

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 891  
Second Edition Engrossed 4/24/97  
House Committee Substitute Favorable 5/7/97

Short Title: Local Government Contracting.

(Public)

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Sponsors:

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Referred to:

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April 16, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL  
3 GOVERNMENT CONTRACTING.

4 The General Assembly of North Carolina enacts:

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

6 "(a) No construction or repair work requiring the estimated expenditure of public  
7 money in an amount equal to or more than one hundred thousand dollars (\$100,000) or  
8 purchase of apparatus, supplies, materials, or equipment requiring an estimated  
9 expenditure of public money in an amount equal to or more than ~~twenty thousand dollars~~  
10 ~~(\$20,000),~~ thirty thousand dollars (\$30,000), except in cases of group purchases made by  
11 hospitals through a competitive bidding purchasing program or in cases of special  
12 emergency involving the health and safety of the people or their property, shall be  
13 performed, nor shall any contract be awarded therefor, by any board or governing body of  
14 the State, or of any institution of the State government, or of any county, city, town, or  
15 other subdivision of the State, unless the provisions of this section are complied with.  
16 For purposes of this Article, a competitive bidding group purchasing program is a  
17 formally organized program that offers purchasing services at discount prices to two or  
18 more hospital facilities. The limitation contained in this paragraph shall not apply to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) The United States of America or any federal agency;

12 (2) The State of North Carolina or any agency or political subdivision of the  
13 State; or

14 (3) Any other state or any agency or political subdivision of that state,  
15 if the person or entity is willing to furnish the items at the same or more favorable prices,  
16 terms, and conditions as those provided under the contract with the other unit or agency.  
17 Notwithstanding any other provision of this section, any purchase made under this  
18 subsection shall be approved by the governing body of the purchasing municipality,  
19 county, or other political subdivision of the State at a regularly scheduled meeting of the  
20 governing body no fewer than 10 days after publication of notice, in a newspaper of  
21 general circulation in the area served by the governing body, that a waiver of the bid  
22 procedure will be considered in order to contract with a qualified supplier pursuant to this  
23 section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall  
24 apply with respect to participation in State term contracts."

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

26 "**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on**  
27 **informal bids.**

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

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

39 "**§ 160A-266. Methods of sale; limitation.**

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

43 (1) Private negotiation and sale;

- 1 (2) Advertisement for sealed bids;
- 2 (3) Negotiated offer, advertisement, and upset bid;
- 3 (4) Public auction; or
- 4 (5) Exchange.

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

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

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

1 exchanged, to whom it was sold, or with whom exchanged, and the amount of money or  
2 other consideration received for each sale or ~~exchange since the last such report was~~  
3 ~~submitted.~~ exchange."

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

6 "**§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and**  
7 **equipment.**

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

16 Section 8. This act raises the threshold amount in G.S. 143-129 and G.S.  
17 160A-266. If any local act provides a threshold amount for the subjects addressed in  
18 these statutes that is less than the amount provided in this act, this act prevails to the  
19 extent of that conflict.

20 Section 9. This act becomes effective July 1, 1997.