

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 78*

Short Title: Amend State Contract Review Laws. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); Apodaca, Clodfelter, Daniel, Graham;
Gunn, Hise, Hunt, and Randleman.

Referred to: Program Evaluation.

February 13, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF
3 CERTAIN STATE CONTRACTS, AND TO PROVIDE FOR CONTRACT
4 MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT
5 LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 114-8.3 reads as rewritten:

8 "**§ 114-8.3. Attorney General/General Counsel; to review certain contracts.**

9 (a) Except as provided in subsection (b) of this section, the Attorney General or the
10 Attorney General's designee shall review all proposed contracts for supplies, materials,
11 printing, equipment, ~~and or~~ contractual services that exceed one million dollars (\$1,000,000) to
12 ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required
13 by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed
14 contract. The term "review" as used in this section shall not constitute approval or disapproval
15 of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the
16 term "Attorney General's designee" shall include any attorney approved by the Attorney
17 General to review contracts as provided in this subsection. ~~The Attorney General, in~~
18 consultation with the Department of Administration, shall establish procedures regarding the
19 review of contracts subject to this section, and shall provide any attorney designated under this
20 subsection with guidelines to be used in reviewing contracts. shall require that any
21 Any attorney designated under this subsection shall comply with any rules-procedures established by
22 the Attorney General ~~or the Department of Administration~~ regarding the review of contracts.

23 (a1) Any contract for services that exceeds five million dollars (\$5,000,000), which
24 requires that a representative from within the office of the Attorney General advise and assist in
25 the negotiation of contract for services pursuant to G.S. 143-49(3a), must include the signature
26 and title of the Attorney General's representative in order to be valid.

27 (b) For the constituent institutions of The University of North Carolina, the General
28 Counsel of each institution or the General Counsel's designee shall review all proposed
29 contracts for supplies, materials, printing, equipment, and contractual services that exceed one
30 million dollars (\$1,000,000) to ensure that the proposed contracts are (i) in proper legal form,
31 (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the
32 intended purposes of the proposed contract. The term "review" as used in this section shall not
33 constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.
34 For purposes of this subsection, the term "General Counsel's designee" shall include any
35 attorney approved by the General Counsel to review contracts as provided in this subsection.



1 The General Counsel shall establish procedures regarding the review of contracts subject to this
2 section, and shall require that any attorney designated under this subsection comply with any
3 rules-procedures established by the Attorney General or the Department of Administration
4 regarding the review of contracts.

5 (c) All State agencies, the constituent institutions of The University of North Carolina,
6 or any person who will be entering into a contract on behalf of the State for supplies, materials,
7 printing, equipment, or contractual services that exceed one million dollars (\$1,000,000) shall
8 notify the Secretary of the Department of Administration or the Secretary's designee of the
9 intent to enter into the contract, and provide information as required by the Secretary or the
10 Secretary's designee, including, but not limited to, the name and title of the attorney designated
11 to conduct the review required by this section.

12 (d) The Department of Administration shall adopt procedures for the identification and
13 record keeping of contracts subject to review under this section. The records shall be kept by
14 the Department and shall include a log identifying all contracts subject to review under this
15 section. The log shall include, at a minimum, (i) the name of the contracting agency,
16 constituent institution of The University of North Carolina, or the party that is contracting on
17 behalf of the State and (ii) the name and title of the attorney designated to conduct the review
18 required by this section."

19 **SECTION 2.** G.S. 143-49 reads as rewritten:

20 **"§ 143-49. Powers and duties of Secretary.**

21 The Secretary of Administration shall have power and authority, and it shall be ~~his~~ the
22 Secretary's duty, subject to the provisions of this Article:

23 ...

24 (3a) To ~~request, notify and~~ the Attorney General of pending contracts for
25 contractual services exceeding a cost of five million dollars (\$5,000,000).
26 Upon notification, the Attorney General shall assign a representative of from
27 within the office of the Attorney General to assist in negotiation for the
28 award of any the contract. contract for contractual services exceeding a cost
29 of one hundred thousand dollars (\$100,000) that requires negotiation with
30 prospective contractors. It shall be the duty of such representative to assist
31 and advise in obtaining the most favorable contract for the State, to evaluate
32 all proposals available from prospective contractors for that purpose, to
33 interpret proposed contract terms and to advise the Secretary or his
34 representatives of the liabilities of the State and validity of the contract to be
35 awarded. All contracts and drafts of such contracts shall be prepared by the
36 office of the Attorney General and copies thereof shall be retained by such
37 office for a period of three years following the termination of such contracts.
38 The term "contractual services" as used in this subsection and G.S. 143-52.2
39 shall mean work performed by an independent contractor requiring
40 specialized knowledge, experience, expertise or similar capabilities wherein
41 the service rendered does not consist primarily of acquisition by this State of
42 equipment or materials and the rental of equipment, materials and supplies.
43 The term "negotiation" as used in this This subdivision shall not apply be
44 deemed to refer to contracts entered into or to be entered into as a result of a
45 competitive bidding process. This subdivision does not require the Secretary
46 to notify the Attorney General for the appointment of a representative from
47 within the office of the Attorney General for any contracts for contractual
48 services to be entered into by the constituent institutions of The University
49 of North Carolina unless requested to do so by the General Counsel of The
50 University of North Carolina.

