

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 418
Commerce Committee Substitute Adopted 4/1/97

Short Title: Small Business Procurement Act.

(Public)

Sponsors:

Referred to:

March 18, 1997

1 A BILL TO BE ENTITLED
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 the 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.**

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

1 The Secretary shall establish business size standards for small and medium-sized
2 businesses in this State and shall establish procedures for the division of estimates of
3 supplies, materials, equipment, and contractual services or for allowable consolidation of
4 bids from small and medium-sized firms to provide opportunities for these businesses to
5 bid on State contracts while still promoting sound purchasing management."

6 Section 2. G.S. 143-49 reads as rewritten:

7 **"§ 143-49. Powers and duties of Secretary.**

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

- 10 (1) To canvass sources of supply, including sources of supply of materials
11 and supplies with recycled content, and to purchase or to contract for the
12 purchase, lease and lease-purchase of all supplies, materials, equipment
13 and other tangible personal property required by the State government,
14 or any of its departments, institutions or agencies under competitive
15 bidding or otherwise as hereinafter provided.
- 16 (2) To establish and enforce specifications which shall apply to all supplies,
17 materials and equipment to be purchased or leased for the use of the
18 State government or any of its departments, institutions or agencies.
- 19 (3) To purchase or to contract for, by sealed, competitive bidding or other
20 suitable means, all contractual services and needs of the State
21 government, or any of its departments, institutions, or agencies; or to
22 authorize any department, institution or agency to purchase or contract
23 for such services.

24 When the award of any contract for contractual services exceeding a
25 cost of one hundred thousand dollars (\$100,000) requires negotiation
26 with prospective contractors, the Secretary shall request and the
27 Attorney General shall assign a representative of the office of the
28 Attorney General to assist in negotiation for the award of the contract.
29 It shall be the duty of such representative to assist and advise in
30 obtaining the most favorable contract for the State, to evaluate all
31 proposals available from prospective contractors for that purpose, to
32 interpret proposed contract terms and to advise the Secretary or his
33 representatives of the liabilities of the State and validity of the contract
34 to be awarded. All contracts and drafts of such contracts shall be
35 prepared by the office of the Attorney General and copies thereof shall
36 be retained by such office for a period of three years following the
37 termination of such contracts. The term 'contractual services' as used in
38 this subsection shall mean work performed by an independent contractor
39 requiring specialized knowledge, experience, expertise or similar
40 capabilities wherein the service rendered does not consist primarily of
41 acquisition by this State of equipment or materials and the rental of
42 equipment, materials and supplies. The term "negotiation" as used

1 herein shall not be deemed to refer to contracts entered into or to be
2 entered into as a result of a competitive bidding process.

3 (4) To have general supervision of all storerooms and stores operated by the
4 State government, or any of its departments, institutions or agencies and
5 to have supervision of inventories of all tangible personal property
6 belonging to the State government, or any of its departments,
7 institutions or agencies. The duties imposed by this subdivision shall
8 not relieve any department, institution or agency of the State
9 government from accountability for equipment, materials, supplies and
10 tangible personal property under its control.

11 (5) To make provision for or to contract for all State printing, including all
12 printing, binding, paper stock, recycled paper stock, supplies, and
13 supplies with recycled content, or materials in connection with the
14 same.

15 (6) To make available to nonprofit corporations operating charitable
16 hospitals, to local nonprofit community sheltered workshops or centers
17 that meet standards established by the Division of Vocational
18 Rehabilitation of the Department of Human Resources, to private
19 nonprofit agencies licensed or approved by the Department of Human
20 Resources as child placing agencies, residential child-care facilities,
21 private nonprofit rural, community, and migrant health centers
22 designated by the Office of Rural Health and Resource Development,
23 and to counties, cities, towns, governmental entities and other
24 subdivisions of the State and public agencies thereof in the expenditure
25 of public funds, the services of the Department of Administration in the
26 purchase of materials, supplies and equipment under such rules,
27 regulations and procedures as the Secretary of Administration may
28 adopt. In adopting rules and regulations any or all provisions of this
29 Article may be made applicable to such purchases and contracts made
30 through the Department of Administration, and in addition the rules and
31 regulations shall contain a requirement that payment for all such
32 purchases be made in accordance with the terms of the contract. Prior
33 to adopting rules and regulations under this subdivision, the Secretary of
34 Administration may consult with the Advisory Budget Commission.

35 (7) **(See Editor's note)** To evaluate the nonprofit qualifications and
36 capabilities of qualified work centers to manufacture commodities or
37 perform services.

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

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

42 "**§ 143-54. Certification that bids were submitted without collusion.**

1 The Director of Administration shall require bidders to certify that each bid is
2 submitted competitively and without collusion. The combining of bids pursuant to rules
3 issued under subdivision (7) of G.S. 143-53 shall not be prima facie evidence of
4 collusion. False certification is a Class I felony."

5 Section 4. The Department of Administration shall report to the General
6 Assembly, prior to the 1998 Session of the General Assembly, on measures to encourage
7 the use of small and medium-sized businesses to provide the supplies, materials,
8 equipment, and contractual services required by the State. The study shall consider and
9 propose new procedures and policies to eliminate the disincentives to small and medium-
10 sized businesses from bidding on State contracts, such as expediting the prompt payment
11 for completed contracts and elimination of any discounts for prompt payment.

12 In preparing this report, the Department of Administration shall contact the
13 General Counsel of the United States Office of Small Business Advocacy to determine
14 what has been done in other states to encourage small and medium-sized business
15 participation in government contracts.

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