

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 404*

Short Title: Dept. of Admin/Procurement Modernization.-AB (Public)

Sponsors: Senator Brock.

Referred to: Program Evaluation.

March 24, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE PROCUREMENT METHODS USED BY THE SECRETARY
3 OF ADMINISTRATION AND STATE DEPARTMENTS, INSTITUTIONS, AND
4 AGENCIES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 143-49 reads as rewritten:

7 "§ 143-49. Powers and duties of Secretary.

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

10 (1) To canvass sources of supply, including sources of ~~supply of materials and~~
11 ~~supplies~~ goods with recycled content, and to purchase or to contract for the
12 purchase, lease and lease-purchase of all ~~supplies, materials, equipment and~~
13 ~~other tangible personal property~~ goods required by the State government, or
14 any of its departments, institutions or agencies under competitive bidding or
15 ~~otherwise as hereinafter provided.~~ other suitable means authorized by the
16 Secretary including, without limitation, negotiations, reverse auctions, a best
17 value procurement method such as that defined in G.S. 143-135.9(a)(1), and
18 the solicitation, offer, and acceptance of electronic bids. For purposes of this
19 Article, the term "goods" includes, without limitation, all commodities,
20 supplies, materials, equipment, and other tangible personal property.

21 (2) To establish and enforce specifications which shall apply to all ~~supplies,~~
22 ~~materials and equipment~~ goods and services to be purchased or leased for the
23 use of the State government or any of its departments, institutions or
24 agencies.

25 (3) To purchase or to contract for, by sealed, competitive bidding or other
26 suitable ~~means, all contractual services and needs~~ means authorized by the
27 Secretary including, without limitation, negotiations, reverse auctions, a best
28 value procurement method such as that defined in G.S. 143-135.9(a)(1), and
29 the solicitation, offer, and acceptance of electronic bids, all services of the
30 State government, or any of its departments, institutions, or agencies; or to
31 authorize any department, institution or agency to purchase or contract for
32 such services.

33 (3a) ~~When~~ To request, and the Attorney General shall assign a representative of
34 the office of the Attorney General to assist in negotiation for the award of
35 any contract for contractual services exceeding a cost of one hundred
36 thousand dollars (\$100,000) that requires negotiation with prospective
37 ~~contractors, the Secretary shall request and the Attorney General shall assign~~



1 a representative of the office of the Attorney General to assist in negotiation
 2 for the award of the contract. contractors. It shall be the duty of such
 3 representative to assist and advise in obtaining the most favorable contract
 4 for the State, to evaluate all proposals available from prospective contractors
 5 for that purpose, to interpret proposed contract terms and to advise the
 6 Secretary or his representatives of the liabilities of the State and validity of
 7 the contract to be awarded. All contracts and drafts of such contracts shall be
 8 prepared by the office of the Attorney General and copies thereof shall be
 9 retained by such office for a period of three years following the termination
 10 of such contracts. The term "contractual services" as used in this subsection
 11 and G.S. 143-52.2 shall mean work performed by an independent contractor
 12 requiring specialized knowledge, experience, expertise or similar capabilities
 13 wherein the service rendered does not consist primarily of acquisition by this
 14 State of equipment or materials and the rental of equipment, materials and
 15 supplies. The term "negotiation" as used ~~herein~~ in this subdivision shall not
 16 be deemed to refer to contracts entered into or to be entered into as a result
 17 of a competitive bidding process.

18 ...

- 19 (6) To make available to nonprofit corporations operating charitable hospitals,
 20 to local nonprofit community sheltered workshops or centers that meet
 21 standards established by the Division of Vocational Rehabilitation of the
 22 Department of Health and Human Services, to private nonprofit agencies
 23 licensed or approved by the Department of Health and Human Services as
 24 child placing agencies, residential child-care facilities, private nonprofit
 25 rural, community, and migrant health centers designated by the Office of
 26 Rural Health and Resource Development, to private higher education
 27 institutions that are defined as "institutions" in G.S. 116-22(1), and to
 28 counties, cities, towns, local school administrative units, governmental
 29 entities and other subdivisions of the State and public agencies thereof in the
 30 expenditure of public funds, the services of the Department of
 31 Administration in the purchase of ~~materials, supplies and equipment~~ goods
 32 and services under such rules, regulations and procedures as the Secretary of
 33 Administration may adopt. In adopting rules and regulations any or all
 34 provisions of this Article may be made applicable to such purchases and
 35 contracts made through the Department of Administration, and in addition
 36 the rules and regulations shall contain a requirement that payment for all
 37 such purchases be made in accordance with the terms of the contract.

38 ...

