

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 855

Short Title: Local Government Contracting.

(Public)

Sponsors: Representative Bowen.

Referred to: Business and Labor.

April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL
GOVERNMENT CONTRACTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129 reads as rewritten:

**"§ 143-129. Procedure for letting of public contracts; purchases from federal
government by State, counties, etc.**

(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than fifty thousand dollars (\$50,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars (\$20,000)~~, thirty thousand dollars (\$30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work

1 undertaken during the progress of a construction or repair project initially begun pursuant
2 to this section. Further, the provisions of this section shall not apply to the purchase of
3 gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. ~~Such~~ These purchases shall be
4 subject to G.S. 143-131.

5 The governing body of any municipality, county, or other political subdivision of the
6 State may, subject to any restrictions as to dollar amount or other conditions that the
7 governing body elects to impose, delegate to the manager or the chief purchasing official
8 the authority to award contracts for the purchase of apparatus, supplies, materials, and
9 equipment that are subject to the requirements of this section, and to reject bids or
10 readvertise to receive new bids when the person to whom the authority is delegated
11 determines it to be in the best interest of the unit. When a governing body delegates
12 authority under this subsection, the manager or purchasing official shall follow the
13 requirements of this section that would otherwise apply to the governing body.

14 (b) Advertisement of the letting of ~~such~~ the contracts shall be as follows:

15 Where the contract is to be let by a board or governing body of the State government,
16 or of a State institution, as distinguished from a board or governing body of a subdivision
17 of the State, proposals shall be invited by advertisement at least one week before the time
18 specified for the opening of said proposals in a newspaper having general circulation in
19 the State of North Carolina. Provided that the advertisements for bidders required by this
20 section shall be published at ~~such~~ a time that at least seven full days shall lapse between
21 the date of publication of notice and the date of the opening of bids.

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

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

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

34 All proposals shall be opened in public and a summary of the proposals shall be
35 recorded on the minutes of the board or governing body and the award shall be made to
36 the lowest responsible bidder or bidders, taking into consideration quality, performance
37 and the time specified in the proposals for the performance of the contract. In the event
38 the lowest responsible bids are in excess of the funds available for the project, the
39 responsible board or governing body is authorized to enter into negotiations with the
40 lowest responsible bidder above mentioned, making reasonable changes in the plans and
41 specifications as may be necessary to bring the contract price within the funds available,
42 and may award a contract to ~~such~~ the bidder upon recommendation of the Department of
43 Administration in the case of the State government or of a State institution or agency, or

1 upon recommendation of the responsible commission, council or board in the case of a
2 subdivision of the State, if ~~such~~the bidder will agree to perform the work at the
3 negotiated price within the funds available therefor. If a contract cannot be let under the
4 above conditions, the board or governing body is authorized to readvertise, as herein
5 provided, after having made ~~such~~the changes in plans and specifications as may be
6 necessary to bring the cost of the project within the funds available therefor. The
7 procedure above specified may be repeated if necessary in order to secure an acceptable
8 contract within the funds available therefor.

9 No proposal shall be considered or accepted by said board or governing body unless
10 at the time of its filing the same shall be accompanied by a deposit with said board or
11 governing body of cash, or a cashier's check, or a certified check on some bank or trust
12 company insured by the Federal Deposit Insurance Corporation in an amount equal to not
13 less than five percent (5%) of the proposal. In lieu of making the cash deposit as above
14 provided, ~~such~~the bidder may file a bid bond executed by a corporate surety licensed
15 under the laws of North Carolina to execute ~~such~~the bonds, conditioned that the surety
16 will upon demand forthwith make payment to the obligee upon said bond if the bidder
17 fails to execute the contract in accordance with the bid bond. This deposit shall be
18 retained if the successful bidder fails to execute the contract within 10 days after the
19 award or fails to give satisfactory surety as required herein. In the case of proposals ~~in an~~
20 ~~estimated amount of less than one hundred thousand dollars (\$100,000)~~ for the purchase of
21 apparatus, supplies, materials, or equipment, the board or governing body may waive the
22 requirement for a bid bond or other deposit.

23 Bids shall be sealed ~~if the invitation to bid so specifies and, in any event, and~~ the opening
24 of a bid or the disclosure or exhibition of the contents of any bid by anyone without the
25 permission of the bidder prior to the time set for opening in the invitation to bid shall
26 constitute a Class 1 misdemeanor.

