

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 437
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Short Title: Government Construction Contracts.

(Public)

Sponsors:

Referred to:

March 21, 1995

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET CONCERNING GOVERNMENT
CONSTRUCTION CONTRACTS AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 480 of the 1989 Session Laws reads as
rewritten:

"Sec. 4. This act is effective upon ~~ratification and shall expire on June 30, 1995.~~
ratification."

Sec. 2. Section 3 of Chapter 480 of the 1989 Session Laws is repealed.

Sec. 3. G.S. 44A-26 reads as rewritten:

"§ 44A-26. Bonds required.

(a) When the total amount of construction contracts awarded for any one project
exceeds ~~fifty thousand dollars (\$50,000)~~ one hundred thousand dollars (\$100,000) a
performance and payment bond as set forth in (1) and (2) is required by the contracting
body from any contractor with a contract more than fifteen thousand dollars (\$15,000). In
the discretion of the contracting body, a performance and payment bond may be required
on any construction contract as follows:

1 (1) A performance bond in the amount of one hundred percent (100%) of
2 the construction contract amount, conditioned upon the faithful
3 performance of the contract in accordance with the plans, specifications
4 and conditions of the contract. Such bond shall be solely for the
5 protection of the contracting body which awarded the contract.

6 (2) A payment bond in the amount of one hundred percent (100%) of the
7 construction contract amount, conditioned upon the prompt payment for
8 all labor or materials for which a contractor or subcontractor is liable.
9 The payment bond shall be solely for the protection of the persons
10 furnishing materials or performing labor for which a contractor or
11 subcontractor is liable.

12 (b) The performance bond and the payment bond shall be executed by one or more
13 surety companies legally authorized to do business in the State of North Carolina and
14 shall become effective upon the awarding of the construction contract."

15 Sec. 4. G.S. 143-128 reads as rewritten:

16 "~~§ 143-128. Separate specifications for building contracts; responsible contractors.~~

17 Requirements for certain building contracts.

18 (a) Preparation of specifications. – Every officer, board, department, commission
19 or commissions charged with responsibility of preparation of specifications or awarding
20 or entering into contracts for the erection, construction, alteration or repair of any
21 buildings for the State, or for any ~~county or municipality,~~ county, municipality, or other
22 public body, ~~when the entire cost of such work shall exceed one hundred thousand dollars~~
23 ~~(\$100,000)~~ must have prepared separate specifications for each of the following
24 subdivisions or branches of work to be performed:

25 (1) Heating, ventilating, air conditioning and accessories (separately or
26 combined into one conductive system) and/or refrigeration for cold
27 storage (where the cold storage cooling load is 15 tons or more of
28 refrigeration), and all work kindred thereto.

29 (2) Plumbing and gas fittings and accessories, and all work kindred thereto.

30 (3) Electrical wiring and installations, and all work kindred thereto.

31 (4) General work relating to the erection, construction, alteration, or repair
32 of any building above referred to, which work is not included in the
33 above-listed three subdivisions or branches.

34 All such specifications must be so drawn as to permit separate and independent
35 bidding upon each of the subdivisions or branches of work enumerated above. The above
36 enumeration of subdivisions or branches of work shall not be construed to prevent any
37 officer, board, department, commission or commissions from preparing additional
38 separate specifications ~~and awarding additional separate contracts~~ for any other category of
39 ~~work when it is deemed in the best interest of such officer, board, department, commission or~~
40 ~~commissions to do so.~~ work.

41 (b) Building projects over five hundred thousand dollars (\$500,000); separate
42 prime contracts. ~~All contracts hereafter awarded by the State or by a county or~~
43 ~~municipality, or a department, board, commissioner, or officer thereof, for the erection,~~

