

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 749

Short Title: Government Construction Contracts.

(Public)

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Sponsors: Senators Hobbs, Kerr, Odom, Plexico, Martin of Pitt, Gulley, Rand, Winner, Carrington, East, and Warren.

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Referred to: Judiciary I/Constitution

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April 18, 1995

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF SINGLE-PRIME AND SEPARATE-PRIME  
CONTRACTS FOR BUILDING CONSTRUCTION CONTRACTS.

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

**"§ 143-128. ~~Separate specifications~~ Specifications for building contracts; responsible  
contractors.**

(a) ~~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, 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~~

1 storage (where the cooling load is 15 tons or more of refrigeration), and  
2 all work kindred thereto.

3 (2) Plumbing and gas fittings and accessories, and all work kindred thereto.

4 (3) Electrical wiring and installations, and all work kindred thereto.

5 (4) General work relating to the erection, construction, alteration, or repair  
6 of any building above referred to, which work is not included in the  
7 above-listed three subdivisions or branches.

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

15 All contracts hereafter awarded by the State or by a county or municipality, or a  
16 department, board, commissioner, or officer thereof, for the erection, construction,  
17 alteration or repair of buildings, or any parts thereof, shall award the respective work  
18 specified separately to responsible and reliable persons, firms or corporations regularly  
19 engaged in their respective lines of work. When the estimated cost of work to be  
20 performed in any single subdivision or branch is less than ten thousand dollars (\$10,000),  
21 the same may be included in the contract for one of the other subdivisions or branches of  
22 the work, irrespective of total project cost.

23 Each separate contractor shall be directly liable to the State of North Carolina, or to  
24 the county or municipality, and to the other separate contractors for the full performance  
25 of all duties and obligations due respectively under the terms of the separate contracts and  
26 in accordance with the plans and specifications, which shall specifically set forth the  
27 duties and obligations of each separate contractor. For the purpose of this section, the  
28 wording "separate contractor" is hereby deemed and held to mean any person, firm or  
29 corporation who shall enter into a contract with the State, or with any county or  
30 municipality, for the erection, construction, alteration or repair of any building or  
31 buildings, or parts thereof.

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

36 (b) Notwithstanding the provisions of subsection (a) of this section, the State, a  
37 county, municipality, department, board, commission, public hospital, or other public  
38 body, or an officer thereof may use the single prime contract system and may prequalify  
39 bidders for all construction contracts.

40 If the public body chooses to use the single prime contract system, it must also seek  
41 bids for the project under subsection (a) of this section and award the contract to the  
42 lowest responsible bidder or bidders for the total project.

1       ~~For the single prime contract system all bidders must identify on their bid the~~  
2 ~~contractors they have selected for the subdivisions or branches of work for:~~

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

7       Specifications for the erection, construction, alteration, or repair of a building for a  
8 government unit shall be prepared and bids shall be received in accordance with the  
9 single-prime method, the separate-prime method, or both, as established in this section.

10 This section does not apply if (i) the total cost of the work is estimated not to exceed one  
11 hundred thousand dollars (\$100,000), or (ii) the work is for the erection of a prefabricated  
12 or relocatable building and the work to be performed at the site of erection is estimated  
13 not to exceed one hundred thousand dollars (\$100,000).

14       (a) Single Prime. – A government unit may prepare specifications for bid by a  
15 single-prime contractor.

16       Each single-prime bidder must identify on its bid the subcontractor it has selected for  
17 each of the categories of work listed in subdivisions (b)(1) through (b)(4) of this section  
18 and the amount of the subcontractor's bid. A subcontractor identified on the bid shall not  
19 be replaced without the approval of the contracting authority of the government unit.

20       (b) Separate Prime. – A government unit may prepare specifications for bids by  
21 separate-prime contractors. The specifications shall require that bids be received  
22 separately on each of the following categories of work:

- 23           (1) Heating, ventilation, air conditioning, and accessories (separately or  
24 combined into one conductive system) and/or refrigeration for cold  
25 storage (where the cooling load is 15 tons or more of refrigeration), and  
26 all related work.
- 27           (2) Plumbing and gas fittings and accessories, and all related work.
- 28           (3) Electrical wiring and installation, and all related work.
- 29           (4) General work, not included in subdivisions (1) through (3) of this  
30 subsection, relating to the erection, construction, alteration, or repair of  
31 the building.

32       Additional separate specifications for other categories of work may be prepared for  
33 bidding and award when the contracting authority for the government unit deems it to be  
34 in the best interest of the unit. When the estimated cost of work to be performed in a  
35 single category is less than ten thousand dollars (\$10,000), the work may be included in  
36 one of the other categories.

