

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1046  
Committee Substitute Favorable 6/15/93  
Third Edition Engrossed 6/23/93

Short Title: Change Purchasing Laws.

(Public)

Sponsors:

Referred to:

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

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

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

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

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

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

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

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

1       (e) The governing body of any county, city, town, or other political subdivision  
2 of the State may, each time that it adopts the annual budget ordinance and subject to any  
3 restrictions as to dollar amount or other conditions that the governing body elects to  
4 impose, delegate to any officer or employee the authority to award contracts for  
5 purchase of apparatus, supplies, materials, or equipment that are subject to this section,  
6 and may delegate to any officer or employee the authority to reject bids or readvertise to  
7 receive new bids if the officer or employee determines that rejection or readvertisement  
8 is in the best interest of the unit. When a governing body delegates authority to an  
9 officer or employee under this subsection, the officer or employee shall follow the  
10 requirements of this section that otherwise would apply to the governing body.

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

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

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

1 (i) The owning agency or the Department of Administration, in contracts  
2 involving a State agency, and the owning agency or the governing board, in contracts  
3 involving a political subdivision of the State, may reject the bonds of any surety  
4 company against which there is pending any unsettled claim or complaint made by a  
5 State agency or the owning agency or governing board of any political subdivision of  
6 the State arising out of any contract under which State funds, in contracts with the State,  
7 or funds of political subdivisions of the State, in contracts with such political  
8 subdivision, were expended, provided such claim or complaint has been pending more  
9 than 180 days.

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

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

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

29 (m) The provisions of this section do not apply to contracts for the purchase of  
30 apparatus, supplies, materials, or equipment by counties, cities, towns, or other political  
31 subdivisions of the State for items available under contracts awarded by the State  
32 Department of Administration that are in effect at the time of the purchase, provided  
33 that the prices, terms, and conditions of the purchase are the same as or more favorable  
34 than those provided under the State contract.

35 (n) The provisions of this Article shall not apply to purchases of apparatus,  
36 supplies, materials, or equipment by hospitals when performance or price competition  
37 for a product are not available; when a needed product is available from only one source  
38 of supply; when standardization or compatibility is the overriding consideration; when a  
39 particular medical item or prosthetic appliance is needed; when a particular product is  
40 ordered by an attending physician for his patients; when additional products are needed  
41 to complete an ongoing job or task; when products are purchased for 'over-the-counter'  
42 resale; when a particular product is needed or desired for experimental, developmental,  
43 or research work; or when equipment is already installed, connected, and in service  
44 under a lease or other agreement and the governing body of the hospital determines that

1 the equipment should be purchased. The governing body of a hospital shall keep a  
2 record of all purchases made pursuant to this exception. These records are subject to  
3 public inspection."

4 Sec. 2. G.S. 160A-266(c) reads as rewritten:

5 "(c) A city council may adopt regulations prescribing procedures for disposing of  
6 personal property valued at less than ~~five hundred dollars (\$500.00)~~ two thousand five  
7 hundred dollars (\$2,500) for any one item or group of items in substitution for the  
8 requirements of this Article. The regulations shall be designed to secure for the city fair  
9 market value for all property disposed of and to accomplish the disposal efficiently and  
10 economically. The regulations may, but need not, require published notice, and may  
11 provide for either public or private exchanges and sales. The council may authorize one  
12 or more city officials to declare surplus any personal property valued at less than ~~five~~  
13 ~~hundred dollars (\$500.00)~~ two thousand five hundred dollars (\$2,500) for any one item or  
14 group of items, to set its fair market value, and to convey title to the property for the city  
15 in accord with the regulations. A city official authorized under this section to dispose of  
16 property shall, on the first day of February, report in writing to the council on any  
17 property disposed of under such authorization from July 1 through December 31 of the  
18 previous year, and shall on the first day of August report in writing to the council on any  
19 property disposed of under such authorization from January 1 through June 30 of that  
20 year. The written report shall generally describe the property sold or exchanged, to  
21 whom it was sold, or with whom exchanged, and the amount of money or other  
22 consideration received for each sale or exchange since the last such report was  
23 submitted."

24 Sec. 3. This act raises threshold amounts in G.S. 143-129 and G.S. 160A-  
25 266(c). If any local act provides a threshold amount for the subjects addressed in these  
26 statutes that is less than the amount provided by this act, this act prevails to the extent of  
27 the conflict.

28 Sec. 4. This act is effective upon ratification.