27 (c) All contracts to which this section applies shall be executed in writing, and the
28 board or governing body shall require the person to whom the award of contract is made
29 to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money,
30 certified check or government securities for the full amount of said contract to secure the
31 faithful performance of the terms of said contract and the payment of all sums due for
32 labor and materials in a manner consistent with Article 3 of Chapter 44A; and no ~~such~~
33 contract shall be altered except by written agreement of the contractor, the sureties on his
34 bond, and the board or governing body. ~~Such~~The surety bond or deposit required herein
35 shall be deposited with the board or governing body for which the work is to be
36 performed. When a deposit, other than a surety bond, is made with the board or
37 governing body, said board or governing body assumes all the liabilities, obligations and
38 duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In
39 the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the
40 board or governing body may waive the requirement for a surety bond or other deposit.

41 The owning agency or the Department of Administration, in contracts involving a
42 State agency, and the owning agency or the governing board, in contracts involving a
43 political subdivision of the State, may reject the bonds of any surety company against

1 which there is pending any unsettled claim or complaint made by a State agency or the
2 owning agency or governing board of any political subdivision of the State arising out of
3 any contract under which State funds, in contracts with the State, or funds of political
4 subdivisions of the State, in contracts with ~~such-that~~ political subdivision, were expended,
5 provided ~~such-the~~ claim or complaint has been pending more than 180 days.

6 (d) Nothing in this section shall operate so as to require any public agency to enter
7 into a contract which will prevent the use of unemployment relief labor paid for in whole
8 or in part by appropriations or funds furnished by the State or federal government.

9 (e) Any board or governing body of the State or any institution of the State
10 government or of any county, city, town, or other subdivision of the State may enter into
11 any contract with (i) the United States of America or any agency thereof, or (ii) any other
12 government unit or agency thereof within the United States, for the purchase, lease, or
13 other acquisition of any apparatus, supplies, materials, or equipment without regard to the
14 foregoing provisions of this section or to the provisions of any other section of this
15 Article.

16 The Secretary of Administration or the governing board of any county, city, town, or
17 other subdivision of the State may designate any officer or employee of the State, county,
18 city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus,
19 supplies, materials, equipment or other property owned by (i) the United States of
20 America or any agency thereof, or (ii) any other governmental unit or agency thereof
21 within the United States, and may authorize ~~such-the~~ officer or employee to make any
22 partial or down payment or payment in full that may be required by regulations of the
23 government or agency disposing of ~~such-the~~ property.

24 (f) The provisions of this Article shall not apply to purchases of apparatus,
25 supplies, materials, or equipment by hospitals when performance or price competition for
26 a product are not available; when a needed product is available from only one source of
27 supply; or when standardization or compatibility is the overriding consideration;
28 consideration. In the case of purchases by hospitals, in addition to the other exceptions
29 set forth in this subsection, the provisions of this Article shall not apply when a particular
30 medical item or prosthetic appliance is needed; when a particular product is ordered by an
31 attending physician for his patients; when additional products are needed to complete an
32 ongoing job or task; when products are purchased for 'over-the-counter' resale; when a
33 particular product is needed or desired for experimental, developmental, or research
34 work; or when equipment is already installed, connected, and in service under a lease or
35 other agreement and the governing body of the hospital determines that the equipment
36 should be purchased. The governing body of a ~~hospital-hospital, municipality, county, or~~
37 other political subdivision of the State shall keep a record of all purchases made pursuant
38 to this exception. These records are subject to public inspection."

39 Sec. 2. G.S. 143-131 reads as rewritten:

40 **"§ 143-131. When counties, cities, towns and other subdivisions may let contracts on**
41 **informal bids.**

42 All contracts for construction or repair work or for the purchase of apparatus,
43 supplies, materials, or equipment, involving the expenditure of public money in the

1 amount of five thousand dollars (\$5,000) or more, but less than the limits prescribed in
2 G.S. 143-129, made by any officer, department, board, or commission of any county,
3 city, town, or other subdivision of this State shall be made after informal bids have been
4 secured. All ~~such~~ contracts shall be awarded to the lowest responsible bidder, taking into
5 consideration quality, performance, and the time specified in the bids for the performance
6 of the contract. It shall be the duty of any officer, department, board, or commission
7 entering into ~~such~~ a contract to keep a record of all bids submitted, and ~~such~~ the record
8 shall be subject to public inspection ~~at any time~~ until the contract has been awarded.

