

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE BILL 291

Short Title: Catawba County/Local Bid Preference. (Local)

Sponsors: Senator Allran.

Referred to: State and Local Government.

March 10, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CATAWBA COUNTY TO GIVE PREFERENCE TO A LOCAL
BIDDER WHEN PURCHASING GOODS OR SERVICES OR ENTERING INTO
CONTRACTS FOR THE CONSTRUCTION OR REPAIR OF BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-128 reads as rewritten:

"§ 143-128. Requirements for certain building contracts.

...

(b) Separate-prime contracts. – When the State, county, municipality, or other public body uses the separate-prime contract system, it shall accept bids for each subdivision of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars (\$25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost. ~~The~~ Except as authorized in G.S. 143-129(b1), the contracts shall be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county, municipality, or other public body and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public entity to erect, construct, alter or repair any building or buildings, or parts of any building or buildings.

...

(d) Single-prime contracts. – All bidders in a single-prime project shall identify on their bid the contractors they have selected for the subdivisions or branches of work for:

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



1 ~~The Except as authorized in G.S. 143-129(b1), the~~ contract shall be awarded to the lowest
2 responsible, responsive bidder, taking into consideration quality, performance, the time
3 specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. A
4 contractor whose bid is accepted shall not substitute any person as subcontractor in the place of
5 the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later
6 determined by the contractor to be nonresponsible or nonresponsive or the listed subcontractor
7 refuses to enter into a contract for the complete performance of the bid work, or (ii) with the
8 approval of the awarding authority for good cause shown by the contractor. The terms,
9 conditions, and requirements of each contract between the contractor and a subcontractor
10 performing work under a subdivision or branch of work listed in this subsection shall
11 incorporate by reference the terms, conditions, and requirements of the contract between the
12 contractor and the State, county, municipality, or other public body.

13 When contracts are awarded pursuant to this section, the public body shall make available
14 to subcontractors the dispute resolution process as provided for in subsection (f1) of this
15 section.

16 (d1) Dual bidding. – The State, a county, municipality, or other public entity may accept
17 bids to erect, construct, alter, or repair a building under both the single-prime and
18 separate-prime contracting systems ~~and~~ and, except as authorized in G.S. 143-129(b1), shall
19 award the contract to the lowest responsible, responsive bidder under the single-prime system
20 or to the lowest responsible, responsive bidder under the separate-prime system, taking into
21 consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the
22 bids to perform the contract. In determining the system under which the contract will be
23 awarded to the lowest responsible, responsive bidder, the public entity may consider cost of
24 construction oversight, time for completion, and other factors it considers appropriate. The bids
25 received as separate-prime bids shall be received, but not opened, one hour prior to the deadline
26 for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to
27 the general contractor under the single-prime system shall not exceed the amount bid, if any,
28 for the same work by that subcontractor to the public entity under the separate-prime system.
29 The provisions of subsection (b) of this section shall apply to separate-prime contracts awarded
30 pursuant to this section and the provisions of subsection (d) of this section shall apply to
31 single-prime contracts awarded pursuant to this section.

32 "

33 **SECTION 2.** G.S. 143-128.2 reads as rewritten:

34 "**§ 143-128.2. Minority business participation goals.**

35 ...

36 (c) Each bidder, which shall mean first-tier subcontractor for construction manager at
37 risk projects for purposes of this subsection, on a project bid under any of the methods
38 authorized under G.S. 143-128(a1) shall identify on its bid the minority businesses that it will
39 use on the project and an affidavit listing the good faith efforts it has made pursuant to
40 subsection (f) of this section and the total dollar value of the bid that will be performed by the
41 minority businesses. A contractor, including a first-tier subcontractor on a construction
42 manager at risk project, that performs all of the work under a contract with its own workforce
43 may submit an affidavit to that effect in lieu of the affidavit otherwise required under this
44 subsection. The apparent lowest responsible, responsive bidder or the lowest responsible,
45 responsive bidder given preference under G.S. 143-129(b1) shall also file the following:

46 ...