37       Each separate contractor shall be directly liable to the government unit and to the other  
38 separate contractors for the full performance of all duties and obligations under the terms  
39 of its contract and in accordance with the plans and specifications. The plans and  
40 specifications shall specifically identify the duties and obligations of each separate  
41 contractor. The contractor performing the work under subdivision (4) of this subsection  
42 is responsible for expediting the project and, in executing this responsibility, may

1 recommend to the contracting authority of the government unit whether payment to a  
2 contractor should be approved.

3 (c) Prequalification. – The contracting authority of a government unit may  
4 prequalify bidders under either method of contracting.

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

11 However, contracts shall be awarded without regard to race, religion, color, creed,  
12 national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing  
13 in this section shall be construed to require contractors or government units to award  
14 contracts or subcontracts to or to make purchases of materials or equipment from  
15 minority business contractors or minority business subcontractors who do not submit the  
16 lowest responsible bid or bids.

17 (e) As used in this ~~subsection:~~ section:

18 (1) ~~The term 'minority business'~~ 'Minority business' means a business:

- 19 a. In which at least fifty-one percent (51%) is owned by one or  
20 more minority persons, or in the case of a corporation, in which  
21 at least fifty-one percent (51%) of the stock is owned by one or  
22 more minority persons; and  
23 b. Of which the management and daily business operations are  
24 controlled by one or more of the minority persons who own it.

25 (2) ~~The term 'minority'~~ 'Minority person' means a person who is a citizen or  
26 lawful permanent resident of the United States and who is:

- 27 a. Black, that is, a person having origins in any of the black racial  
28 groups in Africa;  
29 b. Hispanic, that is, a person of Spanish or Portugese culture with  
30 origins in Mexico, South or Central America, or the Caribbean  
31 Islands, regardless of race;  
32 c. Asian American, that is, a person having origins in any of the  
33 original peoples of the Far East, Southeast Asia and Asia, the  
34 Indian subcontinent, the Pacific Islands;  
35 d. American Indian or Alaskan Native, that is, a person having  
36 origins in any of the original peoples of North America; or  
37 e. Female.

38 (3) ~~The term 'verifiable goal' means for purposes of the separate prime~~  
39 ~~contract system, that the awarding authority has adopted written~~  
40 ~~guidelines specifying the actions that will be taken to ensure a good~~  
41 ~~faith effort in the recruitment and selection of minority businesses for~~  
42 ~~participation in contracts awarded under this section; 'Government unit'~~

1 means the State, a municipality, a county, school administrative unit, or  
2 other political subdivision of the State; and

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

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

18 Sec. 3. G.S. 143-132 reads as rewritten:

19 "**§ 143-132. Minimum number of bids for public contracts.**

20 (a) No contract to which G.S. 143-129 applies for construction or repairs shall be  
21 awarded by any board or governing body of the State, or any subdivision thereof, unless  
22 at least three competitive bids have been received from reputable and qualified  
23 contractors regularly engaged in their respective lines of endeavor; however, this section  
24 shall not apply to contracts which are negotiated as provided for in G.S. 143-129.  
25 Provided that if after advertisement for bids as required by G.S. 143-129, not as many as  
26 three competitive bids have been received from reputable and qualified contractors  
27 regularly engaged in their respective lines of endeavor, said board or governing body of  
28 the State agency or of a county, city, town or other subdivision of the State shall again  
29 advertise for bids; and if as a result of such second advertisement, not as many as three  
30 competitive bids from reputable and qualified contractors are received, such board or  
31 governing body may then let the contract to the lowest responsible bidder submitting a  
32 bid for such project, even though only one bid is received.

33 (b) ~~For purposes of contracts bid in the alternative between the separate prime and~~  
34 ~~single prime contracts, pursuant to G.S. 143-128(b), If bids are received under both the~~  
35 ~~single-prime and separate-prime methods under G.S. 143-128, the following applies:~~

- 36 (1) ~~each~~Each single-prime bid shall constitute a competitive bid in each of  
37 the four subdivisions or branches of work listed in G.S. 143-128(a),  
38 categories of work under G.S. 143-128(b).

- 39 (2) ~~and each~~Each full set of separate-prime bids shall constitute a  
40 competitive single-prime bid in meeting the requirements of subsection  
41 (a) of this section.

- 42 (3) If there are at least three single-prime bids but there is not at least one  
43 full set of separate-prime bids, no separate-prime bids shall be opened.

1       (c)     The State Building Commission shall develop guidelines ~~no later than January 1,~~  
2 ~~1991,~~ governing the opening of bids pursuant to this Article. These guidelines shall be  
3 distributed to all public bodies subject to this Article. The guidelines shall not be subject  
4 to the provisions of Chapter 150B of the General Statutes."

5             Sec. 4. This act is effective upon ratification.