

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 649
Committee Substitute Favorable 5/4/89

Short Title: Group Purchasing.

(Public)

Sponsors:

Referred to:

March 16, 1989

A BILL TO BE ENTITLED

AN ACT TO ALLOW STATE MENTAL HEALTH, MENTAL RETARDATION,
AND SUBSTANCE ABUSE FACILITIES TO PARTICIPATE IN GROUP
PURCHASING.

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 and State facilities operated under the authority of Chapter 122C of the General Statutes 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

1 section. Further, the provisions of this section shall not apply to the purchase of
2 gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject
3 to G.S. 143-131.

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

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

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

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

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

25 All proposals shall be opened in public and shall be recorded on the minutes of the
26 board or governing body and the award shall be made to the lowest responsible bidder
27 or bidders, taking into consideration quality, performance and the time specified in the
28 proposals for the performance of the contract. In the event the lowest responsible bids
29 are in excess of the funds available for the project, the responsible board or governing
30 body is authorized to enter into negotiations with the lowest responsible bidder above
31 mentioned, making reasonable changes in the plans and specifications as may be
32 necessary to bring the contract price within the funds available, and may award a
33 contract to such bidder upon recommendation of the Department of Administration in
34 the case of the State government or of a State institution or agency, or upon
35 recommendation of the responsible commission, council or board in the case of a
36 subdivision of the State, if such bidder will agree to perform the work at the negotiated
37 price within the funds available therefor. If a contract cannot be let under the above
38 conditions, the board or governing body is authorized to readvertise, as herein provided,
39 after having made such changes in plans and specifications as may be necessary to bring
40 the cost of the project within the funds available therefor. The procedure above
41 specified may be repeated if necessary in order to secure an acceptable contract within
42 the funds available therefor.

43 No proposal shall be considered or accepted by said board or governing body unless
44 at the time of its filing the same shall be accompanied by a deposit with said board or

1 governing body of cash, or a cashier's check, or a certified check on some bank or trust
2 company insured by the Federal Deposit Insurance Corporation in an amount equal to
3 not less than five percent (5%) of the proposal. In lieu of making the cash deposit as
4 above provided, such bidder may file a bid bond executed by a corporate surety licensed
5 under the laws of North Carolina to execute such bonds, conditioned that the surety will
6 upon demand forthwith make payment to the obligee upon said bond if the bidder fails
7 to execute the contract in accordance with the bid bond. This deposit shall be retained if
8 the successful bidder fails to execute the contract within 10 days after the award or fails
9 to give satisfactory surety as required herein. In the case of proposals in an estimated
10 amount of less than one hundred thousand dollars (\$100,000) for the purchase of
11 apparatus, supplies, materials, or equipment, the board or governing body may waive
12 the requirement for a bid bond or other deposit.

13 Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening
14 of a bid or the disclosure or exhibition of the contents of any bid by anyone without the
15 permission of the bidder prior to the time set for opening in the invitation to bid shall
16 constitute a general misdemeanor.

17 All contracts to which this section applies shall be executed in writing, and the board
18 or governing body shall require the person to whom the award of contract is made to
19 furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money,
20 certified check or government securities for the full amount of said contract to secure
21 the faithful performance of the terms of said contract and the payment of all sums due
22 for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no
23 such contract shall be altered except by written agreement of the contractor, the sureties
24 on his bond, and the board or governing body. Such surety bond or deposit required
25 herein shall be deposited with the board or governing body for which the work is to be
26 performed. When a deposit, other than a surety bond, is made with the board or
27 governing body, said board or governing body assumes all the liabilities, obligations
28 and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said
29 deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or
30 equipment, the board or governing body may waive the requirement for a surety bond or
31 other deposit.

32 The owning agency or the Department of Administration, in contracts involving a
33 State agency, and the owning agency or the governing board, in contracts involving a
34 political subdivision of the State, may reject the bonds of any surety company against
35 which there is pending any unsettled claim or complaint made by a State agency or the
36 owning agency or governing board of any political subdivision of the State arising out
37 of any contract under which State funds, in contracts with the State, or funds of political
38 subdivisions of the State, in contracts with such political subdivision, were expended,
39 provided such claim or complaint has been pending more than 180 days.

40 Nothing in this section shall operate so as to require any public agency to enter into a
41 contract which will prevent the use of unemployment relief labor paid for in whole or in
42 part by appropriations or funds furnished by the State or federal government.

43 Any board or governing body of the State or any institution of the State government
44 or of any county, city, town, or other subdivision of the State may enter into any

1 contract with (i) the United States of America or any agency thereof, or (ii) any
2 other government unit or agency thereof within the United States, for the purchase,
3 lease, or other acquisition of any apparatus, supplies, materials, or equipment without
4 regard to the foregoing provisions of this section or to the provisions of any other
5 section of this Article.

6 The Secretary of Administration or the governing board of any county, city, town, or
7 other subdivision of the State may designate any officer or employee of the State,
8 county, city, town or subdivision to enter a bid or bids in its behalf at any sale of
9 apparatus, supplies, materials, equipment or other property owned by (i) the United
10 States of America or any agency thereof, or (ii) any other governmental unit or agency
11 thereof within the United States, and may authorize such officer or employee to make
12 any partial or down payment or payment in full that may be required by regulations of
13 the government or agency disposing of such property."

14 Sec. 2. G.S. 143-56 reads as rewritten:

15 **"§ 143-56. Certain purchases excepted from provisions of Article.**

16 Unless as may otherwise be ordered by the Secretary of Administration, the
17 purchase of supplies, materials and equipment through the Secretary of Administration
18 shall be mandatory in the following cases:

- 19 (1) Published books, manuscripts, maps, pamphlets and periodicals.
- 20 (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat,
21 eggs, and others as may be classified by the Secretary of
22 Administration.

23 Purchase through the Secretary of Administration shall not be mandatory for a purchase
24 of supplies, materials or equipment for the General Assembly if the total expenditures is
25 less than five thousand dollars (\$5,000) or for group purchases made by hospitals or
26 State facilities operated under the authority of Chapter 122C of the General Statutes
27 through a competitive bidding purchasing program, as defined in G.S. 143-129.

28 All purchases of the above articles made directly by the departments, institutions and
29 agencies of the State government shall, whenever possible, be based on competitive
30 bids. Whenever an order is placed or contract awarded for such articles by any of the
31 departments, institutions and agencies of the State government, a copy of such order or
32 contract shall be forwarded to the Secretary of Administration and a record of the
33 competitive bids upon which it was based shall be retained for inspection and review."

34 Sec. 3. This act shall become effective October 1, 1989, and applies to
35 purchases made on or after that date.