

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1046

Short Title: Change Purchasing Laws.

(Public)

Sponsors: Representative Bowen.

Referred to: State Government.

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO UPDATE THE LAWS
REGARDING GOVERNMENTAL PURCHASING AND CONTRACTING.

The General Assembly of North Carolina enacts:

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

"§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than fifty thousand dollars (\$50,000) 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 project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

1 **(b)** Advertisement of the letting of such contracts shall be as follows:

2 (1) Where the contract is to be let by a board or governing body of the
3 State government, or of a State institution, as distinguished from a
4 board or governing body of a subdivision of the State, proposals shall
5 be invited by advertisement at least one week before the time specified
6 for the opening of said proposals in a newspaper having general
7 circulation in the State of North Carolina. Provided that the
8 advertisements for bidders required by this section shall be published
9 at such a time that at least seven full days shall lapse between the date
10 of publication of notice and the date of the opening of bids.

11 (2) Where the contract is to be let by a county, city, town or other
12 subdivision of the State, proposals shall be invited by advertisement at
13 least one week before the time specified for the opening of said
14 proposals in a newspaper having general circulation in such county,
15 city, town or other subdivision.

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

20 **(c)** Proposals shall not be rejected for the purpose of evading the provisions of
21 this Article. No board or governing body of the State or subdivision thereof shall
22 assume responsibility for construction or purchase contracts, or guarantee the payments
23 of labor or materials therefor except under provisions of this Article.

24 **(d)** All proposals shall be opened in public and shall be recorded on the minutes
25 of the board or governing body and the award shall be made to the lowest responsible
26 bidder or bidders, taking into consideration quality, performance and the time specified
27 in the proposals for the performance of the contract. In the event the lowest responsible
28 bids are in excess of the funds available for the project, the responsible board or
29 governing body is authorized to enter into negotiations with the lowest responsible
30 bidder above mentioned, making reasonable changes in the plans and specifications as
31 may be necessary to bring the contract price within the funds available, and may award
32 a contract to such bidder upon recommendation of the Department of Administration in
33 the case of the State government or of a State institution or agency, or upon
34 recommendation of the responsible commission, council or board in the case of a
35 subdivision of the State, if such bidder will agree to perform the work at the negotiated
36 price within the funds available therefor. If a contract cannot be let under the above
37 conditions, the board or governing body is authorized to readvertise, as herein provided,
38 after having made such changes in plans and specifications as may be necessary to bring
39 the cost of the project within the funds available therefor. The procedure above
40 specified may be repeated if necessary in order to secure an acceptable contract within
41 the funds available therefor.

42 **(e)** The governing body of any county, city, town, or other political subdivision
43 of the State may, each time that it adopts the annual budget ordinance and subject to any
44 restrictions as to dollar amount or other conditions that the governing body elects to

1 impose, delegate to any officer or employee the authority to award contracts for
2 purchase of apparatus, supplies, materials, or equipment that are subject to this section,
3 and may delegate to any officer or employee the authority to reject bids or readvertise to
4 receive new bids if the officer or employee determines that rejection or readvertisement
5 is in the best interest of the unit.

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

20 (g) Bids shall be sealed if the invitation to bid so specifies and, in any event, the
21 opening of a bid or the disclosure or exhibition of the contents of any bid by anyone
22 without the permission of the bidder prior to the time set for opening in the invitation to
23 bid shall constitute a general misdemeanor.

24 (h) All contracts to which this section applies shall be executed in writing, and
25 the board or governing body shall require the person to whom the award of contract is
26 made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of
27 money, certified check or government securities for the full amount of said contract to
28 secure the faithful performance of the terms of said contract and the payment of all
29 sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A;
30 and no such contract shall be altered except by written agreement of the contractor, the
31 sureties on his bond, and the board or governing body. Such surety bond or deposit
32 required herein shall be deposited with the board or governing body for which the work
33 is to be performed. When a deposit, other than a surety bond, is made with the board or
34 governing body, said board or governing body assumes all the liabilities, obligations
35 and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said
36 deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or
37 equipment, the board or governing body may waive the requirement for a surety bond or
38 other deposit.

39 (i) The owning agency or the Department of Administration, in contracts
40 involving a State agency, and the owning agency or the governing board, in contracts
41 involving a political subdivision of the State, may reject the bonds of any surety
42 company against which there is pending any unsettled claim or complaint made by a
43 State agency or the owning agency or governing board of any political subdivision of
44 the State arising out of any contract under which State funds, in contracts with the State,

1 or funds of political subdivisions of the State, in contracts with such political
2 subdivision, were expended, provided such claim or complaint has been pending more
3 than 180 days.

4 (j) Nothing in this section shall operate so as to require any public agency to
5 enter into a contract which will prevent the use of unemployment relief labor paid for in
6 whole or in part by appropriations or funds furnished by the State or federal
7 government.