1 ~~construction, alteration or repair of buildings, or any parts thereof, Except as provided in~~
2 ~~subsection (d) of this section, when the entire cost of the erection, construction,~~
3 ~~alteration, or repair of a building exceeds five hundred thousand dollars (\$500,000), the~~
4 ~~State, county, municipality, or other public body shall accept bids for each subdivision or~~
5 ~~branch of work for which specifications are required to be prepared under subsection (a)~~
6 ~~of this section and shall award the respective work specified separately to responsible and~~
7 ~~reliable persons, firms or corporations regularly engaged in their respective lines of work.~~
8 ~~When the estimated cost of work to be performed in any single subdivision or branch for~~
9 ~~which separate bids are required by this subsection is less than ten thousand dollars~~
10 ~~(\$10,000), twenty-five thousand dollars (\$25,000), the same may be included in the~~
11 ~~contract for one of the other subdivisions or branches of the work, irrespective of total~~
12 ~~project cost.~~

13 ~~Bids may also be accepted from and awards made to separate contractors for other~~
14 ~~categories of work.~~

15 ~~Each separate contractor shall be directly liable to the State of North Carolina, or to~~
16 ~~the county or municipality, and to the other separate contractors for the full performance~~
17 ~~of all duties and obligations due respectively under the terms of the separate contracts and~~
18 ~~in accordance with the plans and specifications, which shall specifically set forth the~~
19 ~~duties and obligations of each separate contractor. For the purpose of this section, the~~
20 ~~wording 'separate contractor' is hereby deemed and held to mean means any person, firm or~~
21 ~~corporation who shall enter into a contract with the State, or with any county or~~
22 ~~municipality, county, municipality, or other public body, for the erection, construction,~~
23 ~~alteration or repair of any building or buildings, or parts thereof.~~

24 ~~All public authorities coming within the requirements of this section shall have the~~
25 ~~authority to purchase and erect prefabricated or relocatable buildings or portions thereof~~
26 ~~without complying with the provisions hereof, except that portion of the work which~~
27 ~~must be performed at the construction site.~~

28 ~~(c) Building projects five hundred thousand dollars (\$500,000) or less. – When~~
29 ~~the entire cost of the erection, construction, alteration, or repair of a building is five~~
30 ~~hundred thousand dollars (\$500,000) or less, the State, county, municipality, or other~~
31 ~~public body may accept bids under the single-prime contract system, the separate prime~~
32 ~~contract system, or both. The provisions of subsection (b) of this section apply to the use~~
33 ~~of the separate prime contract system under this subsection. The provisions of subsection~~
34 ~~(d) of this section apply to the use of the single-prime contract system under this section,~~
35 ~~except that bidding in the alternative between the single-prime and separate prime~~
36 ~~systems is not required. Contracts bid in the alternative between the single-prime and~~
37 ~~separate prime systems under this subsection must be awarded to the lowest responsible~~
38 ~~bidder or bidders, as provided in subsection (d) of this section.~~

39 ~~(b) (d) Single-prime contracts. – Notwithstanding the provisions of subsection (a)~~
40 ~~of this section, the The State, a county, municipality, department, board, commission,~~
41 ~~public hospital, or other public body, or an officer thereof body may use accept bids~~
42 ~~under the single-prime contract system and may prequalify bidders for all construction~~
43 ~~contracts system.~~

1 If the State, county, municipality, or other public body chooses to use accepts bids
2 under the single-prime contract system, it must also seek bids for the project under
3 subsection (a) of this section the separate prime contract system and award the contract to
4 the lowest responsible bidder or bidders for the total project project, taking into
5 consideration quality, performance, and the time specified in the bids for the performance
6 of the contract.

7 ~~For~~ When bids are accepted under the single-prime contract system all bidders must
8 identify on their bid the contractors they have selected for the subdivisions or branches of
9 work for:

- 10 (1) Heating, ventilating, and air conditioning;
- 11 (2) Plumbing;
- 12 (3) Electrical; and
- 13 (4) General.

14 No contractor whose bid is accepted shall substitute any person as subcontractor in
15 the place of the subcontractor listed in the original bid, except with the approval of the
16 awarding authority for good cause shown by the contractor. The terms, conditions, and
17 requirements of each contract between the contractor and a subcontractor performing
18 work under a subdivision or branch of work listed in this subsection shall be substantially
19 the same as the terms, conditions, and requirements of the contract between the
20 contractor and the State, county, municipality, or other public body.

