

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 716

Short Title: Reciprocal Preference Bid Law.

(Public)

Sponsors: Representative Daughtry.

Referred to: State Government.

April 1, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A BIDDER WITH A PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE WITH LAWS OR REGULATIONS CAUSING DISADVANTAGE IN ANOTHER STATE WILL BE AT RECIPROCAL DISADVANTAGE WHEN BIDDING ON A PUBLIC CONTRACT WITH THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-59.1. Reciprocal preferences; out-of-State bidders.

(a) The following definitions apply in this section:

(1) 'In-state preference' means a procedure established by statute, rule, regulation or practice whereby any state or local government procurement agency gives a bidder an advantage in the evaluation of bids based on whether the bidder maintains his principal place of business within the borders of the State or locality, and includes any advantage given to a bidder based on whether the goods or services offered in a bid were produced, manufactured, mined, or grown within the borders of the State or locality.

(2) 'Out-of-State bidder' means a bidder who does not have a regular place of business in North Carolina.

(3) 'Principal place of business' means an office, factory, warehouse or other space of a bidder which is recognized by any state or local

1 government as the basis for applying an in-state preference in favor of
2 the bidder.

- 3 (4) 'Regular place of business' means a bona fide office, factory,
4 warehouse or other space which is regularly maintained by the bidder,
5 occupied by one or more of the bidder's employees, and used in
6 carrying on the bidder's business and shall not include the maintenance
7 of a temporary job site or field office in this State, the storage of goods
8 in this State, or the employment of an independent agent or
9 subcontractor in this State.

10 (b) Whenever a competitive bidding procedure is employed in accordance with
11 G.S 143-52, a bidder with its principal place of business in another state which has
12 provisions of state law, rules, or regulations causing disadvantage to any bidder for a
13 public contract to provide like goods, services, or both to that state because the bidder's
14 principal place of business is located outside that state shall have like conditions applied
15 to it in accordance with rules adopted pursuant this section. The reciprocal in-state
16 preference shall apply even in the absence of a bidder having a regular place of business
17 in this State.

18 (c) The Secretary of Administration shall adopt rules for the competitive bidding
19 of contracts with this State that:

- 20 (1) Apply on a reciprocal basis against an out-of-State bidder any in-state
21 preference which is applied in favor of that bidder by the state or
22 locality in which the bidder's principal place of business is located.
23 (2) Apply any reciprocal in-state preference reasonably in a similar
24 manner and to similar effect as the other state or locality such that:
25 a. Where an in-state preference is applied by another state or
26 locality in the form of a percentage which is added to or
27 subtracted from bidders' prices, markups, or discounts the
28 Secretary shall similarly apply the same percentage against an
29 affected out-of-State bidder; and
30 b. Where an in-state preference is applied by another state or a
31 locality in the form of a categorical rejection of certain bids, the
32 Secretary shall apply a similar categorical rejection against an
33 affected out-of-State bidder.

34 (d) The Secretary of Administration may waive the application of a reciprocal in-
35 state preference where the resulting prices for goods and services would exceed the
36 reasonable cost estimate of the State department, institution, or agency that would use
37 the goods and services or would otherwise be unreasonably high.

38 (e) The Secretary of Administration shall waive a reciprocal in-state preference:

- 39 (1) On procurements supported by federal funds where federal rules
40 prohibit the use of residential preference.
41 (2) When the action would result in an award to a vendor who has a poor
42 record of contract performance, including complaints or contract
43 terminations.

1 (3) When, in accordance with G.S. 143-57, an emergency requires the
2 immediate delivery of goods or performance of the service.

3 (f) Nothing in this section shall be construed to:

4 (1) Require the award of any contract to a bidder whose bid is not most
5 advantageous to the State considering cost and other criteria.

6 (2) Affect the preference given to North Carolina producers of certain
7 products under G.S. 143-59.

8 (3) Limit authority granted to the Secretary of Administration to obtain
9 goods or services in the open market.

10 (g) The Secretary of Administration shall maintain and make available for public
11 inspection a list to be updated annually of states having statutes, rules, or regulations
12 which grant in-state preferences in the competitive bidding for goods and services. The
13 Secretary of Administration shall compile the list based on surveys conducted by the
14 Secretary and research conducted by national organizations of state and local
15 governments, procurement agencies, government officials, and purchasing agents. The
16 Secretary of Administration may receive information from prospective bidders which
17 indicates that any state or local government agency outside of North Carolina applies an
18 in-state preference in its procurement statutes, rules, regulations, ordinances, charters, or
19 practices.

20 (h) The Secretary of Administration shall prepare annually a report to the
21 Governor, the State Auditor, and the General Assembly on the fiscal consequences to
22 the State of applying the reciprocal in-state preference required by this section."

23 Sec. 2. This act becomes effective January 1, 1994, and applies to
24 competitive bids solicited by the State on or after that date.