

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 828

Short Title: Bidding Process Changes/Maintenance and Op. (Public)

Sponsors: Senator Jenkins.

Referred to: Commerce.

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM AMOUNT AT WHICH PROJECTS MAY UNDERGO AN INFORMAL BIDDING PROCESS AND TO CLARIFY THE APPLICATION OF THIS PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-28.1 reads as rewritten:

"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for ~~construction~~ construction, maintenance, or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) In those cases in which the amount of work to be let to contract for highway ~~construction, maintenance, construction~~ or repair is one million two hundred thousand dollars (\$1,200,000) or less, and for highway maintenance that is one million two hundred thousand dollars (\$1,200,000) per year or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget Act. In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the



1 construction of welcome center buildings shall be deemed highway construction, maintenance,
2 or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Chapter 143C of the General
3 Statutes, the State Budget Act.

4 (e) The Department of Transportation may enter into contracts for construction,
5 maintenance, or repair without complying with the bidding requirements of this section upon a
6 determination of the Secretary of Transportation or the State Highway Administrator that an
7 emergency exists and that it is not feasible or not in the public interest for the Department of
8 Transportation to comply with the bidding requirements.

9 (f) Notwithstanding any other provision of law, the Department of Transportation may
10 solicit proposals under rules and regulations adopted by the Department of Transportation for
11 all contracts for professional engineering services and other kinds of professional or specialized
12 services necessary in connection with ~~highway construction, maintenance, or repair.~~the
13 planning, design, maintenance, repair, and construction of transportation infrastructure. In order
14 to promote engineering and design quality and ensure maximum competition by professional
15 firms of all sizes, the Department may establish fiscal guidelines and limitations necessary to
16 promote cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to
17 reject any and all proposals is reserved to the Board of Transportation.

18 (g) The Department of Transportation may enter into contracts for research and
19 development with educational institutions and nonprofit organizations without soliciting bids or
20 proposals.

21 (h) The Department of Transportation may enter into contracts for applied research and
22 experimental work without soliciting bids or proposals; provided, however, that if the research
23 or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article
24 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is
25 encouraged to solicit proposals when contracts are entered into with private firms when it is in
26 the public interest to do so.

27 (i) The Department of Transportation may negotiate and enter into contracts with
28 public utility companies for the lease, purchase, installation, and maintenance of generators for
29 electricity for its ferry repair facilities.

30 (j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

31 (k) The Department of Transportation may accept bids under this section by electronic
32 means and may issue rules governing the acceptance of these bids. For purposes of this
33 subsection "electronic means" is defined as means relating to technology having electrical,
34 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

35 (l) The Department of Transportation may enter into as many as two pilot contracts for
36 public private participation in providing litter removal from State right-of-way. Selection of
37 firms to perform this work shall be made using a best value procurement process and shall be
38 without regard to other provisions of law regarding the Adopt-A-Highway Program
39 administered by the Department. Acknowledgement of sponsors may be indicated by
40 appropriate signs that shall be owned by the Department of Transportation. The size, style,
41 specifications, and content of the signs shall be determined in the sole discretion of the
42 Department of Transportation. The Department of Transportation may issue rules and policies
43 necessary to implement this section.

44 (m) The Department of Transportation may enter into as many as two pilot contracts for
45 public-private participation in providing real-time traveler information at State-owned rest
46 areas. Selection of firms to perform this work shall be made using a best value procurement
47 process. Recognition of sponsors in the program may be indicated by appropriate
48 acknowledgment for any services provided. The size, style, specifications, and content of the
49 acknowledgment shall be determined in the sole discretion of the Department. Revenues
50 generated pursuant to a contract initiated under this subsection shall be shared with Department
51 of Transportation at a predetermined percentage or rate, and shall be earmarked by the

1 Department to maintain the State owned rest areas from which the revenues are generated. The
2 Department of Transportation may issue guidelines, rules, and policies necessary to administer
3 a pilot program initiated under this subsection."

4 **SECTION 2.** G.S. 136-28.10(a) reads as rewritten:

5 "(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway
6 Trust Fund construction and repair projects of five hundred thousand dollars (\$500,000) or less,
7 and maintenance projects of five hundred thousand dollars (\$500,000) or less per year, the
8 Board of Transportation may, after soliciting at least three informal bids in writing from Small
9 Business Enterprises, award contracts to the lowest responsible bidder. The Department of
10 Transportation may identify projects likely to attract increased participation by Small Business
11 Enterprises, and restrict the solicitation and award to those bidders. The Board of
12 Transportation may delegate full authority to award contracts, adopt necessary rules, and
13 administer the provisions of this section to the Secretary of Transportation."

14 **SECTION 3.** This act becomes effective July 1, 2009.