21 (e) Project expediter; scheduling. – The State, county, municipality, or other public
22 body may, if specified in the bid documents, provide for assignment of responsibility for
23 expediting the work on the project to a single responsible and reliable person, firm, or
24 corporation which may be a prime contractor. In executing this responsibility, the
25 designated project expediter may recommend to the State, county, municipality, or other
26 public body whether payment to a contractor should be approved. The project expediter,
27 if required by the contract documents, shall be responsible for the preparation of the
28 project schedule and shall allow all contractors and subcontractors performing any of the
29 branches of work listed in subsection (d) of this section equal input into the preparation
30 of the initial schedule.

31 ~~(e)~~ (f) Minority goals. – The State shall have a verifiable ten percent (10%) goal
32 for participation by minority businesses in the total value of work for each project for
33 which a contract or contracts are awarded pursuant to this section building project. Each city,
34 county, or other public body shall adopt, after a notice and public hearing, an appropriate
35 verifiable percentage goal for participation by minority businesses in the total value of
36 work for which a contract or contracts are awarded pursuant to this section each building
37 project.

38 As used in this subsection:

- 39 (1) The term 'minority-business' means a business:
 - 40 a. In which at least fifty-one percent (51%) is owned by one or
 - 41 more minority persons, or in the case of a corporation, in which
 - 42 at least fifty-one percent (51%) of the stock is owned by one or
 - 43 more minority persons; and

- 1 b. Of which the management and daily business operations are
2 controlled by one or more of the minority persons who own it.
- 3 (2) The term 'minority person' means a person who is a citizen or lawful
4 permanent resident of the United States and who is:
- 5 a. Black, that is, a person having origins in any of the black racial
6 groups in Africa;
- 7 b. Hispanic, that is, a person of Spanish or Portugese culture with
8 origins in Mexico, South or Central America, or the Caribbean
9 Islands, regardless of race;
- 10 c. Asian American, that is, a person having origins in any of the
11 original peoples of the Far East, Southeast Asia and Asia, the
12 Indian subcontinent, the Pacific Islands;
- 13 d. American Indian or Alaskan Native, that is, a person having
14 origins in any of the original peoples of North America; or
- 15 e. Female.
- 16 (3) The term 'verifiable goal' means for purposes of the separate prime
17 contract system, that the awarding authority has adopted written
18 guidelines specifying the actions that will be taken to ensure a good
19 faith effort in the recruitment and selection of minority businesses for
20 participation in contracts awarded under this section; and
- 21 (4) The term 'verifiable goal' means for purposes of the single-prime
22 contract system, that the awarding authority has adopted written
23 guidelines specifying the actions that the prime contractor must take to
24 ensure a good faith effort in the recruitment and selection of minority
25 businesses for participation in contracts awarded under this section; the
26 required actions must be documented in writing by the contractor to the
27 appropriate awarding authority.
- 28 (d) ~~The State and its political subdivisions~~ The State, counties, municipalities, and all
29 other public bodies shall award public building contracts pursuant to this section without
30 regard to race, religion, color, creed, national origin, sex, age, or handicapping condition,
31 as defined in G.S. 168A-3. Nothing in this section shall be construed to require
32 contractors or awarding authorities to award contracts or subcontracts to or to make
33 purchases of materials or equipment from minority-business contractors or minority-
34 business subcontractors who do not submit the lowest responsible bid or bids.
- 35 (g) Exceptions. – This section shall not apply to:
- 36 (1) The purchase and erection of prefabricated or relocatable buildings or
37 portions thereof, except that portion of the work which must be
38 performed at the construction site.
- 39 (2) The erection, construction, alteration, or repair of a building when the
40 cost thereof is one hundred thousand dollars (\$100,000) or less."
- 41 Sec. 5. G.S. 143-128, as amended by Section 4 of this act, reads as rewritten:
42 "**§ 143-128. Requirements for certain building contracts.**

1 (a) Preparation of specifications. – Every officer, board, department, commission
2 or commissions charged with responsibility of preparation of specifications or awarding
3 or entering into contracts for the erection, construction, alteration or repair of any
4 buildings for the State, or for any county, municipality, or other public body, must have
5 prepared separate specifications for each of the following subdivisions or branches of
6 work to be performed:

7 (1) Heating, ventilating, air conditioning and accessories (separately or
8 combined into one conductive system) and/or refrigeration for cold
9 storage (where the cold storage cooling load is 15 tons or more of
10 refrigeration), and all work kindred thereto.

