

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 304*
Committee Substitute Favorable 3/13/95

Short Title: Procurement Council.

(Public)

Sponsors:

Referred to:

February 23, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A STATE PROCUREMENT POLICY COUNCIL.

3 The General Assembly of North Carolina enacts:

4 Section 1. Article 3 of Chapter 143 of the General Statutes is amended by
5 adding the following new section:

6 **"§ 143-50.1. State Procurement Policy Council.**

7 (a) The State Procurement Policy Council is created. The Council shall consist of
8 seven members. The General Assembly shall appoint four members, two of whom shall
9 be private citizens experienced in large-scale purchasing; and two of whom shall be
10 public members from private industry, at least one of whom shall be a representative of
11 small business interests. Of the General Assembly's four appointments, one public
12 member and one member with large-scale purchasing experience shall be appointed upon
13 the recommendation of the President Pro Tempore of the Senate, and one public member
14 and one member with large-scale purchasing experience shall be appointed upon the
15 recommendation of the Speaker of the House of Representatives. The State Treasurer
16 and the State Controller or their designees shall serve as ex officio members. The
17 Secretary of Administration or the Secretary's designee shall serve as the chair of the
18 Council.

1 (b) The Department of Administration shall provide staff and meeting space for
2 the Council.

3 (c) The Council shall adopt and revise, as necessary, rules to implement the
4 provisions of this Article. The Council shall also monitor policy and the administration
5 of this Article but shall not exercise authority over the award or administration of a
6 contract executed or bid protest or contract controversy claim filed under this Article.

7 (d) The Council shall meet quarterly and upon the call of the chair. A majority of
8 the Council shall constitute a quorum.

9 (e) The initial public member appointed by the General Assembly upon the
10 recommendation of the Speaker of the House of Representatives and the initial member
11 with purchasing experience appointed by the General Assembly upon the
12 recommendation of the President Pro Tempore of the Senate shall each serve an initial
13 term ending June 30, 1997. The initial public member appointed by the General
14 Assembly upon the recommendation of the President Pro Tempore of the Senate and the
15 initial member with purchasing experience appointed by the General Assembly upon the
16 recommendation of the Speaker of the House of Representatives shall each serve an
17 initial term ending June 30, 1998. Thereafter, their successors shall serve three-year
18 terms. No member appointed by the General Assembly may serve more than two
19 complete consecutive terms. A vacancy in a legislative appointment shall be filled in
20 accordance with G.S. 120-122."

21 Sec. 2. G.S. 143-49(6) reads as rewritten:

22 "(6) To make available to nonprofit corporations operating
23 charitable hospitals, to local nonprofit community sheltered
24 workshops or centers that meet standards established by the Division
25 of Vocational Rehabilitation of the Department of Human Resources,
26 to private nonprofit agencies licensed or approved by the Department
27 of Human Resources as child placing agencies or residential child-
28 care facilities, and to counties, cities, towns, governmental entities and
29 other subdivisions of the State and public agencies thereof in the
30 expenditure of public funds, the services of the Department of
31 Administration in the purchase of materials, supplies and equipment
32 under such rules, regulations and procedures as the ~~Secretary of~~
33 ~~Administration~~ State Procurement Policy Council may adopt. In
34 adopting rules and regulations any or all provisions of this Article
35 may be made applicable to such purchases and contracts made
36 through the Department of Administration, and in addition the rules
37 and regulations shall contain a requirement that payment for all such
38 purchases be made in accordance with the terms of the contract. Prior
39 to adopting rules and regulations under this subdivision, the ~~Secretary~~
40 ~~of Administration~~ State Procurement Policy Council may consult with
41 the Advisory Budget Commission."

42 Sec. 3. G.S. 143-52 reads as rewritten:

1 **"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary;**
2 **bids; awarding of contracts.**

3 As feasible, the Secretary of Administration will compile and consolidate all such
4 estimates of supplies, materials, equipment and contractual services needed and required
5 by State departments, institutions and agencies to determine the total requirements of any
6 given commodity. Where such total requirements will involve an expenditure in excess
7 of the expenditure benchmark established under the provisions of G.S. 143-53.1 and
8 where the competitive bidding procedure is employed as hereinafter provided, sealed bids
9 shall be solicited by advertisement in a newspaper of statewide circulation at least once
10 and at least 10 days prior to the date designated for opening of the bids and awarding of
11 the contract: Provided, other methods of advertisement may be adopted by the Secretary
12 of Administration when such other method is deemed more advantageous for certain
13 items or commodities. Regardless of the amount of the expenditure, under the
14 competitive bidding procedure it shall be the duty of the Secretary of Administration to
15 solicit bids direct by mail from qualified sources of supply. Except as otherwise provided
16 under this Article, contracts for the purchase of supplies, materials or equipment shall be
17 based on competitive bids and acceptance made of the lowest and best bid(s) most
18 advantageous to the State as determined upon consideration of the following criteria:
19 prices offered; the quality of the articles offered; the general reputation and performance
20 capabilities of the bidders; the substantial conformity with the specifications and other
21 conditions set forth in the request for bids; the suitability of the articles for the intended
22 use; the personal or related services needed; the transportation charges; the date or dates
23 of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the
24 purchase in question, which if controlling shall be made a matter of record. Competitive
25 bids on such contracts shall be received in accordance with rules and regulations to be
26 adopted by the ~~Secretary of Administration~~, State Procurement Policy Council, which rules
27 and regulations shall prescribe for the manner, time and place for proper advertisement
28 for such bids, the time and place when bids will be received, the articles for which such
29 bids are to be submitted and the specifications prescribed for such articles, the number of
30 the articles desired or the duration of the proposed contract, and the amount, if any, of
31 bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and
32 all bids received may be rejected. Each and every bid conforming to the terms of the
33 invitation, together with the name of the bidder, shall be tabulated or otherwise entered as
34 a matter of record, and all such records with the name of the successful bidder indicated
35 thereon shall, after the award of the contract, be open to public inspection. Provided, that
36 trade secrets, test data and similar proprietary information may remain confidential. A
37 bond for the faithful performance of any contract may be required of the successful
38 bidder at bidder's expense and in the discretion of the Secretary of Administration. After
39 contracts have been awarded, the Secretary of Administration shall certify to the
40 departments, institutions and agencies of the State government the sources of supply and
41 the contract price of the supplies, materials and equipment so contracted for. Prior to
42 adopting other methods of advertisement under this section, the Secretary of
43 Administration may consult with the Advisory Budget Commission. Prior to adopting

