

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 367
SENATE BILL 437

AN ACT TO REPEAL THE SUNSET CONCERNING GOVERNMENT
CONSTRUCTION CONTRACTS AND TO MAKE RELATED CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 480 of the 1989 Session Laws reads as rewritten:

"Sec. 4. This act is effective upon ~~ratification and shall expire on June 30, 1995.~~
ratification."

Sec. 2. Section 3 of Chapter 480 of the 1989 Session Laws is repealed.

Sec. 3. G.S. 44A-26 reads as rewritten:

"§ 44A-26. Bonds required.

(a) When the total amount of construction contracts awarded for any one project exceeds ~~fifty thousand dollars (\$50,000)~~ one hundred thousand dollars (\$100,000) a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor with a contract more than fifteen thousand dollars (\$15,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

- (1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded the contract.
- (2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor or subcontractor is liable.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract."

Sec. 4. G.S. 143-128 reads as rewritten:

"§ 143-128. ~~Separate specifications for building contracts; responsible contractors.~~
Requirements for certain building contracts.

(a) Preparation of specifications. – Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding

or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any ~~county or municipality, county, municipality, or other public body, when the entire cost of such work shall exceed one hundred thousand dollars (\$100,000)~~ must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

- (1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all work kindred thereto.
- (2) Plumbing and gas fittings and accessories, and all work kindred thereto.
- (3) Electrical wiring and installations, and all work kindred thereto.
- (4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications ~~and awarding additional separate contracts for any other category of work when it is deemed in the best interest of such officer, board, department, commission or commissions to do so.~~ work.

(b) Building projects over five hundred thousand dollars (\$500,000); separate prime contracts. All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction, alteration or repair of buildings, or any parts thereof, Except as provided in subsection (d) of this section, when the entire cost of the erection, construction, alteration, or repair of a building exceeds five hundred thousand dollars (\$500,000), the State, county, municipality, or other public body shall accept bids for each subdivision or branch of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than ~~ten thousand dollars (\$10,000), twenty-five thousand dollars (\$25,000),~~ the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section,

~~the wording 'separate contractor' is hereby deemed and held to mean~~ means any person, firm or corporation who shall enter into a contract with the State, or with any ~~county or municipality, county, municipality, or other public body,~~ for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

~~All public authorities coming within the requirements of this section shall have the authority to purchase and erect prefabricated or relocatable buildings or portions thereof without complying with the provisions hereof, except that portion of the work which must be performed at the construction site.~~

(c) Building projects five hundred thousand dollars (\$500,000) or less. – When the entire cost of the erection, construction, alteration, or repair of a building is five hundred thousand dollars (\$500,000) or less, the State, county, municipality, or other public body may accept bids under the single-prime contract system, the separate prime contract system, or both. The provisions of subsection (b) of this section apply to the use of the separate prime contract system under this subsection. The provisions of subsection (d) of this section apply to the use of the single-prime contract system under this section, except that bidding in the alternative between the single-prime and separate prime systems is not required. Contracts bid in the alternative between the single-prime and separate prime systems under this subsection must be awarded to the lowest responsible bidder or bidders, as provided in subsection (d) of this section.

~~(b)(d) Single-prime contracts. – Notwithstanding the provisions of subsection (a) of this section, the~~ The State, a county, municipality, department, board, commission, public hospital, or other public body, or an officer thereof ~~body may use accept bids under the single-prime contract system and may prequalify bidders for all construction contracts.~~ system.

If the State, county, municipality, or other public body chooses to use accepts bids under the single-prime contract system, it must also seek bids for the project under subsection (a) of this section the separate prime contract system and award the contract to the lowest responsible bidder or bidders for the total project. project, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

~~For~~ When bids are accepted under the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

- (1) Heating, ventilating, and air conditioning;
- (2) Plumbing;
- (3) Electrical; and
- (4) General.

No contractor whose bid is accepted shall substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall be substantially the same as the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

(e) Project expediter; scheduling. – The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm, or corporation which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule.

~~(e)(f) Minority goals. – The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each project for which a contract or contracts are awarded pursuant to this section. building project. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for which a contract or contracts are awarded pursuant to this section. each building project.~~

As used in this subsection:

- (1) The term 'minority-business' means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.
- (2) The term 'minority person' means a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portugese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
 - d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
 - e. Female.
- (3) The term 'verifiable goal' means for purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; and

- (4) The term 'verifiable goal' means for purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

~~(d) The State and its political subdivisions~~ The State, counties, municipalities, and all other public bodies shall award public building contracts pursuant to this section without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible bid or bids.

(g) Exceptions. – This section shall not apply to:

- (1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.
- (2) The erection, construction, alteration, or repair of a building when the cost thereof is one hundred thousand dollars (\$100,000) or less."

Sec. 5. G.S. 143-128, as amended by Section 4 of this act, reads as rewritten:

"§ 143-128. Requirements for certain building contracts.

