

GENERAL ASSEMBLY OF NORTH CAROLINA
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Short Title: Procurement of Professional Services.

(Public)

Sponsors:

Referred to:

March 10, 2005

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY THE BID PROCESS FOR SMALL COMMUNITY COLLEGE CAPITAL IMPROVEMENT PROJECTS AND TO PROHIBIT THE USE OF REVERSE AUCTIONS FOR THE PROCUREMENT OF ARCHITECTURAL, ENGINEERING, SURVEYING, CONSTRUCTION MANAGEMENT AT-RISK, OR CONSTRUCTION SERVICES BY A STATE OR LOCAL GOVERNMENT OR BY A PRIVATE ENTITY THAT HAS RECEIVED PUBLIC MONEY AS AN INCENTIVE TO COMPLETE THE PROJECT WITH RESPECT TO WHICH THE SERVICES ARE REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.34 reads as rewritten:

"§ 143-64.34. Exemption of certain projects.

(a) ~~State Capital Improvement Projects~~ capital improvement projects under the jurisdiction of the State Building Commission and community college capital improvement projects, where the estimated expenditure of public money is less than one hundred thousand dollars ~~(\$100,000)~~ (\$100,000), are exempt from the provisions of this Article.

(b) A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars (\$300,000) is exempt from this Article ~~if~~ if all of the following apply:

- (1) The architectural, engineering, or surveying services to be rendered are under an open-end design ~~agreement;~~ agreement.
- (2) The open-end design agreement has been publicly ~~announced;~~ and announced.

1 (3) The open-end design agreement complies with procedures adopted by
2 the University and approved by the State Building Commission under
3 G.S. 116-31.11(a)(3).

4 (c) A community college capital improvement project where the estimated
5 expenditure of public money is less than three hundred thousand dollars (\$300,000) is
6 exempt from this Article if all of the following apply:

7 (1) The architectural, engineering, or surveying services to be rendered are
8 under an open-end design agreement.

9 (2) The open-end design agreement has been publicly announced.

10 (3) The open-end design agreement complies with procedures adopted by
11 the State Board of Community Colleges and approved by the State
12 Building Commission."

13 **SECTION 2.** G.S. 143-135.26(12) reads as rewritten:

14 **"§ 143-135.26. Powers and duties of the Commission.**

15 The State Building Commission shall have the following powers and duties with
16 regard to the State's capital facilities development and management program:

17 ...

18 (12) To adopt rules governing the use of open-end design agreements for
19 State capital improvement projects and community college buildings
20 as defined in subdivision (4) of this section, where the ~~fee~~ expenditure
21 of public money does not exceed the amount specified in
22 ~~G.S. 143-64.34(b)~~ G.S. 143-64.34(b) or (c).

23"

24 **SECTION 3.** G.S. 143-64.31 is amended by adding a new subsection to
25 read:

26 "(c) Notwithstanding the provisions of this Article exempting certain projects
27 from the provisions of this Article, in no case shall a public entity use reverse auction,
28 as defined in G.S. 143-129.9, as a method of procuring architectural, engineering,
29 surveying, construction management at-risk, or other construction services except for
30 construction projects and repair services that are subject to G.S. 143-131."

31 **SECTION 4.** Part 2 of Article 10 of Chapter 143B of the General Statutes is
32 amended by adding a new section to read:

33 **"§ 143B-437.07. Reverse auctions for procurement of architectural, engineering,**
34 **surveying, construction management at-risk, and other construction**
35 **services prohibited.**

36 It is unlawful for any business that receives an economic development incentive
37 from the State or a local government to utilize reverse auction, as defined in
38 G.S. 143-129.9, as a method of obtaining architectural, engineering, surveying,
39 construction management at-risk, or other construction services with respect to the
40 property or facility with respect to which the economic development incentive was
41 provided. A business that receives an economic development incentive from the State or
42 a local government shall comply with the provisions of G.S. 143-64.31 as if it were a
43 public entity and shall submit the report required by that section to the Secretary of
44 Administration and to the agency that administers the economic development incentive

1 that the business received. A business that violates this section forfeits the economic
2 development incentive received and must repay any amount received as an economic
3 development incentive to the State or local government."

4 **SECTION 5.** This act becomes effective October 1, 2005.