

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 790  
House Committee Substitute Favorable 6/6/89

Short Title: Hospitals' Bidding.

(Public)

Sponsors:

Referred to:

April 5, 1989

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW REGARDING PUBLIC BIDDING TO EXEMPT  
3 HOSPITALS FROM CERTAIN REQUIREMENTS.

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 No construction or repair work requiring the estimated expenditure of public money  
9 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  
11 public money in an amount equal to or more than twenty thousand dollars (\$20,000),  
12 except in cases of group purchases made by hospitals through a competitive bidding  
13 purchasing program or in cases of special emergency involving the health and safety of  
14 the people or their property, shall be performed, nor shall any contract be awarded  
15 therefor, by any board or governing body of the State, or of any institution of the State  
16 government, or of any county, city, town, or other subdivision of the State, unless the  
17 provisions of this section are complied with. For purposes of this Article, a competitive  
18 bidding group purchasing program is a formally organized program that offers  
19 purchasing services at discount prices to two or more hospital facilities. The limitation  
20 contained in this paragraph shall not apply to construction or repair work undertaken  
21 during the progress of a construction or repair project initially begun pursuant to this  
22 section. Further, the provisions of this section shall not apply to the purchase of

1 gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject  
2 to G.S. 143-131.

3 Advertisement of the letting of such contracts shall be as follows:

4 Where the contract is to be let by a board or governing body of the State  
5 government, or of a State institution, as distinguished from a board or governing body  
6 of a subdivision of the State, proposals shall be invited by advertisement at least one  
7 week before the time specified for the opening of said proposals in a newspaper having  
8 general circulation in the State of North Carolina. Provided that the advertisements for  
9 bidders required by this section shall be published at such a time that at least seven full  
10 days shall lapse between the date of publication of notice and the date of the opening of  
11 bids.

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

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

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

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

43 No proposal shall be considered or accepted by said board or governing body unless  
44 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  
3 not less than five percent (5%) of the proposal. In lieu of making the cash deposit as  
4 above provided, such bidder may file a bid bond executed by a corporate surety licensed  
5 under the laws of North Carolina to execute such bonds, conditioned that the surety will  
6 upon demand forthwith make payment to the obligee upon said bond if the bidder fails  
7 to execute the contract in accordance with the bid bond. This deposit shall be retained if  
8 the successful bidder fails to execute the contract within 10 day after the award or fails  
9 to 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  
12 the 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 general misdemeanor.

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

32 The owning agency or the Department of Administration, in contracts involving a  
33 State agency, and the owning agency or the governing board, in contracts involving a  
34 political subdivision of the State, may reject the bonds of any surety company against  
35 which there is pending any unsettled claim or complaint made by a State agency or the  
36 owning agency or governing board of any political subdivision of the State arising out  
37 of any contract under which State funds, in contracts with the State, or funds of political  
38 subdivisions of the State, in contracts with such political subdivision, were expended,  
39 provided such claim or complaint has been pending more than 180 days.

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

43 Any board or governing body of the State or any institution of the State government  
44 or of any county, city, town or other subdivision of the State may enter into any contract

1 with (i) the United States of America or any agency thereof, or (ii) any other  
2 government unit or agency thereof within the United States, for the purchase, lease, or  
3 other acquisition of any apparatus, supplies, materials, or equipment without regard to  
4 the foregoing provisions of this section or to the provisions of any other section of this  
5 Article.

6 The Secretary of Administration or the governing board of any county, city, town, or  
7 other subdivision of the State may designate any officer or employee of the State,  
8 county, city, town or subdivision to enter a bid or bids in its behalf at any sale of  
9 apparatus, supplies, materials,, equipment or other property owned by (i) the United  
10 States of America or any agency thereof, or (ii) any other governmental unit or agency  
11 thereof within the United States, and may authorize such officer or employee to make  
12 any partial or down payment or payment in full that may be required by regulations of  
13 the government or agency disposing of such property.

14 The provisions of this Article shall not apply to purchases of apparatus, supplies,  
15 materials, or equipment by hospitals when performance or price competition for a  
16 product are not available; when a needed product is available from only one source of  
17 supply; when standardization or compatibility is the overriding consideration; when a  
18 particular medical item or prosthetic appliance is needed; when a particular product is  
19 ordered by an attending physician for his patients; when additional products are needed  
20 to complete an ongoing job or task; when products are purchased for 'over-the-counter'  
21 resale; when a particular product is needed or desired for experimental, developmental,  
22 or research work; or when equipment is already installed, connected, and in service  
23 under a lease or other agreement and the governing body of the hospital determines that  
24 the equipment should be purchased. The governing body of a hospital shall keep a  
25 record of all purchases made pursuant to this exception. These records are subject to  
26 public inspection."

27 Sec. 2. This act shall become effective July 1, 1989.