(a) Preparation of specifications. – Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

- (1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all work kindred thereto.
- (2) Plumbing and gas fittings and accessories, and all work kindred thereto.
- (3) Electrical wiring and installations, and all work kindred thereto.
- (4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(b) Building projects over five hundred thousand dollars (\$500,000); separate prime contracts. – Except as provided in subsection (d) of this section, when the entire cost of the erection, construction, alteration, or repair of a building exceeds five hundred thousand dollars (\$500,000), the State, county, municipality, or other public body shall accept bids for each subdivision or branch of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars (\$25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, 'separate contractor' means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public body, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

(c) Building projects five hundred thousand dollars (\$500,000) or less. – When the entire cost of the erection, construction, alteration, or repair of a building is five hundred thousand dollars (\$500,000) or less, the State, county, municipality, or other public body may accept bids under the single-prime contract system, the separate prime contract system, or both. The provisions of subsection (b) of this section apply to the use of the separate prime contract system under this subsection. The provisions of subsection (d) of this section apply to the use of the single-prime contract system under this section, except that bidding in the alternative between the single-prime and separate prime systems is not required. Contracts bid in the alternative between the single-prime and separate prime systems under this subsection must be awarded to the lowest responsible bidder or bidders, as provided in subsection (d) of this section.

(d) Single-prime and alternative contracts. – The State, a county, municipality, or other public body may accept bids under the single-prime contract ~~system~~ system or a contracting method approved by the State Building Commission under G.S. 143-135.26.

If the State, county, municipality, or other public body accepts bids under the single-prime contract system, it must also seek bids for the project under the separate prime contract ~~system~~ system, except as otherwise authorized under G.S. 143-135.26, and award the contract to the lowest responsible bidder or bidders for the total project, taking into consideration quality, performance and the time specified in the bids for the performance of the contract.

When bids are accepted under the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

- (1) Heating, ventilating, and air conditioning;
- (2) Plumbing;
- (3) Electrical; and
- (4) General.

No contractor whose bid is accepted shall substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall be substantially the same as the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

The requirements of this subsection governing the identification of bidders, substitution of contractors, and the terms and conditions of subcontractor's contracts apply to all single-prime bidding and single-prime contracts, regardless of whether bidding in the alternative between the single-prime and separate prime systems has been waived by the State Building Commission.

(e) Project expediter; scheduling. – The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule.

(f) Minority goals. – The State shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each building project. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for each building project.

As used in this subsection:

- (1) The term 'minority-business' means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons who own it.
- (2) The term 'minority person' means a person who is a citizen or lawful permanent resident of the United States and who is:

- a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
 - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
 - d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or
 - e. Female.
- (3) The term 'verifiable goal' ~~means for~~ means:
- a. For purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; and section.
- (4) ~~The term 'verifiable goal' means for~~
- b. For purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.
 - c. For purposes of an alternative contracting system authorized by the State Building Commission under G.S. 143-135.26(9), that the awarding authority has adopted written guidelines specifying the action to be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section.

The State, counties, municipalities, and all other public bodies shall award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible bid or bids.

- (g) Exceptions. – This section shall not apply to:
 - (1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

- (2) The erection, construction, alteration, or repair of a building when the cost thereof is one hundred thousand dollars (\$100,000) or less."

Sec. 6. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ~~fifty thousand dollars (\$50,000)~~ one hundred thousand dollars (\$100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than twenty thousand dollars (\$20,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131."

Sec. 7. G.S. 143-132(b) reads as rewritten:

"(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. ~~143-128(b)~~, 143-128(c) or (d), each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened."

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

"§ 143-135.8. Prequalification.

Bidders may be prequalified for any public construction project."

Sec. 9. G.S. 143-135.25(a) reads as rewritten:

"(a) A State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State's capital facilities development and management ~~program.~~ program and to perform the duties created under this Article."

Sec. 10. G.S. 143-135.26 is amended by adding a new subdivision to read:

"(9) Effective July 1, 1996, to authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128, including the use of the single-prime contracting system without soliciting bids under both the single and separate prime contract systems. An authorization under this subdivision for an alternative

contracting method shall be granted only under the following conditions:

- a. An authorization shall apply only to a single project.
- b. The entity seeking authorization must demonstrate to the Commission that the alternative contracting method is necessary because the project cannot be reasonably completed under the methods authorized under G.S. 143-128 or for such other reasons as the Commission, pursuant to its rules and criteria, deems appropriate and in the public's interest.
- c. The authorization must be approved by two-thirds of the members of the Commission present and voting.

The Commission shall not waive the requirements of G.S. 143-129 or G.S. 143-132 for public contracts unless otherwise authorized by law."

Sec. 11. Sections 1, 2, and 10 of this act and this section are effective upon ratification. Section 5 of this act becomes effective July 1, 1996, and applies to contracts for which bids are solicited on or after that date. The remainder of this act becomes effective October 1, 1995. Section 3 applies to the award of contracts on or after October 1, 1995. Sections 4 and 6 apply to contracts for which bids are solicited on or after October 1, 1995.

In the General Assembly read three times and ratified this the 30th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives