

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 522

Short Title: Government Construction Contracts.

(Public)

Sponsors: Representatives Arnold; Allred, Beall, Bowie, Buchanan, Capps, Carpenter, Clary, Creech, Culp, Davis, Dickson, Gray, Lemmond, Locke, McCrary, McMahan, Miner, Neely, Owens Sharpe, Wilkins, and G. Wilson.

Referred to: Judiciary II.

March 22, 2995

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF SINGLE-PRIME AND SEPARATE-PRIME
CONTRACTS FOR BUILDING CONSTRUCTION CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 480 of the 1989 Session Laws reads as
rewritten:

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

Sec. 2. G.S. 143-128 reads as rewritten:

**"§ 143-128. ~~Separate specifications~~ 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 ~~(1) Heating, ventilating, air conditioning and accessories (separately or~~
2 ~~combined into one conductive system) and/or refrigeration for cold~~
3 ~~storage (where the cooling load is 15 tons or more of refrigeration), and~~
4 ~~all work kindred thereto.~~
- 5 ~~(2) Plumbing and gas fittings and accessories, and all work kindred thereto.~~
- 6 ~~(3) Electrical wiring and installations, and all work kindred thereto.~~
- 7 ~~(4) General work relating to the erection, construction, alteration, or repair~~
8 ~~of any building above referred to, which work is not included in the~~
9 ~~above listed three subdivisions or branches.~~

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

17 ~~All contracts hereafter awarded by the State or by a county or municipality, or a~~
18 ~~department, board, commissioner, or officer thereof, for the erection, construction,~~
19 ~~alteration or repair of buildings, or any parts thereof, shall award the respective work~~
20 ~~specified separately to responsible and reliable persons, firms or corporations regularly~~
21 ~~engaged in their respective lines of work. When the estimated cost of work to be~~
22 ~~performed in any single subdivision or branch is less than ten thousand dollars (\$10,000),~~
23 ~~the same may be included in the contract for one of the other subdivisions or branches of~~
24 ~~the work, irrespective of total project cost.~~

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

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

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

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

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

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

10 Specifications for the erection, construction, alteration, or repair of a building for a
11 government unit shall be prepared and bids shall be received in accordance with the
12 single-prime method, the separate-prime method, or both, as established in this section.
13 This section does not apply if (i) the total cost of the work is estimated not to exceed one
14 hundred thousand dollars (\$100,000), or (ii) the work is for the erection of a prefabricated
15 or relocatable building and the work to be performed at the site of erection is estimated
16 not to exceed one hundred thousand dollars (\$100,000).

17 (a) Single Prime. – A government unit may prepare specifications for bid by a
18 single-prime contractor.

19 Each single-prime bidder must identify on its bid the subcontractor it has selected for
20 each of the categories of work listed in subdivisions (b)(1) through (b)(4) of this section
21 and the amount of the subcontractor's bid. A subcontractor identified on the bid shall not
22 be replaced without the approval of the contracting authority of the government unit.

23 (b) Separate Prime. – A government unit may prepare specifications for bids by
24 separate-prime contractors. The specifications shall require that bids be received
25 separately on each of the following categories of work:

- 26 (1) Heating, ventilation, air conditioning, and accessories (separately or
27 combined into one conductive system) and/or refrigeration for cold
28 storage (where the cooling load is 15 tons or more of refrigeration), and
29 all related work.
- 30 (2) Plumbing and gas fittings and accessories, and all related work.
- 31 (3) Electrical wiring and installation, and all related work.
- 32 (4) General work, not included in subdivisions (1) through (3) of this
33 subsection, relating to the erection, construction, alteration, or repair of
34 the building.

35 Additional separate specifications for other categories of work may be prepared for
36 bidding and award when the contracting authority for the government unit deems it to be
37 in the best interest of the unit. When the estimated cost of work to be performed in a
38 single category is less than ten thousand dollars (\$10,000), the work may be included in
39 one of the other categories.

40 Each separate contractor shall be directly liable to the government unit and to the other
41 separate contractors for the full performance of all duties and obligations under the terms
42 of its contract and in accordance with the plans and specifications. The plans and
43 specifications shall specifically identify the duties and obligations of each separate

1 contractor. The contractor performing the work under subdivision (4) of this subsection
2 is responsible for expediting the project and, in executing this responsibility, may
3 recommend to the contracting authority of the government unit whether payment to a
4 contractor should be approved.

5 (c) Prequalification. – The contracting authority of a government unit may
6 prequalify bidders under either method of contracting.