8 (k) Any board or governing body of the State or any institution of the State
9 government or of any county, city, town, or other subdivision of the State may enter into
10 any contract with (i) the United States of America or any agency thereof, or (ii) any
11 other government unit or agency thereof within the United States, for the purchase,
12 lease, or other acquisition of any apparatus, supplies, materials, or equipment without
13 regard to the foregoing provisions of this section or to the provisions of any other
14 section of this Article.

15 (l) The Secretary of Administration or the governing board of any county, city,
16 town, or other subdivision of the State may designate any officer or employee of the
17 State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of
18 apparatus, supplies, materials, equipment or other property owned by (i) the United
19 States of America or any agency thereof, or (ii) any other governmental unit or agency
20 thereof within the United States, and may authorize such officer or employee to make
21 any partial or down payment or payment in full that may be required by regulations of
22 the government or agency disposing of such property.

23 (m) The provisions of this section do not apply to contracts for the purchase of
24 apparatus, supplies, materials, or equipment by counties, cities, towns, or other political
25 subdivisions of the State for items available under contracts awarded by the State
26 Department of Administration that are in effect at the time of the purchase, provided
27 that the prices, terms, and conditions of the purchase are the same as those provided
28 under the State contract.

29 (n) The provisions of this Article shall not apply to purchases of apparatus,
30 supplies, materials, or equipment by hospitals when performance or price competition
31 for a product are not available; when a needed product is available from only one source
32 of supply; when standardization or compatibility is the overriding consideration; when a
33 particular medical item or prosthetic appliance is needed; when a particular product is
34 ordered by an attending physician for his patients; when additional products are needed
35 to complete an ongoing job or task; when products are purchased for "over-the-counter"
36 resale; when a particular product is needed or desired for experimental, developmental,
37 or research work; or when equipment is already installed, connected, and in service
38 under a lease or other agreement and the governing body of the hospital determines that
39 the equipment should be purchased. The governing body of a hospital shall keep a
40 record of all purchases made pursuant to this exception. These records are subject to
41 public inspection."

42 Sec. 2. G.S 143-49(6) reads as rewritten:

43 "(6) To make available to nonprofit corporations operating charitable
44 hospitals, to local nonprofit community sheltered workshops or centers

1 that meet standards established by the Division of Vocational
2 Rehabilitation of the Department of Human Resources, to private
3 nonprofit agencies licensed or approved by the Department of Human
4 Resources as child placing agencies or residential child-care facilities,
5 and to counties, cities, towns, governmental entities and other
6 subdivisions of the State and public agencies thereof in the expenditure
7 of public funds, the services of the Department of Administration in
8 the purchase of materials, supplies and equipment under such rules,
9 regulations and procedures as the Secretary of Administration may
10 adopt. In adopting rules and regulations any or all provisions of this
11 Article may be made applicable to such purchases and contracts made
12 through the Department of Administration, and in addition the rules
13 and regulations shall contain a requirement that payment for all such
14 purchases be made in accordance with the terms of the contract. The
15 Secretary shall require contractors to extend to any entity listed in this
16 subsection the same prices, terms, and conditions for purchase of
17 materials, supplies, and equipment as are provided under the State
18 contract regardless of whether the entity is a party to the State contract.
19 Prior to adopting rules and regulations under this subdivision, the
20 Secretary of Administration may consult with the Advisory Budget
21 Commission."

22 Sec. 3. G.S. 160A-266(c) reads as rewritten:

23 "(c) A city council may adopt regulations prescribing procedures for disposing of
24 personal property valued at less than ~~five hundred dollars (\$500.00)~~ two thousand five
25 hundred dollars (\$2,500) for any one item or group of items in substitution for the
26 requirements of this Article. The regulations shall be designed to secure for the city fair
27 market value for all property disposed of and to accomplish the disposal efficiently and
28 economically. The regulations may, but need not, require published notice, and may
29 provide for either public or private exchanges and sales. The council may authorize one
30 or more city officials to declare surplus any personal property valued at less than ~~five~~
31 ~~hundred dollars (\$500.00)~~ two thousand five hundred dollars (\$2,500) for any one item or
32 group of items, to set its fair market value, and to convey title to the property for the city
33 in accord with the regulations. A city official authorized under this section to dispose of
34 property shall, on the first day of February, report in writing to the council on any
35 property disposed of under such authorization from July 1 through December 31 of the
36 previous year, and shall on the first day of August report in writing to the council on any
37 property disposed of under such authorization from January 1 through June 30 of that
38 year. The written report shall generally describe the property sold or exchanged, to
39 whom it was sold, or with whom exchanged, and the amount of money or other
40 consideration received for each sale or exchange since the last such report was
41 submitted."

42 Sec. 4. This act raises threshold amounts in G.S. 143-129 and G.S. 160A-
43 266(c). If any local act provides a threshold amount for the subjects addressed in these

1 statutes that is less than the amount provided by this act, this act prevails to the extent of
2 the conflict.

3 Sec. 5. This act is effective upon ratification.