- 39 (17) To establish procedures to permit State government, or any of its
 40 departments, institutions, or agencies, to join with any federal, State, or local
 41 government agency, entity, or subdivision, or any nonprofit organization in
 42 cooperative purchasing plans, projects, arrangements, or agreements if the
 43 interest of the State would be served thereby."

44 **SECTION 2.** G.S. 143-51 reads as rewritten:

45 **"§ 143-51. Reports to Secretary required of all agencies as to ~~needs,~~ needs and purchases.**

46 (a) It shall be the duty of all departments, institutions, or agencies of the State
 47 government to furnish to the Secretary of Administration when requested, and on forms to be
 48 prescribed by him, estimates of all ~~supplies, materials, contractual services and~~
 49 ~~equipment~~ goods and services needed and required by such department, institution or agency for
 50 such periods in advance as may be designated by the Secretary of Administration.

1 (b) In addition to the report required by subsection (a) of this section, all departments,
2 institutions, or agencies of the State government shall furnish to the Secretary of
3 Administration when requested, and on forms to be prescribed by him, actual expenditures for
4 all goods and services needed and required by the department, institution, or agency for such
5 periods after the expenditures have been made as may be designated by the Secretary of
6 Administration."

7 **SECTION 3.** G.S. 143-52 reads as rewritten:

8 "**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids;**
9 **awarding of contracts; cost plus percentage of cost contracts strictly**
10 **prohibited.**

11 (a) ~~As feasible, the~~The Secretary of Administration ~~will~~shall compile and consolidate
12 all such estimates of ~~supplies, materials, printing, equipment and contractual~~goods and services
13 needed and required by State departments, institutions and agencies to determine the total
14 requirements of any given commodity. Where such total requirements will involve an
15 expenditure in excess of the expenditure benchmark established under the provisions of
16 G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter
17 provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in
18 this State or through electronic means, or both, as determined by the Secretary to be most
19 advantageous, at least once and at least 10 days prior to the date designated for opening. Except
20 as otherwise provided under this Article, contracts for the purchase of ~~supplies, materials or~~
21 ~~equipment~~ goods and services shall be based on competitive bids and ~~acceptance made of the~~
22 ~~lowest and best~~suitable means authorized by the Secretary as provided in G.S. 143-49. The
23 acceptance of bid(s) most advantageous to the State ~~as~~shall be determined upon consideration
24 of the following criteria: prices offered; best value, as the term is defined in
25 G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance
26 capabilities of the bidders; the substantial conformity with the specifications and other
27 conditions set forth in the request for bids; the suitability of the articles for the intended use; the
28 personal or related services needed; the transportation charges; the date or dates of delivery and
29 performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question,
30 which if controlling shall be made a matter of record. Competitive bids on such contracts shall
31 be received in accordance with rules and regulations to be adopted by the Secretary of
32 Administration, which rules and regulations shall prescribe for the manner, time and place for
33 proper advertisement for such bids, the time and place when bids will be received, the articles
34 for which such bids are to be submitted and the specifications prescribed for such articles, the
35 number of the articles desired or the duration of the proposed contract, and the amount, if any,
36 of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all
37 bids received may be rejected. Each and every bid conforming to the terms of the invitation,
38 together with the name of the bidder, shall be tabulated and that tabulation shall become public
39 record in accordance with the rules adopted by the Secretary. All contract information shall be
40 made a matter of public record after the award of contract. Provided, that trade secrets, test data
41 and similar proprietary information may remain confidential. A bond for the faithful
42 performance of any contract may be required of the successful bidder at bidder's expense and in
43 the discretion of the Secretary of Administration. When the dollar value of a contract for the
44 purchase, lease, or lease/purchase of ~~equipment, materials, and supplies~~goods exceeds the
45 benchmark established by G.S. 143-53.1, the contract shall be reviewed by the Board of
46 Awards pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have
47 been awarded, the Secretary of Administration shall certify to the departments, institutions and
48 agencies of the State government the sources of supply and the contract price of the ~~supplies,~~
49 ~~materials and equipment~~goods so contracted for.

50 "

51 **SECTION 4.** G.S. 143-53 reads as rewritten:

"§ 143-53. Rules.

(a) The Secretary of Administration may adopt rules governing the following:

...

(3) ~~Defining contractual services for the purposes of G.S. 143-49(3) and G.S. 143-49(5).~~

...

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

...

(7) Prescribing conditions and procedures governing the purchase of used ~~equipment, materials and supplies.~~goods.

...."

SECTION 5. G.S. 143-55 reads as rewritten:

"§ 143-55. Requisitioning for supplies by agencies; must purchase through sources certified.

(a) Unless otherwise provided by law, ~~after where~~ sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for ~~all supplies, materials and equipment~~purchases required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase ~~any supplies, materials or equipment~~ from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration.

...."

SECTION 6. This act becomes effective July 1, 2011.