

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1170
State and Local Government Committee Substitute Adopted 7/24/02
House Committee Substitute Favorable 8/15/02

Short Title: Local Gov't Reverse Auctions.

(Public)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT AUTHORIZING ADDITIONAL METHODS FOR BIDDING ON PUBLIC
PROCUREMENT CONTRACTS, AND AMENDING THE LAW REGARDING
BRAND NAME SPECIFICATION IN THE COMPETITIVE BIDDING PROCESS
FOR PUBLIC CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 143 of the General Statutes is amended by
adding a new section to read:

"§ 143-129.9. Alternative competitive bidding methods.

(a) A political subdivision of the State may use any of the following methods to
obtain competitive bids for the purchase of apparatus, supplies, materials, or equipment
as an alternative to the otherwise applicable requirements in this Article:

(1) Reverse auction. – For purposes of this section, "reverse auction"
means a real-time purchasing process in which bidders compete to
provide goods at the lowest selling price in an open and interactive
environment. The bidders' prices may be revealed during the reverse
auction. A reverse auction may be conducted by the political
subdivision or by a third party under contract with the political
subdivision. A political subdivision may also conduct a reverse auction
through the State electronic procurement system, and compliance with
the procedures and requirements of the State's reverse auction process
satisfies the political subdivision's obligations under this Article.

(2) Electronic bidding. – A political subdivision may receive bids
electronically in addition to or instead of paper bids. Procedures for
receipt of electronic bids for contracts that are subject to the
requirements of G.S. 143-129 shall be designed to ensure the security,
authenticity, and confidentiality of the bids to at least the same extent
as is provided for with sealed paper bids.

1 (b) The requirements for advertisement of bidding opportunities, timeliness of
2 the receipt of bids, the standard for the award of contracts, and all other requirements in
3 this Article that are not inconsistent with the methods authorized in this section shall
4 apply to contracts awarded under this section.

5 (c) Reverse auctions shall not be utilized for the purchase or acquisition of
6 construction aggregates, including, but not limited to, crushed stone, sand, and gravel."

7 **SECTION 2.** G.S. 143-53(a)(5) reads as rewritten:

8 "(5) Prescribing conditions under which purchases and contracts for the
9 purchase, installment or lease-purchase, rental or lease of equipment,
10 materials, supplies or services may be entered into by means other than
11 competitive bidding. ~~bidding, including, but not limited to,~~
12 negotiation, reverse auctions, and acceptance of electronic bids.
13 Reverse auctions may only be utilized for the purchase or exchange of
14 supplies, equipment, and materials as provided in G.S. 115C-522.
15 Notwithstanding the provisions of subsections (a) and (b) of this
16 section, any waiver of competition for the purchase, rental, or lease of
17 equipment, materials, supplies, or services is subject to prior review by
18 the Secretary, if the expenditure exceeds ten thousand dollars
19 (\$10,000). The Division may levy a fee, not to exceed one dollar
20 (\$1.00), for review of each waiver application."

21 **SECTION 3.** Notwithstanding any other provision of law to the contrary, the
22 Secretary may conduct a pilot program for reverse auctions. The reverse auctions shall
23 be utilized only for the purchase or exchange of those supplies, equipment, and
24 materials as provided in G.S. 115C-522, for use by the public school systems. The
25 Secretary shall report the results of the pilot program to the Joint Select Committee on
26 Information Technology, upon the convening of the 2003 General Assembly.

27 **SECTION 4.** G.S. 147-33.95 reads as rewritten:

28 "**§ 147-33.95. Procurement of information technology.**

29 (a) Notwithstanding any other provision of law, the Office of Information
30 Technology Services shall procure all information technology for State agencies. For
31 purposes of this section, agency means any department, institution, commission,
32 committee, board, division, bureau, office, officer, or official of the State, unless
33 specifically exempted in this Article. The Office shall integrate technological review,
34 cost analysis, and procurement for all information technology needs of those State
35 agencies in order to make procurement and implementation of technology more
36 responsive, efficient, and cost-effective. All contract information shall be made a matter
37 of public record after the award of contract. Provided, that trade secrets, test data,
38 similar proprietary information, and security information protected under G.S.
39 132-6.1(c) may remain confidential.