9 The licensing requirements of G.S. 87-1 do not apply to a contractor performing
10 under or bidding on a contract for construction or repair work under this section."

11 Sec. 3. G.S. 87-1 reads as rewritten:

12 **"§ 87-1. 'General contractor' defined; exceptions.**

13 For the purpose of this Article any person or firm or corporation who for a fixed price,
14 commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to
15 superintend or manage, on his own behalf or for any person, firm, or corporation that is
16 not licensed as a general contractor pursuant to this Article, the construction of any
17 building, highway, public utilities, grading or any improvement or structure where the
18 cost of the undertaking is thirty thousand dollars (\$30,000) or more, or undertakes to
19 erect a North Carolina labeled manufactured modular building meeting the North
20 Carolina State Building Code, shall be deemed to be a 'general contractor' engaged in the
21 business of general contracting in the State of North Carolina.

22 This section shall not apply to persons or firms or corporations furnishing or erecting
23 industrial equipment, power plan equipment, radial brick chimneys, and monuments.

24 This section shall not apply to any person or firm or corporation who constructs or
25 alters a building on land owned by that person, firm or corporation provided ~~such~~ that the
26 building is intended solely for occupancy by that person and his family, firm, or
27 corporation after completion; and provided further that, if ~~such~~ the building is not
28 occupied solely by ~~such~~ the person and his family, firm, or corporation for at least 12
29 months following completion, it shall be presumed that the person, firm, or corporation
30 did not intend ~~such~~ the building solely for occupancy by that person and his family, firm,
31 or corporation.

32 This section shall not apply to any person engaged in the business of farming who
33 constructs or alters a building on land owned by that person and used in the business of
34 farming, when ~~such~~ the building is intended for use by that person after completion.

35 This section shall not apply to a contractor performing under or bidding on a contract
36 for construction or repair work under G.S. 143-131."

37 Sec. 4. Chapter 143 of the General Statutes is amended by adding a new
38 section to read:

39 **"§ 143-131.1. Purchase with trade-in of apparatus, supplies, materials, and**
40 **equipment.**

41 Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes,
42 municipalities, counties, and other political subdivisions of the State may include in their
43 specifications for the purchase of any apparatus, supplies, materials, or equipment,

1 regardless of its estimated cost, an opportunity for bidders to purchase personal property
2 owned by the city, county, or other political subdivision of the State as a trade-in and may
3 award a contract for both the purchase of the apparatus, supplies, materials, or equipment
4 and the sale of the trade-in property taking into consideration the amount offered on the
5 trade-in when applying the criteria for award established in this Article."

6 Sec. 5. G.S. 160A-266 reads as rewritten:

7 **"§ 160A-266. Methods of sale; limitation.**

8 (a) Subject to the limitations prescribed in subsection (b) of this section, and
9 according to the procedures prescribed in this Article, a city may dispose of real or
10 personal property belonging to the city by:

- 11 (1) Private negotiation and sale;
- 12 (2) Advertisement for sealed bids;
- 13 (3) Negotiated offer, advertisement, and upset bid;
- 14 (4) Public auction; or
- 15 (5) Exchange.

16 (b) Private negotiation and sale may be used only with respect to personal property
17 valued at less than ~~ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) for any
18 one item or group of similar items. Real property of any value and personal property
19 valued at ~~ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) or more for any
20 one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or
21 may be sold by any method permitted in this Article other than private negotiation and
22 sale, except as permitted in G.S. 160A-277 and 160A-279.

23 Provided, however, a city may dispose of real property and personal property valued
24 at ten thousand dollars (\$10,000) or more for any one item or group of similar items by
25 private negotiation and sale where (i) said real or personal property is significant for its
26 architectural, archaeological, artistic, cultural or historical associations, or significant for
27 its relationship to other property significant for architectural, archaeological, artistic,
28 cultural or historical associations, or significant for its natural, scenic or open condition;
29 and (ii) said real or personal property is to be sold to a nonprofit corporation or trust
30 whose purposes include the preservation or conservation of real or personal properties of
31 architectural, archaeological, artistic, cultural, historical, natural or scenic significance;
32 and (iii) where a preservation agreement or conservation agreement as defined in G.S.
33 121-35 is placed in the deed conveying said property from the city to the nonprofit
34 corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said
35 real or personal property subject to covenants or other legally binding restrictions which
36 will promote the preservation or conservation of the property, and, where appropriate,
37 secure rights of public access.

