

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 855  
Committee Substitute Favorable 5/9/95

Short Title: Local Government Contracting.

(Public)

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Sponsors:

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Referred to:

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April 12, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL  
3 GOVERNMENT CONTRACTING.

4 The General Assembly of North Carolina enacts:

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

6 **"§ 143-129. Procedure for letting of public contracts; purchases from federal**  
7 **government by State, counties, etc.**

8 (a) No construction or repair work requiring the estimated expenditure of public  
9 money in an amount equal to or more than fifty thousand dollars (\$50,000) or purchase of  
10 apparatus, supplies, materials, or equipment requiring an estimated expenditure of public  
11 money in an amount equal to or more than ~~twenty thousand dollars (\$20,000),~~ thirty  
12 thousand dollars (\$30,000), except in cases of group purchases made by hospitals through  
13 a competitive bidding purchasing program or in cases of special emergency involving the  
14 health and safety of the people or their property, shall be performed, nor shall any  
15 contract be awarded therefor, by any board or governing body of the State, or of any  
16 institution of the State government, or of any county, city, town, or other subdivision of  
17 the State, unless the provisions of this section are complied with. For purposes of this  
18 Article, a competitive bidding group purchasing program is a formally organized program  
19 that offers purchasing services at discount prices to two or more hospital facilities. The

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

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

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

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

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

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

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

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

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

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

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

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

42 The owning agency or the Department of Administration, in contracts involving a  
43 State agency, and the owning agency or the governing board, in contracts involving a

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

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

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

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

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

40 (g) When the governing board of any municipality, county, or other subdivision of  
41 the State, or the manager or purchasing official delegated authority under subsection (a)  
42 of this section, determines that it is in the best interest of the unit, the requirements of this  
43 section may be waived for the purchase of apparatus, supplies, materials, or equipment

1 from any person or entity which has contracted to furnish the apparatus, supplies,  
2 materials, or equipment to the United States or any agency thereof, or to the State of  
3 North Carolina or any agency or political subdivision thereof, when the person or entity  
4 will furnish the same apparatus, supplies, materials, or equipment at the same or more  
5 favorable prices, terms, and conditions as those provided for under the contract with the  
6 other unit or agency. Rules promulgated by the Secretary of Administration pursuant to  
7 G.S. 143-49(6) shall apply with respect to participation in State term contracts."

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

9 **"§ 143-131. When counties, cities, towns and other subdivisions may let contracts on**  
10 **informal bids.**

11 All contracts for construction or repair work or for the purchase of apparatus,  
12 supplies, materials, or equipment, involving the expenditure of public money in the  
13 amount of five thousand dollars (\$5,000) or more, but less than the limits prescribed in  
14 G.S. 143-129, made by any officer, department, board, or commission of any county,  
15 city, town, or other subdivision of this State shall be made after informal bids have been  
16 secured. All ~~such~~ contracts shall be awarded to the lowest responsible bidder, taking into  
17 consideration quality, performance, and the time specified in the bids for the performance  
18 of the contract. It shall be the duty of any officer, department, board, or commission  
19 entering into ~~such~~ a contract to keep a record of all bids submitted, and ~~such~~ the record  
20 shall not be subject to public inspection ~~at any time.~~ until the contract has been awarded.

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

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

24 **"§ 87-1. 'General contractor' defined; exceptions.**

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

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

36 This section shall not apply to any person or firm or corporation who constructs or  
37 alters a building on land owned by that person, firm or corporation provided ~~such~~ that the  
38 building is intended solely for occupancy by that person and his family, firm, or  
39 corporation after completion; and provided further that, if ~~such~~ the building is not  
40 occupied solely by ~~such~~ the person and his family, firm, or corporation for at least 12  
41 months following completion, it shall be presumed that the person, firm, or corporation  
42 did not intend ~~such~~ the building solely for occupancy by that person and his family, firm,  
43 or corporation.

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

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

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

8 **"§ 143-131.1. Purchase with trade-in of apparatus, supplies, materials, and**  
9 **equipment.**

10 Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes,  
11 municipalities, counties, and other political subdivisions of the State may include in their  
12 specifications for the purchase of any apparatus, supplies, materials, or equipment,  
13 regardless of its estimated cost, an opportunity for bidders to purchase personal property  
14 owned by the city, county, or other political subdivision of the State as a trade-in and may  
15 award a contract for both the purchase of the apparatus, supplies, materials, or equipment  
16 and the sale of the trade-in property taking into consideration the amount offered on the  
17 trade-in when applying the criteria for award established in this Article."

