

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 284

Short Title: Small Business Procurement Act.

(Public)

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Sponsors: Senators Shaw of Cumberland; Jordan and Lucas.

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Referred to: Commerce.

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March 8, 1999

A BILL TO BE ENTITLED

1  
2 AN ACT TO REQUIRE THE SECRETARY OF ADMINISTRATION TO SET  
3 BUSINESS SIZE STANDARDS AND APPLY THEM TO THE PROCUREMENT  
4 PROCEDURES TO PROMOTE INCREASED PROCUREMENTS FROM SMALL  
5 AND MEDIUM-SIZED BUSINESSES.

Whereas, current procurement procedures provide for the consolidation of estimates for supplies, materials, equipment, and contractual services and provide an institutional bias toward awarding State contracts to large businesses; and

Whereas, in this era of large corporate merging, restructuring, and downsizing, with the attendant employee reductions, it is the small and medium-sized businesses that are providing for new employment opportunities and economic growth in North Carolina; and

Whereas, the development of small and medium-sized businesses should be encouraged in North Carolina; Now, therefore,

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 143-52 reads as rewritten:

8 "**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**  
9 **bids; awarding of contracts.**

10 As feasible, the Secretary of Administration will compile and consolidate all such  
11 estimates of supplies, materials, printing, equipment and contractual services needed and

1 required by State departments, institutions and agencies to determine the total  
2 requirements of any given commodity. Where such total requirements will involve an  
3 expenditure in excess of the expenditure benchmark established under the provisions of  
4 G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter  
5 provided, sealed bids shall be solicited by advertisement in a newspaper widely  
6 distributed in this State or through electronic means, or both, as determined by the  
7 Secretary to be most advantageous, at least once and at least 10 days prior to the date  
8 designated for opening. Except as otherwise provided under this Article, contracts for the  
9 purchase of supplies, materials or equipment shall be based on competitive bids and  
10 acceptance made of the lowest and best bid(s) most advantageous to the State as  
11 determined upon consideration of the following criteria: prices offered; the quality of the  
12 articles offered; the general reputation and performance capabilities of the bidders; the  
13 substantial conformity with the specifications and other conditions set forth in the request  
14 for bids; the suitability of the articles for the intended use; the personal or related services  
15 needed; the transportation charges; the date or dates of delivery and performance; and  
16 such other factor(s) deemed pertinent or peculiar to the purchase in question, which if  
17 controlling shall be made a matter of record. Competitive bids on such contracts shall be  
18 received in accordance with rules and regulations to be adopted by the Secretary of  
19 Administration, which rules and regulations shall prescribe for the manner, time and  
20 place for proper advertisement for such bids, the time and place when bids will be  
21 received, the articles for which such bids are to be submitted and the specifications  
22 prescribed for such articles, the number of the articles desired or the duration of the  
23 proposed contract, and the amount, if any, of bonds or certified checks to accompany the  
24 bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and  
25 every bid conforming to the terms of the invitation, together with the name of the bidder,  
26 shall be tabulated and that tabulation shall become public record in accordance with the  
27 rules adopted by the Secretary. All contract information shall be made a matter of public  
28 record after the award of contract. Provided, that trade secrets, test data and similar  
29 proprietary information may remain confidential. A bond for the faithful performance of  
30 any contract may be required of the successful bidder at bidder's expense and in the  
31 discretion of the Secretary of Administration. After contracts have been awarded, the  
32 Secretary of Administration shall certify to the departments, institutions and agencies of  
33 the State government the sources of supply and the contract price of the supplies,  
34 materials and equipment so contracted for. Prior to adopting other methods of  
35 advertisement under this section, the Secretary of Administration may consult with the  
36 Advisory Budget Commission. Prior to adopting rules and regulations under this section,  
37 the Secretary of Administration may consult with the Advisory Budget Commission.

38 The Secretary shall establish procedures for the division of estimates of supplies,  
39 materials, equipment, and contractual services or for allowable consolidation of bids from  
40 small and medium-sized firms, to provide opportunities for these businesses to bid on  
41 State contracts and, at the same time, promote sound purchasing management. The  
42 Secretary shall establish business size standards for small and medium-sized businesses  
43 in this State."

1 Section 2. G.S. 143-49(8) reads as rewritten:

2 **"§ 143-49. Powers and duties of Secretary.**

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

5 ...

6 (8) To allow consideration for encouraging the use of small and medium-  
7 sized businesses through the division of requirements and the  
8 consolidation of bids from these firms."

9 Section 3. G.S. 143-54 reads as rewritten:

10 **"§ 143-54. Certification that bids were submitted without collusion.**

11 The Director of Administration shall require bidders to certify that each bid is  
12 submitted competitively and without collusion. False certification is a Class I felony.

13 The combining of bids pursuant to rules issued under G.S. 143-53(7) is not prima  
14 facie evidence of collusion."

15 Section 4. The Department of Administration shall study measures to  
16 encourage the use of small and medium-sized businesses to provide the supplies,  
17 materials, equipment, and contractual services required by the State. In the course of the  
18 study, the Department shall contact the general counsel of the United States Office of  
19 Small Business Advocacy about measures taken in other states to encourage the  
20 participation of small and medium-sized businesses in government contracts.

21 The Department shall consider and propose new procedures and policies to  
22 eliminate disincentives for small and medium-sized businesses to bid on State contracts.  
23 These new policies and procedures may include prompt payment for completed contracts  
24 and elimination of discounts for prompt payment.

25 The Department shall report the results of its study and any proposed  
26 legislation to the General Assembly prior to May 1, 2000.

27 Section 5. This act is effective when it becomes law.