47 (h) The State, counties, municipalities, and all other public bodies shall award public
48 building contracts, including those awarded under G.S. 143-128.1, 143-129, and 143-131,
49 without regard to race, religion, color, creed, national origin, sex, age, or handicapping
50 condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require
51 contractors or awarding authorities to award contracts or subcontracts to or to make purchases

1 of materials or equipment from minority-business contractors or minority-business
2 subcontractors who do not submit the lowest responsible, responsive bid or bids. However, the
3 provisions of G.S. 143-129(b1) shall apply to minority-business contractors or
4 minority-business subcontractors under this subsection.

5"

6 **SECTION 3.** G.S. 143-129 reads as rewritten:

7 "**§ 143-129. Procedure for letting of public contracts.**

8 ...

9 (b) Advertisement and Letting of Contracts. – Where the contract is to be let by a board
10 or governing body of the State government or of a State institution, proposals shall be invited
11 by advertisement in a newspaper having general circulation in the State of North Carolina.
12 Where the contract is to be let by a political subdivision of the State, proposals shall be invited
13 by advertisement in a newspaper having general circulation in the political subdivision or by
14 electronic means, or both. A decision to advertise solely by electronic means, whether for
15 particular contracts or generally for all contracts that are subject to this Article, shall be
16 approved by the governing board of the political subdivision of the State at a regular meeting of
17 the board.

18 The advertisements for bidders required by this section shall appear at a time where at least
19 seven full days shall lapse between the date on which the notice appears and the date of the
20 opening of bids. The advertisement shall: (i) state the time and place where plans and
21 specifications of proposed work or a complete description of the apparatus, supplies, materials,
22 or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii)
23 reserve to the board or governing body the right to reject any or all proposals.

24 Proposals may be rejected for any reason determined by the board or governing body to be
25 in the best interest of the unit. However, the proposal shall not be rejected for the purpose of
26 evading the provisions of this Article. No board or governing body of the State or political
27 subdivision thereof may assume responsibility for construction or purchase contracts, or
28 guarantee the payments of labor or materials therefor except under provisions of this Article.

29 All proposals shall be opened in public and the board or governing body ~~shall~~ shall, except
30 as authorized in subsection (b1) of this section, award the contract to the lowest
31 ~~responsible~~ responsible, responsive bidder or bidders, taking into consideration quality,
32 performance and the time specified in the proposals for the performance of the contract.

33 In the event the lowest ~~responsible~~ responsible, responsive bids are in excess of the funds
34 available for the project or purchase, the responsible board or governing body is authorized to
35 enter into negotiations with the lowest responsible bidder above mentioned, making reasonable
36 changes in the plans and specifications as may be necessary to bring the contract price within
37 the funds available, and may award a contract to such bidder upon recommendation of the
38 Department of Administration in the case of the State government or of a State institution or
39 agency, or upon recommendation of the responsible commission, council or board in the case
40 of a subdivision of the State, if such bidder will agree to perform the work or provide the
41 apparatus, supplies, materials, or equipment at the negotiated price within the funds available
42 therefor. If a contract cannot be let under the above conditions, the board or governing body is
43 authorized to readvertise, as herein provided, after having made such changes in plans and
44 specifications as may be necessary to bring the cost of the project or purchase within the funds
45 available therefor. The procedure above specified may be repeated if necessary in order to
46 secure an acceptable contract within the funds available therefor.

47 No proposal for construction or repair work may be considered or accepted by said board or
48 governing body unless at the time of its filing the same shall be accompanied by a deposit with
49 said board or governing body of cash, or a cashier's check, or a certified check on some bank or
50 trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not
51 less than five percent (5%) of the proposal. In lieu of making the cash deposit as above

1 provided, such bidder may file a bid bond executed by a corporate surety licensed under the
2 laws of North Carolina to execute such bonds, conditioned that the surety will upon demand
3 forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract
4 in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to
5 execute the contract within 10 days after the award or fails to give satisfactory surety as
6 required herein.

7 Bids shall be sealed and the opening of an envelope or package with knowledge that it
8 contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the
9 permission of the bidder prior to the time set for opening in the invitation to bid shall constitute
10 a Class 1 misdemeanor.

11 (b1) Price-Match Preference. – The governing body of a county may give preference to
12 the lowest responsible, responsive resident bidder if both of the following conditions are met:
13 (i) the bid of the lowest responsible, responsive resident bidder is no greater than five percent
14 (5%) or ten thousand dollars (\$10,000), whichever is less, of the bid of the lowest responsible,
15 responsive nonresident bidder; and (ii) the lowest responsible, responsive resident bidder
16 matches the bid of the lowest responsible, responsive nonresident bidder.

17 For purposes of this subsection, the following definitions apply:

18 (1) Nonresident bidder. – A bidder that is not a resident bidder as defined in
19 subdivision (2) of this subsection.

20 (2) Resident bidder. – A person or corporation who (i) is legally authorized to
21 engage in the sale of goods or services or to perform construction or repair
22 work in this State and (ii) certifies in the bid submitted that the person or
23 corporation has, for at least six months prior to the announcement of the
24 solicitation of bids, maintained a physical place of business within the
25 corporate boundaries of the political subdivision with at least one employee
26 for whom the person or corporation has paid payroll taxes in this State.

27 (b2) Negotiations With Price-Match Bidder. – The provisions of subsection (b) of this
28 section that authorize the governing body of a political subdivision to enter into negotiations
29 with the lowest responsible, responsive bidder if the lowest responsible, responsive bids are in
30 excess of the funds available for the project or purchase shall also apply to a bidder under
31 subsection (b1) of this section.

32"

33 **SECTION 4.** G.S. 143-131 reads as rewritten:

34 **"§ 143-131. When counties, cities, towns and other subdivisions may let contracts on**
35 **informal bids.**

36 (a) All contracts for construction or repair work or for the purchase of apparatus,
37 supplies, materials, or equipment, involving the expenditure of public money in the amount of
38 thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129,
39 made by any officer, department, board, local school administrative unit, or commission of any
40 county, city, town, or other subdivision of this State shall be made after informal bids have
41 been secured. ~~All~~ Except as authorized in G.S. 143-129(b1), all such contracts shall be awarded
42 to the lowest responsible, responsive bidder, taking into consideration quality, performance,
43 and the time specified in the bids for the performance of the contract. It shall be the duty of any
44 officer, department, board, local school administrative unit, or commission entering into such
45 contract to keep a record of all bids submitted, and such record shall not be subject to public
46 inspection until the contract has been awarded.

47"

48 **SECTION 5.** G.S. 143-132 reads as rewritten:

49 **"§ 143-132. Minimum number of bids for public contracts.**

50 (a) No contract to which G.S. 143-129 applies for construction or repairs shall be
51 awarded by any board or governing body of the State, or any subdivision thereof, unless at least

1 three competitive bids have been received from reputable and qualified contractors regularly
2 engaged in their respective lines of endeavor; however, this section shall not apply to contracts
3 which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for
4 bids as required by G.S. 143-129, not as many as three competitive bids have been received
5 from reputable and qualified contractors regularly engaged in their respective lines of endeavor,
6 said board or governing body of the State agency or of a county, city, town or other subdivision
7 of the State shall again advertise for bids; and if as a result of such second advertisement, not as
8 many as three competitive bids from reputable and qualified contractors are received, such
9 board or governing body may then let the contract to the lowest responsible bidder submitting a
10 bid for such project, even though only one bid is received. However, in letting contracts under
11 this section, the governing body of a county may give preference to the lowest responsible,
12 responsive resident bidder as authorized in G.S. 143-129(b1).

13"

14 **SECTION 6.** This act applies to Catawba County only.

15 **SECTION 7.** This act is effective when it becomes law and applies to bids received
16 on and after that date.