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

19 **"§ 160A-266. Methods of sale; limitation.**

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

- 23 (1) Private negotiation and sale;
- 24 (2) Advertisement for sealed bids;
- 25 (3) Negotiated offer, advertisement, and upset bid;
- 26 (4) Public auction; or
- 27 (5) Exchange.

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

35 Provided, however, a city may dispose of real property of any value and personal  
36 property valued at ~~ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) or more  
37 for any one item or group of similar items by private negotiation and sale where (i) said  
38 real or personal property is significant for its architectural, archaeological, artistic,  
39 cultural or historical associations, or significant for its relationship to other property  
40 significant for architectural, archaeological, artistic, cultural or historical associations, or  
41 significant for its natural, scenic or open condition; and (ii) said real or personal property  
42 is to be sold to a nonprofit corporation or trust whose purposes include the preservation  
43 or conservation of real or personal properties of architectural, archaeological, artistic,

1 cultural, historical, natural or scenic significance; and (iii) where a preservation  
2 agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed  
3 conveying said property from the city to the nonprofit corporation or trust. Said  
4 nonprofit corporation or trust shall only dispose of or use said real or personal property  
5 subject to covenants or other legally binding restrictions which will promote the  
6 preservation or conservation of the property, and, where appropriate, secure rights of  
7 public access.

8 (c) A city council may adopt regulations prescribing procedures for disposing of  
9 personal property valued at less than ~~five hundred dollars (\$500.00)~~ two thousand five  
10 hundred dollars (\$2,500) for any one item or group of items in substitution for the  
11 requirements of this Article. The regulations shall be designed to secure for the city fair  
12 market value for all property disposed of and to accomplish the disposal efficiently and  
13 economically. The regulations may, but need not, require published notice, and may  
14 provide for either public or private exchanges and sales. The council may authorize one  
15 or more city officials to declare surplus any personal property valued at less than ~~five~~  
16 ~~hundred dollars (\$500.00)~~ two thousand five hundred dollars (\$2,500) for any one item or  
17 group of items, to set its fair market value, and to convey title to the property for the city  
18 in accord with the regulations. A city official authorized under this section to dispose of  
19 property shall, ~~on the first day of February, report in writing to the council on any property~~  
20 ~~disposed of under such authorization from July 1 through December 31 of the previous year, and~~  
21 ~~shall on the first day of August report in writing to the council on any property disposed of under~~  
22 ~~such authorization from January 1 through June 30 of that year. The written report shall keep a~~  
23 record of all property sold under procedures established pursuant to the subsection which  
24 shall generally describe the property sold or exchanged, to whom it was sold, or with  
25 whom exchanged, and the amount of money or other consideration received for each sale  
26 or exchange since the last such report was submitted. ~~exchange.~~ A city council may also  
27 authorize one or more city officials to identify surplus personal property of any value to  
28 be traded in under G.S. 143-131.1."

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

30 "**§ 160A-265. Use and disposal of property.**

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

35 Sec. 7. Chapter 143 of the General Statutes is amended by adding a new  
36 section to read:

37 "**§ 143-129.5. Facsimile and electronic transfer of bids or bid bonds.**

38 Any municipality, county, or other political subdivision of the State may allow  
39 submission of proposals, bids, and bid bonds by facsimile or electronic transmission and  
40 may establish procedures designed to provide the confidentiality and equal treatment of  
41 bidders required to comply with the formal and informal procedures established under  
42 this Article. These procedures may provide that a proposal, bid, or bid bond will be  
43 considered a sealed bid for purposes of complying with the requirements of G.S. 143-129

1 if it is submitted in accordance with the procedures or specifications of the unit.  
2 Documents transmitted in the manner authorized herein are binding upon the bidder or  
3 surety to the same extent as if they were transmitted in their original form by personal  
4 delivery or by mail, courier, or other carrier."

5           Sec. 8. This act raises threshold amounts in G.S. 143-129 and G.S. 160A-266.  
6 If any local act provides a threshold amount for the subjects addressed in these statutes  
7 that is less than the amount provided in this act, this act prevails to the extent of the  
8 conflict.

9           Sec. 9. This act becomes effective October 1, 1995.