11 (2) Plumbing and gas fittings and accessories, and all work kindred thereto.

12 (3) Electrical wiring and installations, and all work kindred thereto.

13 (4) General work relating to the erection, construction, alteration, or repair
14 of any building above referred to, which work is not included in the
15 above-listed three subdivisions or branches.

16 All such specifications must be so drawn as to permit separate and independent
17 bidding upon each of the subdivisions or branches of work enumerated above. The above
18 enumeration of subdivisions or branches of work shall not be construed to prevent any
19 officer, board, department, commission or commissions from preparing additional
20 separate specifications for any other category of work.

21 (b) Building projects over five hundred thousand dollars (\$500,000); separate
22 prime contracts. – Except as provided in subsection (d) of this section, when the entire
23 cost of the erection, construction, alteration, or repair of a building exceeds five hundred
24 thousand dollars (\$500,000), the State, county, municipality, or other public body shall
25 accept bids for each subdivision or branch of work for which specifications are required
26 to be prepared under subsection (a) of this section and shall award the respective work
27 specified separately to responsible and reliable persons, firms or corporations regularly
28 engaged in their respective lines of work. When the estimated cost of work to be
29 performed in any single subdivision or branch for which separate bids are required by this
30 subsection is less than twenty-five thousand dollars (\$25,000), the same may be included
31 in the contract for one of the other subdivisions or branches of the work, irrespective of
32 total project cost.

33 Bids may also be accepted from and awards made to separate contractors for other
34 categories of work.

35 Each separate contractor shall be directly liable to the State of North Carolina, or to
36 the county or municipality, and to the other separate contractors for the full performance
37 of all duties and obligations due respectively under the terms of the separate contracts and
38 in accordance with the plans and specifications, which shall specifically set forth the
39 duties and obligations of each separate contractor. For the purpose of this section,
40 'separate contractor' means any person, firm or corporation who shall enter into a contract
41 with the State, or with any county, municipality, or other public body, for the erection,
42 construction, alteration or repair of any building or buildings, or parts thereof.

1 (c) Building projects five hundred thousand dollars (\$500,000) or less. – When
2 the entire cost of the erection, construction, alteration, or repair of a building is five
3 hundred thousand dollars (\$500,000) or less, the State, county, municipality, or other
4 public body may accept bids under the single-prime contract system, the separate prime
5 contract system, or both. The provisions of subsection (b) of this section apply to the use
6 of the separate prime contract system under this subsection. The provisions of subsection
7 (d) of this section apply to the use of the single-prime contract system under this section,
8 except that bidding in the alternative between the single-prime and separate prime
9 systems is not required. Contracts bid in the alternative between the single-prime and
10 separate prime systems under this subsection must be awarded to the lowest responsible
11 bidder or bidders, as provided in subsection (d) of this section.

12 (d) Single-prime and alternative contracts. – The State, a county, municipality, or
13 other public body may accept bids under the single-prime contract ~~system~~ system or a
14 contracting method approved by the State Building Commission under G.S. 143-135.26.

15 If the State, county, municipality, or other public body accepts bids under the single-
16 prime contract system, it must also seek bids for the project under the separate prime
17 contract ~~system~~ system, except as otherwise authorized under G.S. 143-135.26, and award
18 the contract to the lowest responsible bidder or bidders for the total project, taking into
19 consideration quality, performance and the time specified in the bids for the performance
20 of the contract.

21 When bids are accepted under the single-prime contract system all bidders must
22 identify on their bid the contractors they have selected for the subdivisions or branches of
23 work for:

- 24 (1) Heating, ventilating, and air conditioning;
- 25 (2) Plumbing;
- 26 (3) Electrical; and
- 27 (4) General.

