

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-234
HOUSE BILL 56

AN ACT TO ESTABLISH THE CONTRACT MANAGEMENT SECTION OF THE DIVISION OF PURCHASE AND CONTRACT, DEPARTMENT OF ADMINISTRATION, TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF CERTAIN STATE CONTRACTS, TO PROVIDE OVERSIGHT AND REPORTING OF CERTAIN CONTRACT AWARDS, AND TO PROVIDE FOR CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"§ 114-8.3. Attorney General-General/Counsel;to review certain contracts.

(a) Except as provided in ~~subsection subsections~~ ~~(b) and (b1)~~ of this section, the Attorney General or the Attorney General's designee shall perform the duties required pursuant to G.S. 143-49(3a) for review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one five million dollars (\$1,000,000) (\$5,000,000). The designee shall confirm to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in ~~this section shall~~ ~~designee's review does~~ not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include includes any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall:

- (1) Establish procedures regarding the review of contracts subject to this section and shall provide any attorney designated under G.S. 143-49(3a) with guidelines to be used in reviewing contracts. shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts.
- (2) Advise and assist the Contract Management Section of the Division of Purchase and Contract, Department of Administration, in establishing procedures and guidelines for the review of contracts pursuant to G.S. 143-50.1.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section ~~shall does~~ not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include includes any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall establish procedures regarding the review of contracts subject to this section and shall require that any attorney designated under this subsection comply with any rules procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(b1) The General Counsel of the Department of State Treasurer or the General Counsel's designee shall review all proposed investment contracts, as defined in subdivision (4) of this



subsection, and all proposed contracts for investment-related services entered pursuant to the State Treasurer's authority under G.S. 147-69.3 not constituting consulting contracts, to confirm that the proposed contracts (i) are in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable to the extent governed by North Carolina law, and (iv) accomplish the intended purposes of the proposed contract. The General Counsel shall establish, in consultation with the Attorney General and the Department of Administration, procedures regarding the review of contracts subject to this subsection. The following terms and requirements apply to contracts under this subsection:

- (1) The term "review" as used in this section does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.
- (2) The term "General Counsel's designee" includes any attorney employed or retained by the General Counsel to review contracts as provided in this subsection.
- (3) Any contract for services reviewed pursuant to this subsection must include the signature of the General Counsel or the General Counsel's designee confirming that the Department of State Treasurer has adhered to the procedures established by the General Counsel regarding the review of the contract. Except for a contract entered into as part of direct trading of bonds, instruments, equity securities, or other approved securities, a contract that has not been signed as required by this subdivision is voidable by the State, and any party or parties to the contract are entitled to receive the value of services rendered prior to the termination of the contract.
- (4) For the purposes of this subsection, "investment contract" means any of the following:
 - a. Investments to be acquired, held, or sold, directly or indirectly, by or for the State Treasurer, the Department of State Treasurer, or an investment entity created by the Department of State Treasurer, either on its own behalf or on behalf of another beneficial owner.
 - b. Investments administered by the North Carolina Supplemental Retirement Board of Trustees.

(c) All State agencies, the constituent institutions of The University of North Carolina, or any person who will be entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds one million dollars (\$1,000,000) shall notify the Secretary of the Department of Administration or the Secretary's designee of the intent to enter into the contract and provide information as required by the Department for the purposes of maintaining a centralized log of contracts and identifying the location of the contract documents."

SECTION 2. G.S. 143-49 reads as rewritten:

"§ 143-49. Powers and duties of Secretary.

The Secretary of Administration shall have has the power and authority, and it shall be his is the Secretary's duty, subject to the provisions of this Article:

...

- (3a) To request, notify and the Attorney General of pending contracts for contractual services exceeding a cost of five million dollars (\$5,000,000) and that are not otherwise excepted by this subdivision. Upon notification, the Attorney General shall assign a representative of from within the office of the Attorney General, the Contract Management Section of the Division of Purchase and Contract, Department of Administration, or other qualified counsel to assist in negotiation for the award of any the contract, contract for contractual services exceeding a cost of one hundred thousand dollars (\$100,000) that requires negotiation with prospective contractors. It shall be is the duty of such the representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. An attorney from within the office of the Attorney General shall review all contracts and drafts of such contracts shall be prepared by the office of the Attorney General contracts, and the office shall retain copies thereof shall be retained

