

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 145

Government Performance Audit Select Committee Substitute Adopted 2/23/93

Short Title: Update State Purchasing Manual.

(Public)

Sponsors:

Referred to: Rules and Operation of the Senate.

February 15, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO AUTHORIZE THE SECRETARY OF ADMINISTRATION TO STUDY BID PROTEST PROCEDURES AND DEVELOP INNOVATIVE GOVERNMENT PROCUREMENT PRACTICES, TO IMPROVE THE PROGRAM UNDER WHICH SPECIFICATION STANDARDS ARE DEVELOPED FOR COMMODITIES PURCHASES BY THE STATE, AND TO PROVIDE FOR THE DEVELOPMENT AND IMPLEMENTATION OF A MANAGEMENT INFORMATION SYSTEM ON PURCHASE ACTIVITY BY STATE AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. The Secretary of Administration shall study the manner in which purchase and contract bid protests are handled for State departments and agencies, public schools, and community colleges and shall make findings on the following: (i) whether there should be a uniform procedure applicable to all bid protests, (ii) whether bid protests should be appealed pursuant to Chapter 150B of the General Statutes (Administrative Procedures Act), and (iii) the extent to which the State Purchasing Office should be involved with bid protests. The Secretary shall submit findings and recommendations to the General Assembly for approval prior to March 15, 1994.

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

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

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

- 1 (1) To canvass sources of supply, and to purchase or to contract for the
2 purchase, lease and lease-purchase of all supplies, materials,
3 equipment and other tangible personal property required by the State
4 government, or any of its departments, institutions or agencies under
5 competitive bidding or otherwise as hereinafter provided.
- 6 (2) To establish and enforce specifications ~~which~~ or standards that shall
7 apply to all supplies, materials and equipment to be purchased or
8 leased for the use of the State government or any of its departments,
9 institutions or agencies. The Secretary shall develop a program for
10 prioritizing the commodities for which specifications or standards need
11 to be developed according to the existing demand for the commodities
12 and the current volume of purchases of the commodities. The
13 Secretary shall also consider the adoption of specifications or
14 standards that have been developed or adopted by other governmental
15 entities.
- 16 (3) To purchase or to contract for, by sealed, competitive bidding or other
17 suitable means, all contractual services and needs of the State
18 government, or any of its departments, institutions, or agencies; or to
19 authorize any department, institution or agency to purchase or contract
20 for such services.

21 When the award of any contract for contractual services
22 exceeding a cost of one hundred thousand dollars (\$100,000)
23 requires negotiation with prospective contractors, the Secretary
24 shall request and the Attorney General shall assign a
25 representative of the office of the Attorney General to assist in
26 negotiation for the award of the contract. It shall be the duty of
27 such representative to assist and advise in obtaining the most
28 favorable contract for the State, to evaluate all proposals
29 available from prospective contractors for that purpose, to
30 interpret proposed contract terms and to advise the Secretary or
31 his representatives of the liabilities of the State and validity of
32 the contract to be awarded. All contracts and drafts of such
33 contracts shall be prepared by the office of the Attorney
34 General and copies thereof shall be retained by such office for a
35 period of three years following the termination of such
36 contracts. The term 'contractual services' as used in this
37 subsection shall mean work performed by an independent
38 contractor requiring specialized knowledge, experience,
39 expertise or similar capabilities wherein the service rendered
40 does not consist primarily of acquisition by this State of
41 equipment or materials and the rental of equipment, materials
42 and supplies. The term 'negotiation' as used herein shall not be
43 deemed to refer to contracts entered into or to be entered into as
44 a result of a competitive bidding process.

- 1 (3a) To monitor the purchasing activity of the State and its departments,
2 institutions, and agencies and to require standardized periodic
3 reporting on the volume of purchases by commodity, service, and
4 vendor category, and the volume of purchases under term contract and
5 open-market procedures. The Secretary shall compile and analyze the
6 data no less than annually.
7 The Secretary shall also conduct a biennial management review of
8 the purchasing operations in State government and in each of its
9 departments, institutions, and agencies to assure that they are using
10 effective and efficient purchasing practices in accordance with law.
11 The Secretary may recommend measures to improve purchasing
12 operations.
13 The Secretary shall report his findings and recommendations under
14 this subdivision to the Governor and the General Assembly on an
15 annual basis.
16 (3b) To develop and implement innovative procurement practices so as to
17 reduce the cost of ordering supplies and services, reduce the volume of
18 inventory maintained by State departments and agencies, and increase
19 the quality of products purchased. These innovative procurement
20 practices may include (i) requiring State departments and agencies to
21 order items from prime vendors for delivery at the time the items are
22 needed instead of ordering for stock, when it is advisable to do so, and
23 (ii) urging State departments and agencies to place orders with vendors
24 electronically.
25 The Secretary may appoint a task force to assist him in the
26 implementation of this duty.
27 (4) To have general supervision of all storerooms and stores operated by
28 the State government, or any of its departments, institutions or
29 agencies and to have supervision of inventories of all tangible personal
30 property belonging to the State government, or any of its departments,
31 institutions or agencies. The duties imposed by this subdivision shall
32 not relieve any department, institution or agency of the State
33 government from accountability for equipment, materials, supplies and
34 tangible personal property under its control.
35 (5) To make provision for or to contract for all State printing, including all
36 printing, binding, paper stock and supplies or materials in connection
37 with the same.
38 (6) To make available to nonprofit corporations operating charitable
39 hospitals, to local nonprofit community sheltered workshops or centers
40 that meet standards established by the Division of Vocational
41 Rehabilitation of the Department of Human Resources, to private
42 nonprofit agencies licensed or approved by the Department of Human
43 Resources as child placing agencies or residential child-care facilities,
44 and to counties, cities, towns, governmental entities and other

1 subdivisions of the State and public agencies thereof in the expenditure
2 of public funds, the services of the Department of Administration in
3 the purchase of materials, supplies and equipment under such rules,
4 regulations and procedures as the Secretary of Administration may
5 adopt. In adopting rules and regulations any or all provisions of this
6 Article may be made applicable to such purchases and contracts made
7 through the Department of Administration, and in addition the rules
8 and regulations shall contain a requirement that payment for all such
9 purchases be made in accordance with the terms of the contract. Prior
10 to adopting rules and regulations under this subdivision, the Secretary
11 of Administration may consult with the Advisory Budget
12 Commission."

13 Sec. 3. The General Assembly finds that the Division of Purchase and
14 Contract of the Department of Administration needs information on commodities
15 purchased by State departments and agencies on the open market and under term
16 contract so that the Division can (i) determine expected volume of purchases by line
17 items for new term contract solicitations, and (ii) oversee the use of term contracts and
18 open-market purchases; therefore, the Office of State Controller shall give high priority
19 to a management information system on purchase activity by State departments and
20 agencies when it plans for the implementation of a new accounting system. Until the
21 State Controller has such a system in operation, the Division of Purchase and Contract
22 of the Department of Administration shall direct all State departments and agencies to
23 report to it on commodities purchased on the open market and under term contract, in
24 accordance with G.S. 143-49(3a), and all State departments and agencies shall report as
25 directed by the Division of Purchase and Contract.

26 Sec. 4. The Secretary of Administration shall evaluate the need to reassign
27 standards engineers within the Division of Purchase and Contract and shall make the
28 reassignments as deemed appropriate.

29 Sec. 5. Sections 1 through 3 of this act are effective upon ratification.
30 Section 4 of this act becomes effective July 1, 1993.