51"

1 **SECTION 3.** The Department of Administration shall provide an individualized
2 notice to the following State entities to ensure that the entities are aware of how the statutory
3 amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

- 4 (1) The North Carolina State Lottery Commission, which is subject to
5 G.S. 18C-150.
- 6 (2) The Commissioner of Banks, who is subject to G.S. 53-320(d),
7 G.S. 53-326(d), G.S. 53-391, and G.S. 53-401.
- 8 (3) The Commissioner of Insurance, who is subject to G.S. 53-401,
9 G.S. 58-33-30(e)(4) and (5), G.S. 58-33-125(e), G.S. 58-33-130(a), and
10 G.S. 58-71-40(d).
- 11 (4) The Global TransPark Authority, which is subject to G.S. 63A-24. The
12 Secretary of Transportation shall be copied on the notice sent to the Global
13 TransPark Authority.
- 14 (5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).
- 15 (6) The North Carolina Board for Licensing of Geologists, which is subject to
16 G.S. 89E-5(e).
- 17 (7) The North Carolina Board for Licensing of Soil Scientists, which is subject
18 to G.S. 89F-5(d).
- 19 (8) The constituent institutions of the University of North Carolina, which are
20 subject to G.S. 114-8.3(b). For notification under this subdivision, the
21 Department of Administration may provide the University of North Carolina
22 system a notification to distribute to all of its constituent institutions. If the
23 Department of Administration does so, the University of North Carolina
24 system shall distribute those notifications to the system's constituent
25 institutions.
- 26 (9) The North Carolina Center for Applied Textile Technology, which is subject
27 to G.S. 115D-67.4.
- 28 (10) The North Carolina State Health Plan for Teachers and State Employees,
29 which is subject to G.S. 135-48.33(b).
- 30 (11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and
31 G.S. 143-134(b).
- 32 (12) The North Carolina Turnpike Authority, which is subject to
33 G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on
34 the notice sent to the Turnpike Authority.
- 35 (13) The Department of Health and Human Services, which is subject to
36 G.S. 143-48.1(c).
- 37 (14) The Division of Adult Correction of the Department of Public Safety, which
38 is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied
39 on the notice sent to the Division of Adult Correction.
- 40 (15) The North Carolina Code Officials Qualification Board, which is subject to
41 G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the
42 notice sent to the Code Officials Qualification Board.
- 43 (16) The Roanoke Island Commission, which is subject to
44 G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be
45 copied on the notice sent to the Roanoke Island Commission.
- 46 (17) Any other State entity subject to contract review under G.S. 114-8.3.

47 The Department of Administration, as part of its notice, shall provide a means by
48 which an entity may acknowledge receipt and understanding of the notice. If the Department of
49 Administration has not received an acknowledgement from a State entity within 30 days of
50 sending the notice, the Department of Administration shall send a second notice. If the
51 Department of Administration has not received an acknowledgement from a State entity within

1 30 days of sending the second notice, the Department of Administration shall notify (i) the
2 Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations
3 Subcommittee on General Government and the Senate Appropriations Committee on General
4 Government and Information Technology.

5 **SECTION 4.** The Attorney General's Office, the Department of Administration,
6 and the Office of the General Counsel for The University of North Carolina shall establish
7 procedures to implement the provisions of this act no later than June 30, 2013.

8 **SECTION 5.** G.S. 143-49 reads as rewritten:

9 **"§ 143-49. Powers and duties of Secretary.**

10 The Secretary of Administration shall have power and authority, and it shall be his duty,
11 subject to the provisions of this Article:

12 ...

13 (13) To ~~implement~~implement, by September 1, 2013, a quality management
14 system equivalent to the International Organization for Standardization
15 (ISO) 9001:2008 to ensure that citizen and agency customer requirements
16 are met. By ~~September 1, 2012,~~April 1, 2013, and more frequently as
17 requested, the Secretary shall report to the Joint Legislative Commission on
18 Governmental Operations, the Program Evaluation Division, and the Fiscal
19 Research Division concerning the progress of the Department's effort to
20 comply with the provisions of this subdivision.

21 (14) To work in conjunction with the Office of State Personnel to create a
22 Contracting Specialist career path to provide for the ~~designation~~designation,
23 by April 1, 2013, of one or more employees within each department,
24 agency, or institution of the State to serve as the Contracting Specialist for
25 the department, agency, or institution. Employees on the Contracting
26 Specialist career path shall receive training and guidance as to the provisions
27 of this Article.

28 (15) To work in conjunction with the Office of State Personnel, the Division of
29 Purchase and Contract, and the University of North Carolina School of
30 Government to ~~develop~~implement, by September 1, 2013, a rigorous
31 contract management training and certification program for State employees.
32 The program shall be administered by the Office of State Personnel.

33 (16) To work in conjunction with the University of North Carolina School of
34 Government to study and recommend improvements to State procurement
35 laws, including the feasibility of adopting the provisions of the American
36 Bar Association Model Procurement Code. The recommendations shall be
37 reported by the Secretary to the Joint Legislative Commission on
38 Governmental Operations and the Program Evaluation Division by
39 September 1, 2013.

40 (17) To establish procedures to permit State government, or any of its
41 departments, institutions, or agencies, to join with any federal, State, or local
42 government agency, entity, or subdivision, or any nonprofit organization in
43 cooperative purchasing plans, projects, arrangements, or agreements if the
44 interest of the State would be served thereby. Any procedures established
45 under this subdivision shall be reported to the Joint Legislative Commission
46 on Governmental Operations and the Program Evaluation Division no later
47 than 30 days prior to the effective date of the procedures."

48 **SECTION 6.** Sections 1 and 2 of this act become effective July 1, 2013, and apply
49 to contracts entered into on or after that date. The remainder of this act is effective when it
50 becomes law.