand forthwith make payment to the obligee upon said bond if the bidder fails to
7 execute the contract in accordance with the bid bond. This deposit shall be retained if the
8 successful bidder fails to execute the contract within 10 days after the award or fails to
9 give satisfactory surety as required herein. In the case of proposals in an estimated
10 amount of less than one hundred thousand dollars (\$100,000) for the purchase of
11 apparatus, supplies, materials, or equipment, the board or governing body may waive the
12 requirement for a bid bond or other deposit.

13 Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening
14 of a bid or the disclosure or exhibition of the contents of any bid by anyone without the
15 permission of the bidder prior to the time set for opening in the invitation to bid shall
16 constitute a Class 1 misdemeanor."

17 Sec. 6. Sections 1, 2, and 6 of this act are effective upon ratification. Sections
18 3, 4, and 5 of this act become effective October 1, 1995.