28 No contractor whose bid is accepted shall substitute any person as subcontractor in
29 the place of the subcontractor listed in the original bid, except with the approval of the
30 awarding authority for good cause shown by the contractor. The terms, conditions, and
31 requirements of each contract between the contractor and a subcontractor performing
32 work under a subdivision or branch of work listed in this subsection shall be substantially
33 the same as the terms, conditions, and requirements of the contract between the
34 contractor and the State, county, municipality, or other public body.

35 The requirements of this subsection governing the identification of bidders,
36 substitution of contractors, and the terms and conditions of subcontractor's contracts
37 apply to all single-prime bidding and single-prime contracts, regardless of whether
38 bidding in the alternative between the single-prime and separate prime systems has been
39 waived by the State Building Commission.

40 (e) Project expediter; scheduling. – The State, county, municipality, or other public
41 body may, if specified in the bid documents, provide for assignment of responsibility for
42 expediting the work on the project to a single responsible and reliable person, firm or
43 corporation, which may be a prime contractor. In executing this responsibility, the

1 designated project expediter may recommend to the State, county, municipality, or other
2 public body whether payment to a contractor should be approved. The project expediter,
3 if required by the contract documents, shall be responsible for the preparation of the
4 project schedule and shall allow all contractors and subcontractors performing any of the
5 branches of work listed in subsection (d) of this section equal input into the preparation
6 of the initial schedule.

7 (f) Minority goals. – The State shall have a verifiable ten percent (10%) goal for
8 participation by minority businesses in the total value of work for each building project.
9 Each city, county, or other public body shall adopt, after a notice and public hearing, an
10 appropriate verifiable percentage goal for participation by minority businesses in the total
11 value of work for each building project.

12 As used in this subsection:

13 (1) The term 'minority-business' means a business:

- 14 a. In which at least fifty-one percent (51%) is owned by one or
15 more minority persons, or in the case of a corporation, in which
16 at least fifty-one percent (51%) of the stock is owned by one or
17 more minority persons; and
18 b. Of which the management and daily business operations are
19 controlled by one or more of the minority persons who own it.

20 (2) The term 'minority person' means a person who is a citizen or lawful
21 permanent resident of the United States and who is:

- 22 a. Black, that is, a person having origins in any of the black racial
23 groups in Africa;
24 b. Hispanic, that is, a person of Spanish or Portugese culture with
25 origins in Mexico, South or Central America, or the Caribbean
26 Islands, regardless of race;
27 c. Asian American, that is, a person having origins in any of the
28 original peoples of the Far East, Southeast Asia and Asia, the
29 Indian subcontinent, the Pacific Islands;
30 d. American Indian or Alaskan Native, that is, a person having
31 origins in any of the original peoples of North America; or
32 e. Female.

33 (3) The term 'verifiable goal' ~~means for~~ means:

- 34 a. For purposes of the separate prime contract system, that the
35 awarding authority has adopted written guidelines specifying the
36 actions that will be taken to ensure a good faith effort in the
37 recruitment and selection of minority businesses for participation
38 in contracts awarded under this ~~section~~; and section.

39 ~~(4) The term 'verifiable goal' means for~~

- 40 b. For purposes of the single-prime contract system, that the
41 awarding authority has adopted written guidelines specifying the
42 actions that the prime contractor must take to ensure a good faith
43 effort in the recruitment and selection of minority businesses for

1 participation in contracts awarded under this section; the required
2 actions must be documented in writing by the contractor to the
3 appropriate awarding authority.

4 c. For purposes of an alternative contracting system authorized by
5 the State Building Commission under G.S. 143-135.26(9), that
6 the awarding authority has adopted written guidelines specifying
7 the action to be taken to ensure a good faith effort in the
8 recruitment and selection of minority businesses for participation
9 in contracts awarded under this section.

10 The State, counties, municipalities, and all other public bodies shall award public
11 building contracts without regard to race, religion, color, creed, national origin, sex, age,
12 or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be
13 construed to require contractors or awarding authorities to award contracts or
14 subcontracts to or to make purchases of materials or equipment from minority-business
15 contractors or minority-business subcontractors who do not submit the lowest responsible
16 bid or bids.

