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Short Title: Local Government Contracting.

(Public)

Sponsors: Senators Dalton; Conder, Hartsell, Odom, Warren, Weinstein, and Wellons.

Referred to: State Government, Local Government, and Personnel.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL
GOVERNMENT CONTRACTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars (\$20,000)~~, thirty thousand dollars (\$30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair

1 project initially begun pursuant to this section. Further, the provisions of this section
2 shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil.
3 Such purchases shall be subject to G.S. 143-131.

4 For purchases of apparatus, supplies, materials, or equipment, the governing body of
5 any municipality, county, or other political subdivision of the State may, subject to any
6 restriction as to dollar amount, or other conditions that the governing body elects to
7 impose, delegate to the manager or the chief purchasing official the authority to award
8 contracts, reject bids, readvertise to receive bids on behalf of the unit, or waive bid bonds
9 or deposits, or performance and payment bond requirements. Any person to whom
10 authority is delegated under this subsection shall comply with the requirements of this
11 Article that would otherwise apply to the governing body."

12 Section 2. G.S. 143-129(b) reads as rewritten:

13 "(b) Advertisement of the letting of such contracts shall be as follows:

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

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

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

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

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

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

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

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

26 Section 3. G.S. 143-129(f) reads as rewritten:

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

1 a record of all purchases made pursuant to this exception. These records are subject to
2 public inspection."

3 Section 4. G.S. 143-129 is amended by adding a new subsection to read:

4 "(g) When the governing board of any municipality, county, or other subdivision of
5 the State, or the manager or purchasing official delegated authority under subsection (a)
6 of this section, determines that it is in the best interest of the unit, the requirements of this
7 section may be waived for the purchase of apparatus, supplies, materials, or equipment
8 from any person or entity that has, within the previous 12 months, contracted to furnish
9 the apparatus, supplies, materials, or equipment to:

10 (1) The United States of America or any federal agency;
11 (2) The State of North Carolina or any agency or political subdivision of the
12 State; or
13 (3) Any other state or any agency or political subdivision of that state,
14 if the person or entity is willing to furnish the items at the same or more favorable prices,
15 terms, and conditions as those provided under the contract with the other unit or agency.
16 Notwithstanding any other provision of this section, any purchase made under this
17 subsection shall be approved by the governing body of the purchasing municipality,
18 county, or other political subdivision of the State. Rules issued by the Secretary of
19 Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in
20 State term contracts."

21 Section 5. G.S. 143-131 reads as rewritten:

22 "**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on**
23 **informal bids.**

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

34 Section 6. G.S. 160A-266 reads as rewritten:

35 "**§ 160A-266. Methods of sale; limitation.**

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

39 (1) Private negotiation and sale;
40 (2) Advertisement for sealed bids;
41 (3) Negotiated offer, advertisement, and upset bid;
42 (4) Public auction; or
43 (5) Exchange.

1 (b) Private negotiation and sale may be used only with respect to personal property
2 valued at less than ~~ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) for any
3 one item or group of similar items. ~~Real property property, of any value, and personal~~
4 ~~property valued at ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) or more
5 for any one item or group of similar items may be exchanged as permitted by G.S. 160A-
6 271, or may be sold by any method permitted in this Article other than private negotiation
7 and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

8 Provided, however, a city may dispose of real property of any value and personal
9 property valued at ~~ten thousand dollars (\$10,000)~~ thirty thousand dollars (\$30,000) or more
10 for any one item or group of similar items by private negotiation and sale where (i) said
11 real or personal property is significant for its architectural, archaeological, artistic,
12 cultural or historical associations, or significant for its relationship to other property
13 significant for architectural, archaeological, artistic, cultural or historical associations, or
14 significant for its natural, scenic or open condition; and (ii) said real or personal property
15 is to be sold to a nonprofit corporation or trust whose purposes include the preservation
16 or conservation of real or personal properties of architectural, archaeological, artistic,
17 cultural, historical, natural or scenic significance; and (iii) where a preservation
18 agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed
19 conveying said property from the city to the nonprofit corporation or trust. Said
20 nonprofit corporation or trust shall only dispose of or use said real or personal property
21 subject to covenants or other legally binding restrictions which will promote the
22 preservation or conservation of the property, and, where appropriate, secure rights of
23 public access.

24 (c) A city council may adopt regulations prescribing procedures for disposing of
25 personal property valued at less than ~~five hundred dollars (\$500.00)~~ five thousand dollars
26 (\$5,000) for any one item or group of items in substitution for the requirements of this
27 Article. The regulations shall be designed to secure for the city fair market value for all
28 property disposed of and to accomplish the disposal efficiently and economically. The
29 regulations may, but need not, require published notice, and may provide for either public
30 or private exchanges and sales. The council may authorize one or more city officials to
31 declare surplus any personal property valued at less than ~~five hundred dollars (\$500.00)~~ five
32 thousand dollars (\$5,000) for any one item or group of items, to set its fair market value,
33 and to convey title to the property for the city in accord with the regulations. A city
34 official authorized under this section to dispose of property shall, ~~on the first day of~~
35 ~~February, report in writing to the council on any property disposed of under such authorization~~
36 ~~from July 1 through December 31 of the previous year, and shall on the first day of August~~
37 ~~report in writing to the council on any property disposed of under such authorization from~~
38 ~~January 1 through June 30 of that year. The written report shall keep a record of all property~~
39 ~~sold under this section and that record shall generally describe the property sold or~~
40 ~~exchanged, to whom it was sold, or with whom exchanged, and the amount of money or~~
41 ~~other consideration received for each sale or exchange since the last such report was~~
42 ~~submitted.~~ exchange."

1 Section 7. Article 8 of Chapter 143 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and**
4 **equipment.**

5 Notwithstanding the provisions of Article 12 of Chapter 160A, municipalities,
6 counties, and other political subdivisions of the State may include in specifications for the
7 purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to
8 purchase as 'trade-in' specified personal property owned by the municipality, county, or
9 other political subdivision, and the awarding authority may award a contract for both the
10 purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in
11 property, taking into consideration the amount offered on the trade-in when applying the
12 criteria for award established in this Article."

13 Section 8. This act raises the threshold amount in G.S. 143-129 and G.S.
14 160A-266. If any local act provides a threshold amount for the subjects addressed in
15 these statutes that is less than the amount provided in this act, this act prevails to the
16 extent of that conflict.

17 Section 9. This act is effective when it becomes law.