1 rules and regulations under this section, the ~~Secretary of Administration~~ State Procurement
2 Policy Council may consult with the Advisory Budget Commission."

3 Sec. 4. G.S. 143-53 reads as rewritten:

4 **"§ 143-53. Rules.**

5 The ~~Secretary of Administration~~ State Procurement Policy Council may adopt rules
6 governing the following:

7 (1) Prescribing the routine and procedures to be followed in canvassing bids
8 and awarding contracts, and for reviewing decisions made pursuant
9 thereto, and the decision of the reviewing body shall be the final
10 administrative review.

11 (2) Prescribing routine for securing bids on items that do not exceed the bid
12 value benchmark established under the provisions of G.S. 143-53.1.

13 (3) Defining contractual services for the purposes of G.S. 143-49 (3).

14 (4) Prescribing items and quantities, and conditions and procedures,
15 governing the acquisition of goods and services which may be delegated
16 to departments, institutions and agencies, notwithstanding any other
17 provisions of this Article.

18 (5) Prescribing conditions under which purchases and contracts for the
19 purchase, rental or lease of equipment, materials, supplies or services
20 may be entered into by means other than competitive bidding.

21 (6) Prescribing conditions under which partial, progressive and multiple
22 awards may be made.

23 (7) Prescribing conditions and procedures governing the purchase of used
24 equipment, materials and supplies.

25 (8) Providing conditions under which bids may be rejected in whole or in
26 part.

27 (9) Prescribing conditions under which information submitted by bidders or
28 suppliers may be considered proprietary or confidential.

29 (10) Prescribing procedures for making purchases under programs involving
30 participation by two or more levels or agencies of government, or
31 otherwise with funds other than State-appropriated.

32 (11) Prescribing procedures to encourage the purchase of North Carolina
33 farm products, and products of North Carolina manufacturing
34 enterprises.

35 (12) Repealed by Session Laws 1987, c. 827, s. 216.

36 The purpose of rules promulgated hereunder shall be to promote sound purchasing
37 management.

38 Prior to adopting rules under this section, the ~~Secretary of Administration~~ State
39 Procurement Policy Council may consult with the Advisory Budget Commission."

40 Sec. 5. G.S. 143-60 reads as rewritten:

41 **"§ 143-60. Rules covering certain purposes.**

1 The ~~Secretary of Administration~~ State Procurement Policy Council may adopt, modify,
2 or abrogate rules covering the following purposes, in addition to those authorized
3 elsewhere in this Article:

- 4 (1) Requiring reports by State departments, institutions, or agencies of
5 stocks of supplies and materials and equipment on hand and prescribing
6 the form of such reports.
- 7 (2) Prescribing the manner in which supplies, materials and equipment shall
8 be delivered, stored and distributed.
- 9 (3) Prescribing the manner of inspecting deliveries of supplies, materials
10 and equipment and making chemicals and/or physical tests of samples
11 submitted with bids and samples of deliveries to determine whether
12 deliveries have been made in compliance with specifications.
- 13 (4) Prescribing the manner in which purchases shall be made in
14 emergencies.
- 15 (5) Providing for such other matters as may be necessary to give effect to
16 foregoing rules and provisions of this Article.
- 17 (6) Prescribing the manner in which passenger vehicles shall be purchased.

18 Further, the ~~Secretary of Administration~~ State Procurement Policy Council may
19 prescribe appropriate procedures necessary to enable the State, its institutions and
20 agencies, to obtain materials surplus or otherwise available from federal, State or local
21 governments or their disposal agencies.

22 Prior to taking any action under this section, the ~~Secretary of Administration~~ State
23 Procurement Policy Council may consult with the Advisory Budget Commission."

24 Sec. 6. G.S. 120-123 is amended by adding a new subdivision to read:

25 "(63) The State Procurement Policy Council."

26 Sec. 7. This act is effective upon ratification. The rules of the Secretary and
27 Department of Administration adopted pursuant to Article 3 of Chapter 143 of the
28 General Statutes and in effect as of the effective date of this act, including their
29 application to public schools and community colleges, remain in effect until repealed or
30 modified by the State Procurement Policy Council; except that the Secretary or
31 Department may adopt rules on or after the effective date of this act if the proposed rule
32 was published prior to that date.