

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 705

Short Title: Increase Bid Limits.

(Public)

Sponsors: Senator Sands.

Referred to: State Personnel and State Government.

April 18, 1991

A BILL TO BE ENTITLED

AN ACT TO RAISE THE LEVEL OF EXPENDITURE ON PUBLIC BUILDING PROJECTS ON WHICH INFORMAL COMPETITIVE BID PROCEDURES MAY BE USED.

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). No construction or repair work, or purchase of apparatus, supplies, materials, or equipment requiring the expenditure of public money, 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. except in cases of Provided however, this section shall not apply to 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. property.~~ For purposes of this Article, a competitive bidding group purchasing program is a formally organized

1 program that offers purchasing services at discount prices to two or more hospital
2 facilities. The limitation contained in this paragraph shall not apply to construction or
3 repair work undertaken during the progress of a construction or repair project initially
4 begun pursuant to this section. Further, the provisions of this section shall not apply to
5 the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases
6 shall be subject to G.S. 143-131. Estimated expenditures shall not exceed the following
7 amounts for counties or municipalities, according to the last federal decennial census:

- 8 (1) Counties or municipalities having a population greater than 50,000 –
9 construction or repair: one hundred thousand dollars (\$100,000);
10 apparatus, supplies, materials, or equipment: twenty thousand dollars
11 (\$20,000).
- 12 (2) Counties or municipalities having a population between 14,000 and
13 50,000 – construction or repair: seventy-five thousand dollars
14 (\$75,000); apparatus, supplies, materials, or equipment: twenty
15 thousand dollars (\$20,000).
- 16 (3) Counties or municipalities having a population less than 14,000 –
17 construction or repair: fifty thousand dollars (\$50,000); apparatus,
18 supplies, materials, or equipment: twenty thousand dollars (\$20,000).

19 Provided, however, estimated expenditures in excess of fifty thousand dollars (\$50,000)
20 shall comply with the bond requirements in this section.

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

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

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

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

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

42 (d) All proposals shall be opened in public and shall be recorded on the minutes
43 of the board or governing body and the award shall be made to the lowest responsible
44 bidder or bidders, taking into consideration quality, performance and the time specified

1 in the proposals for the performance of the contract. In the event the lowest responsible
2 bids are in excess of the funds available for the project, the responsible board or
3 governing body is authorized to enter into negotiations with the lowest responsible
4 bidder above mentioned, making reasonable changes in the plans and specifications as
5 may be necessary to bring the contract price within the funds available, and may award
6 a contract to such bidder upon recommendation of the Department of Administration in
7 the case of the State government or of a State institution or agency, or upon
8 recommendation of the responsible commission, council or board in the case of a
9 subdivision of the State, if such bidder will agree to perform the work at the negotiated
10 price within the funds available therefor. If a contract cannot be let under the above
11 conditions, the board or governing body is authorized to readvertise, as herein provided,
12 after having made such changes in plans and specifications as may be necessary to bring
13 the cost of the project within the funds available therefor. The procedure above
14 specified may be repeated if necessary in order to secure an acceptable contract within
15 the funds available therefor.

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

31 (f) Bids shall be sealed if the invitation to bid so specifies and, in any event, the
32 opening of a bid or the disclosure or exhibition of the contents of any bid by anyone
33 without the permission of the bidder prior to the time set for opening in the invitation to
34 bid shall constitute a general misdemeanor.

35 (g) All contracts to which this section applies shall be executed in writing, and
36 the board or governing body shall require the person to whom the award of contract is
37 made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of
38 money, certified ~~check~~ check, letter of credit, or government securities for the full
39 amount of said contract to secure the faithful performance of the terms of said contract
40 and the payment of all sums due for labor and materials in a manner consistent with
41 Article 3 of Chapter 44A; and no such contract shall be altered except by written
42 agreement of the contractor, the sureties on his bond, and the board or governing body.
43 Such surety bond or deposit required herein shall be deposited with the board or
44 governing body for which the work is to be performed. When a deposit, other than a

1 surety bond, is made with the board or governing body, said board or governing body
2 assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of
3 Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of
4 apparatus, supplies, materials, or equipment, the board or governing body may waive
5 the requirement for a surety bond or other deposit.

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

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

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

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

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

- 1 shall keep a record of all purchases made pursuant to this exception. These records are
- 2 subject to public inspection."
- 3 Sec. 2. This act is effective upon ratification.