

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 417

Short Title: Public Contract Bonding Req'ments.

(Public)

Sponsors: Senators Shaw of Cumberland, Ballance; and Jordan.

Referred to: Commerce.

March 18, 1997

A BILL TO BE ENTITLED

**AN ACT TO ELIMINATE THE BONDING REQUIREMENTS FOR PUBLIC
CONTRACTS WITH A VALUE OF ONE MILLION DOLLARS OR LESS.**

The General Assembly of North Carolina enacts:

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

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

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

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

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or

1 equipment may be had, and the time and place for opening of the proposals, and shall
2 reserve to said board or governing body the right to reject any or all such proposals.

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

7 All proposals shall be opened in public and shall be recorded on the minutes of the
8 board or governing body and the award shall be made to the lowest responsible bidder or
9 bidders, taking into consideration quality, performance and the time specified in the
10 proposals for the performance of the contract. In the event the lowest responsible bids
11 are in excess of the funds available for the project, the responsible board or governing
12 body is authorized to enter into negotiations with the lowest responsible bidder above
13 mentioned, making reasonable changes in the plans and specifications as may be
14 necessary to bring the contract price within the funds available, and may award a contract
15 to such bidder upon recommendation of the Department of Administration in the case of
16 the State government or of a State institution or agency, or upon recommendation of the
17 responsible commission, council or board in the case of a subdivision of the State, if such
18 bidder will agree to perform the work at the negotiated price within the funds available
19 therefor. If a contract cannot be let under the above conditions, the board or governing
20 body is authorized to readvertise, as herein provided, after having made such changes in
21 plans and specifications as may be necessary to bring the cost of the project within the
22 funds available therefor. The procedure above specified may be repeated if necessary in
23 order to secure an acceptable contract within the funds available therefor.

24 No proposal for a contract with a value of more than one million dollars (\$1,000,000)
25 shall be considered or accepted by said board or governing body unless at the time of its
26 filing the same shall be accompanied by a deposit with said board or governing body of
27 cash, or a cashier's check, or a certified check on some bank or trust company insured by
28 the Federal Deposit Insurance Corporation in an amount equal to not less than five
29 percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such
30 bidder may file a bid bond executed by a corporate surety licensed under the laws of
31 North Carolina to execute such bonds, conditioned that the surety will upon demand
32 forthwith make payment to the obligee upon said bond if the bidder fails to execute the
33 contract in accordance with the bid bond. No deposit or bid bond shall be required when
34 the contract has a value of one million dollars (\$1,000,000) or less. This deposit shall be
35 retained if the successful bidder fails to execute the contract within 10 days after the
36 award or fails to give satisfactory surety as required herein. ~~In the case of proposals in an~~
37 ~~estimated amount of less than one hundred thousand dollars (\$100,000) for the purchase of~~
38 ~~apparatus, supplies, materials, or equipment, the board or governing body may waive the~~
39 ~~requirement for a bid bond or other deposit.~~

40 Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening
41 of a bid or the disclosure or exhibition of the contents of any bid by anyone without the
42 permission of the bidder prior to the time set for opening in the invitation to bid shall
43 constitute a Class 1 misdemeanor."

1 Section 2. G.S. 143-129(c) reads as rewritten:

2 "(c) All contracts to which this section applies shall be executed in writing, and the
3 board or governing body shall require the person to whom the award of contract is made
4 for a contract with a value of more than one million dollars (\$1,000,000) to furnish bond
5 as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or
6 government securities for the full amount of said contract to secure the faithful
7 performance of the terms of said contract and the payment of all sums due for labor and
8 materials in a manner consistent with Article 3 of Chapter 44A; and no such contract
9 shall be altered except by written agreement of the contractor, the sureties on his bond,
10 and the board or governing body. Such surety bond or deposit required herein shall be
11 deposited with the board or governing body for which the work is to be performed.
12 When a deposit, other than a surety bond, is made with the board or governing body, said
13 board or governing body assumes all the liabilities, obligations and duties of a surety as
14 provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of
15 contracts for the purchase of apparatus, supplies, materials, or equipment, the board or
16 governing body ~~may shall~~ waive the requirement for a surety bond or other ~~deposit~~
17 deposit when the contract has a value of one million dollars (\$1,000,000) or less.

18 The owning agency or the Department of Administration, in contracts involving a
19 State agency, and the owning agency or the governing board, in contracts involving a
20 political subdivision of the State, may reject the bonds of any surety company against
21 which there is pending any unsettled claim or complaint made by a State agency or the
22 owning agency or governing board of any political subdivision of the State arising out of
23 any contract under which State funds, in contracts with the State, or funds of political
24 subdivisions of the State, in contracts with such political subdivision, were expended,
25 provided such claim or complaint has been pending more than 180 days."

26 Section 3. G.S. 44A-26(a) reads as rewritten:

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

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

38 (2) A payment bond in the amount of one hundred percent (100%) of the
39 construction contract amount, conditioned upon the prompt payment for
40 all labor or materials for which a contractor or subcontractor is liable.
41 The payment bond shall be solely for the protection of the persons
42 furnishing materials or performing labor for which a contractor or
43 subcontractor is liable.

- 1 No bonds shall be required from a contractor on a contract with a value of one million
2 dollars (\$1,000,000) or less."
3 Section 4. This act is effective when it becomes law.