

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 480
SENATE BILL 308

AN ACT TO ALLOW PUBLIC CONTRACTS TO BE BID IN THE ALTERNATIVE
AS MULTI-PRIME OR SINGLE-PRIME CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-128 reads as rewritten:

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

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

- (1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cooling load is 15 tons or more of refrigeration), and all work kindred thereto.
- (2) Plumbing and gas fittings and accessories, and all work kindred thereto.
- (3) Electrical wiring and installations, and all work kindred thereto.
- (4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

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

All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction, alteration or repair of buildings, or any parts thereof, shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch is less than ten thousand dollars

(\$10,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

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

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

(b) Notwithstanding the provisions of subsection (a) of this section, the State, a county, municipality, department, board, commission, public hospital, or other public body, or an officer thereof may use the single-prime contract system and may prequalify bidders for all construction contracts.

If the public body chooses to use the single-prime contract system, it must also seek bids for the project under subsection (a) of this section and award the contract to the lowest responsible bidder or bidders for the total project.

For the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

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

(c) The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each project for which a contract or contracts are awarded pursuant to this section. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for which a contract or contracts are awarded pursuant to this section.

As used in this subsection:

- (1) The term 'minority-business' means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.
- (2) The term 'minority person' means a person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portugese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
 - d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
 - e. Female.
- (3) The term 'verifiable goal' means for purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; and
- (4) The term 'verifiable goal' means for purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

(d) The State and its political subdivisions shall award public contracts pursuant to this section without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible bid or bids."

Sec. 2. G.S. 143-132 reads as rewritten:

"§ 143-132. Minimum number of bids for public contracts.

(a) No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or

governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate prime and single-prime contracts, pursuant to G.S. 143-128(b), a bid submitted by a single-prime contractor shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a)."

Sec. 3. The State Construction Office of the Department of Administration, the Division of School Planning of the Department of Public Education, the Division of Facility Services of the Department of Human Resources, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the School Board Association, and the North Carolina Hospital Association shall monitor and study the separate prime and single-prime contract systems in the bidding of public building projects and shall compile data on the total verifiable contractual, legal, and administrative cost to the public.

The State Building Commission shall develop the necessary forms and procedures to survey the public contracts let. The public bodies responsible for the award of contracts shall submit all necessary records to the appropriate office, division, association, or individual as directed by the State Building Commission. The appropriate office, division, association, or individual shall maintain records of public contracts from bodies under their supervision or bodies that are their members.

An executive summary of data shall be submitted to the State Building Commission and such data shall be compiled and analyzed in a report to be made to the 1995 Session of the General Assembly.

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

In the General Assembly read three times and ratified this the 28th day of June, 1989.