17 (g) Exceptions. – This section shall not apply to:

18 (1) The purchase and erection of prefabricated or relocatable buildings or
19 portions thereof, except that portion of the work which must be
20 performed at the construction site.

21 (2) The erection, construction, alteration, or repair of a building when the
22 cost thereof is one hundred thousand dollars (\$100,000) or less."

23 Sec. 6. G.S. 143-129(a) reads as rewritten:

24 "(a) No construction or repair work requiring the estimated expenditure of public
25 money in an amount equal to or more than ~~fifty thousand dollars (\$50,000)~~ one hundred
26 thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment
27 requiring an estimated expenditure of public money in an amount equal to or more than
28 twenty thousand dollars (\$20,000), except in cases of group purchases made by hospitals
29 through a competitive bidding purchasing program or in cases of special emergency
30 involving the health and safety of the people or their property, shall be performed, nor
31 shall any contract be awarded therefor, by any board or governing body of the State, or of
32 any institution of the State government, or of any county, city, town, or other subdivision
33 of the State, unless the provisions of this section are complied with. For purposes of this
34 Article, a competitive bidding group purchasing program is a formally organized program
35 that offers purchasing services at discount prices to two or more hospital facilities. The
36 limitation contained in this paragraph shall not apply to construction or repair work
37 undertaken during the progress of a construction or repair project initially begun pursuant
38 to this section. Further, the provisions of this section shall not apply to the purchase of
39 gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to
40 G.S. 143-131."

41 Sec. 7. G.S. 143-132(b) reads as rewritten:

42 "(b) For purposes of contracts bid in the alternative between the separate-prime and
43 single-prime contracts, pursuant to G.S. ~~143-128(b)~~, 143-128(c) or (d), each single-prime

1 bid shall constitute a competitive bid in each of the four subdivisions or branches of work
2 listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a
3 competitive single-prime bid in meeting the requirements of subsection (a) of this
4 section. If there are at least three single-prime bids but there is not at least one full set of
5 separate-prime bids, no separate-prime bids shall be opened."

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

8 "**§ 143-135.8. Prequalification.**

9 Bidders may be prequalified for any public construction project."

10 Sec. 9. G.S. 143-135.25(a) reads as rewritten:

11 "(a) A State Building Commission is created within the Department of
12 Administration to develop procedures to direct and guide the State's capital facilities
13 development and management ~~program~~-~~program~~ and to perform the duties created under
14 this Article."

15 Sec. 10. G.S. 143-135.26 is amended by adding a new subdivision to read:

16 "(9) Effective July 1, 1996, to authorize a State agency, a local governmental
17 unit, or any other entity subject to the provisions of G.S. 143-129 to use
18 a method of contracting not authorized under G.S. 143-128, including
19 the use of the single-prime contracting system without soliciting bids
20 under both the single and separate prime contract systems. An
21 authorization under this subdivision for an alternative contracting
22 method shall be granted only under the following conditions:

- 23 a. An authorization shall apply only to a single project.
24 b. The entity seeking authorization must demonstrate to the
25 Commission that the alternative contracting method is necessary
26 because the project cannot be reasonably completed under the
27 methods authorized under G.S. 143-128 or for such other reasons
28 as the Commission, pursuant to its rules and criteria, deems
29 appropriate and in the public's interest.
30 c. The authorization must be approved by two-thirds of the
31 members of the Commission present and voting.

32 The Commission shall not waive the requirements of G.S. 143-129 or
33 G.S. 143-132 for public contracts unless otherwise authorized by law."

34 Sec. 11. Sections 1, 2, and 10 of this act and this section are effective upon
35 ratification. Section 5 of this act becomes effective July 1, 1996, and applies to contracts
36 for which bids are solicited on or after that date. The remainder of this act becomes
37 effective October 1, 1995. Section 3 applies to the award of contracts on or after October
38 1, 1995. Sections 4 and 6 apply to contracts for which bids are solicited on or after
39 October 1, 1995.