

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 931

Short Title: NC Businesses First/Small Business Funds. (Public)

Sponsors: Senators White, D. Berger (Primary Sponsors); Daniel and Walters.

Referred to: Appropriations/Base Budget.

May 30, 2012

A BILL TO BE ENTITLED

AN ACT REQUIRING THE SECRETARY OF ADMINISTRATION, STATE AGENCIES, COUNTIES, AND CITIES WHEN PURCHASING GOODS TO GIVE A PRICE-MATCH PREFERENCE TO NORTH CAROLINA COMPANIES THAT MEET CERTAIN REQUIREMENTS, AND APPROPRIATING FUNDS TO ASSIST SMALL BUSINESS MANUFACTURERS IN EXPANDING EXPORT OPPORTUNITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-59 is amended by adding a new subsection to read as follows:

"(a1) Price-Match Preference. – Notwithstanding the provisions of subsection (a) of this section, the Secretary of Administration and any State agency authorized to purchase foodstuff or other products shall, in the purchase of or in the contracting for foods, supplies, materials, or equipment, give preference to the lowest responsible, responsive resident bidder if both of the following conditions are met: (i) the bid of the lowest responsible, responsive resident bidder is no greater than five percent (5%) or ten thousand dollars (\$10,000), whichever is less, of the bid of the lowest responsible, responsive nonresident bidder; and (ii) the lowest responsible, responsive resident bidder matches the bid of the lowest responsible, responsive nonresident bidder. The meaning of the terms "resident bidder" and "nonresident bidder" are as provided in subdivisions (c)(1) and (c)(2) of this section. The Secretary of Administration shall adopt rules to implement the provisions of this subsection."

SECTION 2. G.S. 143-129 reads as rewritten:

"§ 143-129. **Procedure for letting of public contracts.**

...

(b) **Advertisement and Letting of Contracts.** – Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials,



* S 9 3 1 - V - 1 *

1 or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii)
2 reserve to the board or governing body the right to reject any or all proposals.

3 Proposals may be rejected for any reason determined by the board or governing body to be
4 in the best interest of the unit. However, the proposal shall not be rejected for the purpose of
5 evading the provisions of this Article. No board or governing body of the State or political
6 subdivision thereof may assume responsibility for construction or purchase contracts, or
7 guarantee the payments of labor or materials therefor except under provisions of this Article.

8 All proposals shall be opened in public and the board or governing body ~~shall~~ shall, except
9 as authorized in subsection (b1) of this section, award the contract to the lowest ~~responsible~~
10 responsible, responsive bidder or bidders, taking into consideration quality, performance and
11 the time specified in the proposals for the performance of the contract.

12 In the event the lowest ~~responsible-responsible, responsive~~ bids are in excess of the funds
13 available for the project or purchase, the responsible board or governing body is authorized to
14 enter into negotiations with the lowest ~~responsible-responsible, responsive~~ bidder above
15 mentioned, making reasonable changes in the plans and specifications as may be necessary to
16 bring the contract price within the funds available, and may award a contract to such bidder
17 upon recommendation of the Department of Administration in the case of the State government
18 or of a State institution or agency, or upon recommendation of the responsible commission,
19 council or board in the case of a subdivision of the State, if such bidder will agree to perform
20 the work or provide the apparatus, supplies, materials, or equipment at the negotiated price
21 within the funds available therefor. If a contract cannot be let under the above conditions, the
22 board or governing body is authorized to readvertise, as herein provided, after having made
23 such changes in plans and specifications as may be necessary to bring the cost of the project or
24 purchase within the funds available therefor. The procedure above specified may be repeated if
25 necessary in order to secure an acceptable contract within the funds available therefor.

26 No proposal for construction or repair work may be considered or accepted by said board or
27 governing body unless at the time of its filing the same shall be accompanied by a deposit with
28 said board or governing body of cash, or a cashier's check, or a certified check on some bank or
29 trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not
30 less than five percent (5%) of the proposal. In lieu of making the cash deposit as above
31 provided, such bidder may file a bid bond executed by a corporate surety licensed under the
32 laws of North Carolina to execute such bonds, conditioned that the surety will upon demand
33 forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract
34 in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to
35 execute the contract within 10 days after the award or fails to give satisfactory surety as
36 required herein.

37 Bids shall be sealed and the opening of an envelope or package with knowledge that it
38 contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the
39 permission of the bidder prior to the time set for opening in the invitation to bid shall constitute
40 a Class 1 misdemeanor.

41 (b1) Local Government Price-Match Preference. – Where a contract for apparatus,
42 supplies, materials, or equipment is to be let by the governing body of a county or city,
43 preference shall be given to the lowest responsible, responsive resident bidder if both of the
44 following conditions are met: (i) the bid of the lowest responsible, responsive resident bidder is
45 no greater than five percent (5%) or ten thousand dollars (\$10,000), whichever is less, of the
46 bid of the lowest responsible, responsive nonresident bidder and (ii) the lowest responsible,
47 responsive resident bidder matches the bid of the lowest responsible, responsive nonresident
48 bidder. The terms "resident bidder" and "nonresident bidder" are defined as provided in
49 G.S. 143-59(c)(1) and G.S. 143-59(c)(2). The governing body of the county or city shall adopt
50 rules to implement the provisions of this subsection.

51"

1 **SECTION 3.** G.S. 143-131 reads as rewritten:

2 "**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on**
3 **informal bids.**

4 (a) All contracts for construction or repair work or for the purchase of apparatus,
5 supplies, materials, or equipment, involving the expenditure of public money in the amount of
6 thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129,
7 made by any officer, department, board, local school administrative unit, or commission of any
8 county, city, town, or other subdivision of this State shall be made after informal bids have
9 been secured. ~~All~~ Except as authorized in G.S. 143-129(b1), such contracts shall be awarded to
10 the lowest responsible, responsive bidder, taking into consideration quality, performance, and
11 the time specified in the bids for the performance of the contract. It shall be the duty of any
12 officer, department, board, local school administrative unit, or commission entering into such
13 contract to keep a record of all bids submitted, and such record shall not be subject to public
14 inspection until the contract has been awarded.

15 "

16 **SECTION 4.** There is appropriated from the General Fund to the Department of
17 Commerce the sum of five million dollars (\$5,000,000) for the 2012-2013 fiscal year to be used
18 to provide grants to small businesses, as that term is defined in G.S. 105-129.50, that (i) satisfy
19 the requirements of G.S. 105-129.83(c), (d), (e), and (f) relating to wage standard, health
20 insurance, environmental impact, and safety and health programs, respectively; and (ii) are
21 engaged in the manufacture of goods grown, produced, or manufactured for exportation,
22 including businesses that produce agricultural products and commercial fisheries. Grants made
23 by the Department of Commerce under this section shall not exceed the costs for exportation
24 actually incurred by a small business.

25 **SECTION 5.** This act becomes effective July 1, 2012. Sections 1, 2, and 3 of this
26 act apply to bids received on or after that date.