

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1139*

Short Title: DOT Contracts.

(Public)

Sponsors: Senator Gulley.

Referred to: Transportation.

June 3, 2002

A BILL TO BE ENTITLED

1
2 AN ACT TO INCREASE THE INFORMAL BID LIMIT FOR DEPARTMENT OF
3 TRANSPORTATION PROJECTS, AND TO INCREASE FROM THREE TO
4 TWENTY THE LIMIT ON THE NUMBER OF DESIGN-BUILD PROJECTS THE
5 DEPARTMENT OF TRANSPORTATION MAY AWARD EACH YEAR.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 136-28.1 reads as rewritten:

8 "**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

9 (a) All contracts over ~~eight hundred thousand dollars (\$800,000)~~ one million two
10 hundred thousand dollars (\$1,200,000) that the Department of Transportation may let
11 for construction or repair necessary to carry out the provisions of this Chapter shall be
12 let to a responsible bidder after public advertising under rules and regulations to be
13 made and published by the Department of Transportation. The right to reject any and all
14 bids shall be reserved to the Board of Transportation. Contracts for construction or
15 repair for federal aid projects entered into pursuant to this section shall not contain the
16 standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. §
17 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or
18 significant changes in the character of the work. The Department of Transportation shall
19 use only the contract provisions provided in the North Carolina Department of
20 Transportation, Standard Specifications for Roads and Structures, January 1, 1984,
21 except as each may be changed or provided for by rule adopted by the Board of
22 Transportation in accordance with the Administrative Procedure Act.

23 (b) In those cases in which the amount of work to be let to contract for highway
24 construction, maintenance, or repair is ~~eight hundred thousand dollars (\$800,000)~~ one
25 million two hundred thousand dollars (\$1,200,000) or less, at least three informal bids
26 shall be solicited. The term "informal bids" is defined as bids in writing, received
27 pursuant to a written request, without public advertising. All such contracts shall be

1 awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a
2 record of all bids submitted, which record shall be subject to public inspection at any
3 time after the bids are opened.

4 (c) The construction, maintenance, and repair of ferryboats and all other marine
5 floating equipment and the construction and repair of all types of docks by the
6 Department of Transportation shall be deemed highway construction, maintenance, or
7 repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143,
8 "The Executive Budget Act." In cases of a written determination by the Secretary of
9 Transportation that the requirement for compatibility does not make public advertising
10 feasible for the repair of ferryboats, the public advertising as well as the soliciting of
11 informal bids may be waived.

12 (d) The construction, maintenance, and repair of the highway rest area buildings
13 and facilities, weight stations and the Department of Transportation's participation in the
14 construction of welcome center buildings shall be deemed highway construction,
15 maintenance, or repair for the purpose of G.S. 136-28.1 and G.S. 136-28.3 and Article 1
16 of Chapter 143 of the General Statutes, "The Executive Budget Act."

17 (e) The Department of Transportation may enter into contracts for construction,
18 maintenance, or repair without complying with the bidding requirements of this section
19 upon a determination of the Secretary of Transportation or the State Highway
20 Administrator that an emergency exists and that it is not feasible or not in the public
21 interest for the Department of Transportation to comply with the bidding requirements.

22 (f) Notwithstanding any other provision of law, the Department of
23 Transportation may solicit proposals under rules and regulations adopted by the
24 Department of Transportation for all contracts for professional engineering services and
25 other kinds of professional or specialized services necessary in connection with
26 highway construction, maintenance, or repair. In order to promote engineering and
27 design quality and ensure maximum competition by professional firms of all sizes, the
28 Department may establish fiscal guidelines and limitations necessary to promote
29 cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to
30 reject any and all proposals is reserved to the Board of Transportation.

31 (g) The Department of Transportation may enter into contracts for research and
32 development with educational institutions and nonprofit organizations without soliciting
33 bids or proposals.

34 (h) The Department of Transportation may enter into contracts for applied
35 research and experimental work without soliciting bids or proposals; provided, however,
36 that if the research or work is for the purpose of testing equipment, materials, or
37 supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply.
38 The Department of Transportation is encouraged to solicit proposals when contracts are
39 entered into with private firms when it is in the public interest to do so.

40 (i) The Department of Transportation may negotiate and enter into contracts with
41 public utility companies for the lease, purchase, installation, and maintenance of
42 generators for electricity for its ferry repair facilities.

1 (j) Notwithstanding any other provision of law, the Board of Transportation may
2 award up to three contracts annually for construction of transportation projects on a
3 design-build basis. These contracts may be awarded after a determination by the
4 Department of Transportation that delivery of the projects must be expedited and that it
5 is not in the public interest to comply with normal design and construction contracting
6 procedures. Prior to the award of a design-build contract, the Secretary of
7 Transportation shall report to the Joint Legislative Transportation Oversight Committee
8 and to the Joint Legislative Commission on Governmental Operations on the nature and
9 scope of the project and the reasons an award on a design-build basis will best serve the
10 public interest."

11 **SECTION 2.** G.S. 136-28.11 reads as rewritten:

12 "**§ 136-28.11. Design-build construction of transportation projects.**

13 Notwithstanding any other provision of law, the Board of Transportation may award
14 ~~up to three~~ 20 contracts annually for construction of transportation projects on a
15 design-build basis. These contracts may be awarded after a determination by the
16 Department of Transportation that delivery of the projects must be expedited and that it
17 is not in the public interest to comply with normal design and construction contracting
18 procedures. Prior to the award of a design-build contract, the Secretary of
19 Transportation shall report to the Joint Legislative Transportation Oversight Committee
20 and to the Joint Legislative Commission on Governmental Operations on the nature and
21 scope of the project and the reasons an award on a design-build basis will best serve the
22 public interest."

23 **SECTION 3.** This act is effective when it becomes law.