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

13 However, contracts shall be awarded without regard to race, religion, color, creed,
14 national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing
15 in this section shall be construed to require contractors or government units to award
16 contracts or subcontracts to or to make purchases of materials or equipment from
17 minority business contractors or minority business subcontractors who do not submit the
18 lowest responsible bid or bids.

19 (e) As used in this subsection:

20 (1) ~~The term 'minority business'~~ Minority business means a business:

- 21 a. In which at least fifty-one percent (51%) is owned by one or
22 more minority persons, or in the case of a corporation, in which
23 at least fifty-one percent (51%) of the stock is owned by one or
24 more minority persons; and
25 b. Of which the management and daily business operations are
26 controlled by one or more of the minority persons who own it.

27 (2) ~~The term 'minority'~~ Minority person means a person who is a citizen or
28 lawful permanent resident of the United States and who is:

- 29 a. Black, that is, a person having origins in any of the black racial
30 groups in Africa;
31 b. Hispanic, that is, a person of Spanish or Portugese culture with
32 origins in Mexico, South or Central America, or the Caribbean
33 Islands, regardless of race;
34 c. Asian American, that is, a person having origins in any of the
35 original peoples of the Far East, Southeast Asia and Asia, the
36 Indian subcontinent, the Pacific Islands;
37 d. American Indian or Alaskan Native, that is, a person having
38 origins in any of the original peoples of North America; or
39 e. Female.

40 (3) ~~The term 'verifiable goal' means for purposes of the separate prime~~
41 ~~contract system, that the awarding authority has adopted written~~
42 ~~guidelines specifying the actions that will be taken to ensure a good~~
43 ~~faith effort in the recruitment and selection of minority businesses for~~

1 participation in contracts awarded under this section; 'Government unit'
2 means the State, a municipality, a county, school administrative unit, or
3 other political subdivision of the State; and

- 4 (4) ~~The term 'verifiable' Verifiable goal means for purposes of the single-~~
5 ~~prime contract system, that the awarding authority has adopted the~~
6 ~~adoption by the government unit of~~ written guidelines specifying the
7 actions that ~~the prime contractor~~ contractors must take to ensure a good
8 faith effort in the recruitment and selection of minority businesses for
9 participation in contracts awarded under this section; the required
10 actions must be documented in writing by the contractor to the
11 appropriate ~~awarding authority~~ government unit.

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

19 Sec. 3. G.S. 143-132 reads as rewritten:

20 **"§ 143-132. Minimum number of bids for public contracts.**

21 (a) No contract to which G.S. 143-129 applies for construction or repairs shall be
22 awarded by any board or governing body of the State, or any subdivision thereof, unless
23 at least three competitive bids have been received from reputable and qualified
24 contractors regularly engaged in their respective lines of endeavor; however, this section
25 shall not apply to contracts which are negotiated as provided for in G.S. 143-129.
26 Provided that if after advertisement for bids as required by G.S. 143-129, not as many as
27 three competitive bids have been received from reputable and qualified contractors
28 regularly engaged in their respective lines of endeavor, said board or governing body of
29 the State agency or of a county, city, town or other subdivision of the State shall again
30 advertise for bids; and if as a result of such second advertisement, not as many as three
31 competitive bids from reputable and qualified contractors are received, such board or
32 governing body may then let the contract to the lowest responsible bidder submitting a
33 bid for such project, even though only one bid is received.

34 (b) ~~For purposes of contracts bid in the alternative between the separate prime and~~
35 ~~single prime contracts, pursuant to G.S. 143-128(b), If bids are received under both the~~
36 ~~single-prime and separate-prime methods under G.S. 143-128, the following applies:~~

- 37 (1) ~~each~~ Each single-prime bid shall constitute a competitive bid in each of
38 the four subdivisions or branches of work listed in G.S. 143-128(a),
39 categories of work under G.S. 143-128(b).
- 40 (2) ~~and each~~ Each full set of separate-prime bids shall constitute a
41 competitive single-prime bid in meeting the requirements of subsection
42 (a) of this section.

1 (3) If there are at least three single-prime bids but there is not at least one
2 full set of separate-prime bids, no separate-prime bids shall be opened.

3 (c) The State Building Commission shall develop guidelines ~~no later than January 1,~~
4 ~~1991,~~ governing the opening of bids pursuant to this Article. These guidelines shall be
5 distributed to all public bodies subject to this Article. The guidelines shall not be subject
6 to the provisions of Chapter 150B of the General Statutes."

7 Sec. 4. This act is effective upon ratification.