38 (c) A city council may adopt regulations prescribing procedures for disposing of
39 personal property valued at less than ~~five hundred dollars (\$500.00)~~ two thousand five
40 hundred dollars (\$2,500) for any one item or group of items in substitution for the
41 requirements of this Article. The regulations shall be designed to secure for the city fair
42 market value for all property disposed of and to accomplish the disposal efficiently and
43 economically. The regulations may, but need not, require published notice, and may

1 provide for either public or private exchanges and sales. The council may authorize one
2 or more city officials to declare surplus any personal property valued at less than five
3 ~~hundred dollars (\$500.00)~~ two thousand five hundred dollars (\$2,500) for any one item or
4 group of items, to set its fair market value, and to convey title to the property for the city
5 in accord with the regulations. A city official authorized under this section to dispose of
6 property ~~shall, on the first day of February, report in writing to the council on any property~~
7 ~~disposed of under such authorization from July 1 through December 31 of the previous year, and~~
8 ~~shall on the first day of August report in writing to the council on any property disposed of under~~
9 ~~such authorization from January 1 through June 30 of that year. The written report shall keep a~~
10 record of all property sold under procedures established pursuant to the subsection which
11 shall generally describe the property sold or exchanged, to whom it was sold, or with
12 whom exchanged, and the amount of money or other consideration received for each sale
13 or exchange since the last such report was submitted. ~~exchange.~~ A city council may also
14 authorize one or more city officials to identify surplus personal property of any value to
15 be traded in under G.S. 143-131.1."

16 Sec. 6. G.S. 160A-265 reads as rewritten:

17 **"§ 160A-265. Use and disposal of property.**

18 In the discretion of the council, a city may: (i) hold, use, change the use thereof
19 to other uses, or (ii) sell or dispose of real and personal property, without regard to the
20 method or purpose of its acquisition or to its intended or actual governmental or other
21 ~~prior-use."~~

22 Sec. 7. This act raises threshold amounts in G.S. 143-129 and G.S. 160A-266.
23 If any local act provides a threshold amount for the subjects addressed in these statutes
24 that is less than the amount provided in this act, this prevails to the extent of the conflict.

25 Sec. 8. G.S. 143-129 is amended by adding a new subsection to read:

26 "(g) When the governing board of any municipality, county, or other subdivision of
27 the State, or the manager or purchasing official delegated authority under subsection (a)
28 of this section, determines that it is in the best interest of the unit, the requirements of this
29 section may be waived for the purchase of apparatus, supplies, materials, or equipment
30 from any person or entity which has contracted to furnish the apparatus, supplies,
31 materials, or equipment to the United States or any agency thereof, or to the State of
32 North Carolina or any agency or political subdivision thereof, when the person or entity
33 will furnish the same apparatus, supplies, materials, or equipment at the same or more
34 favorable prices, terms, and conditions as those provided for under the contract with the
35 other unit or agency."

36 Sec. 9. Chapter 143 of the General Statutes is amended by adding a new
37 section to read:

38 **"§ 143-129.5. Facsimile and electronic transfer of bids or bid bonds.**

39 Any municipality, county, or other political subdivision of the State may allow
40 submission of proposals, bids, and bid bonds by facsimile or electronic transmission and
41 may establish procedures designed to provide the confidentiality and equal treatment of
42 bidders required to comply with the formal and informal procedures established under
43 this Article. These procedures may provide that a proposal, bid, or bid bond will be

1 considered a sealed bid for purposes of complying with the requirements of G.S. 143-129
2 if it is submitted in accordance with the procedures or specifications of the unit.
3 Documents transmitted in the manner authorized herein are binding upon the bidder or
4 surety to the same extent as if they were transmitted in their original form by personal
5 delivery or by mail, courier, or other carrier."

6 Sec. 10. This act is effective upon ratification.