~~by such office for a period of three years following the termination of such the contracts. The term "contractual services" as used in this subsection and G.S. 143-52.2 shall mean means work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used in this This subdivision shall does not apply be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process. In order to be valid, any contract for services reviewed pursuant to this subdivision must include the signature and title of the attorney designated from within the office of the Attorney General to review the contract. If the contract commences without the required signature, the State has the right to terminate the contract, and the other party or parties to the contract shall only be entitled to the value of all services provided to the State prior to the termination. The Secretary is not required to notify the Attorney General for the appointment of a representative for any contracts for contractual services to be entered into by the constituent institutions of The University of North Carolina pursuant to G.S. 114-8.3(b), or for contracts to be entered into by the Department of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do so by the General Counsel of The University of North Carolina or the General Counsel of the Department of State Treasurer, respectively.~~

...
(13) To implement a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By September 1, 2012, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.
...
(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by June 30, 2014.

...
SECTION 3. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

§ 143-50.1. Division of Purchase and Contract; Contract Management Section.

(a) The Contract Management Section (CMS) is established in the Division of Purchase and Contract, Department of Administration. The CMS shall include legal counsel with the duties and responsibilities included in this section.

(b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed one million dollars (\$1,000,000), the CMS shall:

- (1) Participate and assist in the preparation of all proposed solicitations, and review all available proposals from prospective contractors, with the goal of obtaining the most favorable contract for the State.
- (2) Interpret proposed contract terms and advise the Secretary or the Secretary's designee of the potential liabilities to the State.
- (3) Review all proposed contracts to ensure that the contracts:
 - a. Are in proper legal form.
 - b. Contain all clauses required by law.
 - c. Are legally enforceable.
 - d. Require performance that will accomplish the intended purposes of the proposed contract.

The review and evaluation required by this subsection does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(c) With respect to proposed contracts for services that exceed five million dollars (\$5,000,000), the CMS shall perform the duties required under G.S. 143-49(3a).

(d) The CMS shall:

- (1) Assist State departments, agencies, and institutions to establish formal contract administration procedures and functions.
- (2) Advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities.
- (3) Act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and other matters as directed by the State Purchasing Officer.
- (4) Assist representatives of the Attorney General, agency counsel, and other legal staff, as requested, in matters related to contracting for goods and services.

(e) The Department of Administration shall adopt procedures for the record keeping of the information provided by State agencies and that has been received by the Secretary or the Secretary's designee pursuant to G.S. 114-8.3(c). The Department shall keep the records, and shall include a log with information that provides identification of individual contracts and where the contract documents are located. The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide additional information that may be required to identify the individual contracts.

(f) The CMS shall consist of personnel designated by the Secretary and perform other functions as directed by the Secretary that are not inconsistent with this section."

SECTION 4. G.S. 143-52.1 reads as rewritten:

"§ 143-52.1. Board of Awards; Award recommendations; State Purchasing Officer action.

(a) Award Recommendation. – When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The State Purchasing Officer shall promptly notify the agency or institution making the recommendation, or for which the purchase is to be made, of the action taken. There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.

(b) The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.

(c) When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior to the awarding of the contract.

(d) The State Budget Officer shall designate a secretary for the Board. The Secretary of Administration and the State Chief Information Officer shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each meeting and made public by the Secretary of Administration or State Chief Information Officer, as applicable unless the Secretary of Administration or State Chief Information Officer, as applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. The Secretary of Administration or State Chief Information Officer, as applicable, may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.

(e) Reporting. – Reports on recommendations made by the Board on matters presented by the State Chief Information Officer to the Board shall be reported monthly by the Board. The State Procurement Officer shall provide a monthly report of all contract awards greater than twenty-five thousand dollars (\$25,000) approved through the Division of Purchase and

~~Contract to the chairs of the Joint Legislative Oversight Committee on Information Technology. Co-chairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award.~~

SECTION 5. G.S. 147-33.101 reads as rewritten:

"§ 147-33.101. Board of Awards review; Award recommendation; State Chief Information Officer action.

(a) Award Recommendation. – When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the State Chief Information Officer, an award recommendation shall be submitted to the State Chief Information Officer for approval or other action. The State Chief Information Officer shall promptly notify the agency or institution making the recommendation, or for which the purchase is to be made, of the action taken. the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Review. – Prior to submission of any contract for review by the Board of Awards pursuant to this section for of any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government wide technical architecture as established by the State CIO.

