

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 251

Short Title: Group Purchasing.

(Public)

Sponsors: Senator Sherron.

Referred to: Human Resources.

March 21, 1991

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE MENTAL HEALTH, MENTAL RETARDATION,
AND SUBSTANCE ABUSE FACILITIES AND OTHER STATE FACILITIES TO
PARTICIPATE IN GROUP PURCHASING.

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.

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), except in cases of group purchases made by ~~hospitals~~ hospitals, State facilities operated under the authority of Chapter 122C of the General Statutes, and any State operated facilities that provide inpatient treatment 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

1 provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol
2 fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

3 Advertisement of the letting of such contracts shall be as follows:

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

12 Where the contract is to be let by a county, city, town or other subdivision of the
13 State, proposals shall be invited by advertisement at least one week before the time
14 specified for the opening of said proposals in a newspaper having general circulation in
15 such county, 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 Proposals shall not be rejected for the purpose of evading the provisions of this
21 Article. No board or governing body of the State or subdivision thereof shall assume
22 responsibility for construction or purchase contracts, or guarantee the payments of labor
23 or materials therefor except under provisions of this Article.

24 All proposals shall be opened in public and shall be recorded on the minutes of the
25 board or governing body and the award shall be made to the lowest responsible bidder
26 or bidders, taking into consideration quality, performance and the time specified in the
27 proposals for the performance of the contract. In the event the lowest responsible bids
28 are in excess of the funds available for the project, the responsible board or governing
29 body is authorized to enter into negotiations with the lowest responsible bidder above
30 mentioned, making reasonable changes in the plans and specifications as may be
31 necessary to bring the contract price within the funds available, and may award a
32 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 No proposal shall be considered or accepted by said board or governing body unless
43 at the time of its filing the same shall be accompanied by a deposit with said board or
44 governing body of cash, or a cashier's check, or a certified check on some bank or trust

1 company insured by the Federal Deposit Insurance Corporation in an amount equal to
2 not less than five percent (5%) of the proposal. In lieu of making the cash deposit as
3 above provided, such bidder may file a bid bond executed by a corporate surety licensed
4 under the laws of North Carolina to execute such bonds, conditioned that the surety will
5 upon demand forthwith make payment to the obligee upon said bond if the bidder fails
6 to execute the contract in accordance with the bid bond. This deposit shall be retained if
7 the successful bidder fails to execute the contract within 10 days after the award or fails
8 to give satisfactory surety as required herein. In the case of proposals in an estimated
9 amount of less than one hundred thousand dollars (\$100,000) for the purchase of
10 apparatus, supplies, materials, or equipment, the board or governing body may waive
11 the requirement for a bid bond or other deposit.

12 Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening
13 of a bid or the disclosure or exhibition of the contents of any bid by anyone without the
14 permission of the bidder prior to the time set for opening in the invitation to bid shall
15 constitute a general misdemeanor.

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

31 The owning agency or the Department of Administration, in contracts involving a
32 State agency, and the owning agency or the governing board, in contracts involving a
33 political subdivision of the State, may reject the bonds of any surety company against
34 which there is pending any unsettled claim or complaint made by a State agency or the
35 owning agency or governing board of any political subdivision of the State arising out
36 of any contract under which State funds, in contracts with the State, or funds of political
37 subdivisions of the State, in contracts with such political subdivision, were expended,
38 provided such claim or complaint has been pending more than 180 days.

39 Nothing in this section shall operate so as to require any public agency to enter into a
40 contract which will prevent the use of unemployment relief labor paid for in whole or in
41 part by appropriations or funds furnished by the State or federal government.

42 Any board or governing body of the State or any institution of the State government
43 or of any county, city, town, or other subdivision of the State may enter into any
44 contract with (i) the United States of America or any agency thereof, or (ii) any

1 other government unit or agency thereof within the United States, for the purchase,
2 lease, or other acquisition of any apparatus, supplies, materials, or equipment without
3 regard to the foregoing provisions of this section or to the provisions of any other
4 section of this Article.

5 The Secretary of Administration or the governing board of any county, city, town, or
6 other subdivision of the State may designate any officer or employee of the State,
7 county, city, town or subdivision to enter a bid or bids in its behalf at any sale of
8 apparatus, supplies, materials, equipment or other property owned by (i) the United
9 States of America or any agency thereof, or (ii) any other governmental unit or agency
10 thereof within the United States, and may authorize such officer or employee to make
11 any partial or down payment or payment in full that may be required by regulations of
12 the government or agency disposing of such property.

13 The provisions of this Article shall not apply to purchases of apparatus, supplies,
14 materials, or equipment by hospitals when performance or price competition for a
15 product are not available; when a needed product is available from only one source of
16 supply; when standardization or compatibility is the overriding consideration; when a
17 particular medical item or prosthetic appliance is needed; when a particular product is
18 ordered by an attending physician for his patients; when additional products are needed
19 to complete an ongoing job or task; when products are purchased for 'over-the-counter'
20 resale; when a particular product is needed or desired for experimental, developmental,
21 or research work; or when equipment is already installed, connected, and in service
22 under a lease or other agreement and the governing body of the hospital determines that
23 the equipment should be purchased. The governing body of a hospital shall keep a
24 record of all purchases made pursuant to this exception. These records are subject to
25 public inspection."

26 Sec. 2. G.S. 143-56 reads as rewritten:

27 **"§ 143-56. Certain purchases excepted from provisions of Article.**

28 Unless as may otherwise be ordered by the Secretary of Administration, the
29 purchase of supplies, materials and equipment through the Secretary of Administration
30 shall be mandatory in the following cases:

- 31 (1) Published books, manuscripts, maps, pamphlets and periodicals.
- 32 (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat,
33 eggs, and others as may be classified by the Secretary of
34 Administration.

35 Purchase through the Secretary of Administration shall not be mandatory for a purchase
36 of supplies, materials or equipment for the General Assembly if the total expenditures is
37 less than the expenditure benchmark established under the provisions of G.S. 143-53.1
38 or for group purchases made by hospitals or State facilities operated under the authority
39 of Chapter 122C of the General Statutes or any State operated facilities that provide
40 inpatient treatment through a competitive bidding purchasing program, as defined in
41 G.S. 143-129.

42 All purchases of the above articles made directly by the departments, institutions and
43 agencies of the State government shall, whenever possible, be based on competitive
44 bids. Whenever an order is placed or contract awarded for such articles by any of the

1 departments, institutions and agencies of the State government, a copy of such order or
2 contract shall be forwarded to the Secretary of Administration and a record of the
3 competitive bids upon which it was based shall be retained for inspection and review."
4 Sec. 3. This act becomes effective October 1, 1991, and applies to purchases
5 made on or after that date.