40 (b) The Office shall have the authority and responsibility, subject to the
41 provisions of this Part, to:

42 (1) Purchase or to contract for, by suitable ~~means~~ means, including, but
43 not limited to, negotiations, reverse auctions, and the solicitation,
44 offer, and acceptance of electronic bids, and in conformity with G.S.

1 143-135.9, all information technology in the State government, or any
2 of its departments, institutions, or agencies covered by this Part, or to
3 authorize any department, institution, or agency covered by this Part to
4 purchase or contract for such information technology.

5 (2) Establish processes, specifications, and standards which shall apply to
6 all information technology to be purchased, licensed, or leased in the
7 State government or any of its departments, institutions, or agencies
8 covered by this Part.

9 (3) Comply with the State government-wide technical architecture, as
10 required by the Information Resources Management Commission.

11 (c) For purposes of this section, "reverse auction" means a real-time purchasing
12 process in which vendors compete to provide goods or services at the lowest selling
13 price in an open and interactive electronic environment. The vendor's price may be
14 revealed during the reverse auction. The Office may contract with a third-party vendor
15 to conduct the reverse auction.

16 (d) For purposes of this section, "electronic bidding" means the electronic
17 solicitation and receipt of offers to contract. Offers may be accepted and contracts may
18 be entered by use of electronic bidding.

19 (e) The Office may use the electronic procurement system established by G.S.
20 143-48.3 to conduct reverse auctions and electronic bidding. All requirements relating
21 to formal and competitive bids, including advertisement, seal, and signature, are
22 satisfied when a procurement is conducted or a contract is entered in compliance with
23 the reverse auction or electronic bidding requirements established by the Office.

24 (f) The Office may adopt rules consistent with this section."

25 **SECTION 5.** G.S. 133-3 reads as rewritten:

26 **"§ 133-3. Specifications to carry competitive items; substitution of materials.**

27 All architects, engineers, designers, or draftsmen, when providing design services, or
28 writing specifications, directly or indirectly, for materials to be used in any city, county
29 or State work, shall specify in their plans the required performance and design
30 characteristics of such materials. However, when it is impossible or impractical to
31 specify the required performance and design characteristics for such materials, then the
32 architect, engineer, designer or draftsman may use a brand name specification so long as
33 they cite three or more examples of items of equal design or equivalent design, which
34 would establish an acceptable range for items of equal or equivalent design. The
35 specifications shall state clearly that the cited examples are used only to denote the
36 quality standard of product desired and that they do not restrict bidders to a specific
37 brand, make, manufacturer or specific name; that they are used only to set forth and
38 convey to bidders the general style, type, character and quality of product desired; and
39 that equivalent products will be acceptable. Where it is impossible to specify
40 performance and design characteristics for such materials and impossible to cite three or
41 more items due to the fact that there are not that many items of similar or equivalent
42 design in competition, then as many items as are available shall be cited. On all city,
43 county or State works, the maximum interchangeability and compatibility of cited items
44 shall be required. The brand of product used on a city, county or State work shall not

1 limit competitive bidding on future works. ~~If an architect, engineer, designer, draftsman~~
2 ~~or owner prefers a particular brand of material, then such brand shall be bid as an~~
3 ~~alternate to the base bid and in such case the base bid shall cite three or more examples~~
4 ~~of items of equal or equivalent design, which would establish an acceptable range for~~
5 ~~items of equal or equivalent design.~~ Substitution of materials, items, or equipment of
6 equal or equivalent design shall be submitted to the architect or engineer for approval or
7 disapproval; such approval or disapproval shall be made by the architect or engineer
8 prior to the opening of bids. The purpose of this statute is to mandate and encourage
9 free and open competition on public contracts."

10 **SECTION 6.** This act is effective when it becomes law.