

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 992

Short Title: Prequalify Public Contracts.

(Public)

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Sponsors: Representative Lineberry.

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Referred to: State Government.

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April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO EXPLICITLY AUTHORIZE PREQUALIFICATION OF BIDDERS FOR  
PUBLIC CONTRACTS.

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

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

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

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

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

18 Proposals shall not be rejected for the purpose of evading the provisions of this  
19 Article. No board or governing body of the State or subdivision thereof shall assume  
20 responsibility for construction or purchase contracts, or guarantee the payments of labor  
21 or materials therefor except under provisions of this Article.

22 All proposals shall be opened in public and shall be recorded on the minutes of the  
23 board or governing body and the award shall be made to the lowest responsible bidder  
24 or bidders, taking into consideration quality, performance and the time specified in the  
25 proposals for the performance of the contract. Bidders may be prequalified under rules  
26 and procedures established by the board or governing body of the State, county, city,  
27 town, or other subdivision of the State responsible for letting the contract. In the event  
28 the lowest responsible bids are in excess of the funds available for the project, the  
29 responsible board or governing body is authorized to enter into negotiations with the  
30 lowest responsible bidder above mentioned, making reasonable changes in the plans and  
31 specifications as may be necessary to bring the contract price within the funds available,  
32 and may award a contract to such bidder upon recommendation of the Department of  
33 Administration in the case of the State government or of a State institution or agency, or  
34 upon 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. This act is effective upon ratification.