(c) Reporting. – The State CIOs shall provide a report of all contract awards approved through the Statewide IT Procurement Office as indicated below. The report shall include the amount of the award, the contract term, the award recipient, the using agency, and a short description of the nature of the award.

- (1) For contract awards greater than twenty-five thousand dollars (\$25,000), to the Co-chairs of the Joint Legislative Oversight Committee on Information Technology on a monthly basis.
- (2) For all contract awards outside the established purchasing system, to the Secretary of the Department of Administration on a quarterly basis."

SECTION 6. G.S. 116-13(a) reads as rewritten:

"(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

- (1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or
- (2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of Administration, Administration or the State Purchasing Officer, or the Board of Awards Officer shall not be is not required, regardless of dollar value."

SECTION 7. G.S. 120-36.6 reads as rewritten:

"§ 120-36.6. Legislative Fiscal Research staff participation.

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the ~~Board of Awards~~ and Council of State, unless the ~~Board or~~ Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the ~~Board or~~ Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other

informational material which are distributed to the members of the ~~Board or Council~~; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the ~~Board or Council~~."

SECTION 8. G.S. 143-52(a) reads as rewritten:

"(a) The Secretary of Administration shall compile and consolidate all ~~such~~ estimates of goods and services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where ~~such~~ the total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on ~~such~~ contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for ~~such~~ the articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the ~~Board of Awards State Purchasing Officer~~ pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for."

SECTION 9. G.S. 143-59(b) reads as rewritten:

"(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars (\$25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration ~~may, after consultation with the Board of Awards, may~~ waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration and the ~~Board of Awards~~ shall consider factors that include competition, price, product origination, and available resources."

SECTION 10. G.S. 143-318.18(10) is repealed.

SECTION 11. The Department of Administration shall provide an individualized notice to the following State entities to ensure that the entities are aware of how the statutory amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- (1) The North Carolina State Lottery Commission, which is subject to G.S. 18C-150.
- (2) The Commissioner of Banks, who is subject to G.S. 53-320(d), 53-326(d), 53-391, and 53-401.
- (3) The Commissioner of Insurance, who is subject to G.S. 53-401, 58-33-30(e)(4) and (5), 58-33-125(e), 58-33-130(a), and 58-71-40(d).
- (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The Secretary of Transportation shall be copied on the notice sent to the Global TransPark Authority.
- (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- (6) The North Carolina Board for Licensing of Geologists, which is subject to G.S. 89E-5(e).
- (7) The North Carolina Board for Licensing of Soil Scientists, which is subject to G.S. 89F-5(d).
- (8) The constituent institutions of The University of North Carolina, which are subject to G.S. 114-8.3(b). For notification under this subdivision, the Department of Administration may provide The University of North Carolina system a notification to distribute to all of its constituent institutions. If the Department of Administration does so, The University of North Carolina system shall distribute those notifications to the system's constituent institutions.
- (9) The North Carolina Center for Applied Textile Technology, which is subject to G.S. 115D-67.4.
- (10) The North Carolina State Health Plan for Teachers and State Employees, which is subject to G.S. 135-48.33(b).
- (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and G.S. 143-134(b).
- (12) The North Carolina Turnpike Authority, which is subject to G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on the notice sent to the Turnpike Authority.
- (13) The Department of Health and Human Services, which is subject to G.S. 143-48.1(c).
- (14) The Division of Adult Correction of the Department of Public Safety, which is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied on the notice sent to the Division of Adult Correction.
- (15) The North Carolina Code Officials Qualification Board, which is subject to G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the notice sent to the Code Officials Qualification Board.
- (16) The Roanoke Island Commission, which is subject to G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be copied on the notice sent to the Roanoke Island Commission.
- (17) Any other State entity subject to contract review under G.S. 114-8.3.

The Department of Administration, as part of its notice, shall provide a means by which an entity may acknowledge receipt and understanding of the notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the notice, the Department of Administration shall send a second notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

SECTION 12. The Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina shall establish procedures to implement the provisions of this act no later than October 1, 2013.

SECTION 13. Sections 1 through 3 of this act become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of June, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:32 a.m. this 3rd day of July, 2013