

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**SESSION LAW 2005-176  
HOUSE BILL 1097**

AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO AWARD CONTRACTS FOR THE MANAGEMENT OF SLUDGE ON THE BASIS OF FACTORS OTHER THAN COST ALONE AND TO ENTER INTO CONTRACTS THAT PROVIDE FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF SLUDGE MANAGEMENT FACILITIES BY A SINGLE ENTITY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-129.2 reads as rewritten:

**"§ 143-129.2. Construction, design, and operation of solid waste management facilities and sludge management facilities.**

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. ~~130A-290.~~130A-290, except that the term 'unit of local government' also includes a sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes, an authority created under Article 1 of Chapter 162A of the General Statutes, a metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes, and a county water and sewer district created under Article 6 of Chapter 162A of the General Statutes. As used in this section, the term 'sludge management facility' means a facility that processes sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal but does not include any component of a wastewater treatment process or facility that generates sludge.

(b) To acknowledge the highly complex and innovative nature of solid waste and sludge management technology technologies for processing mixed solid waste, ~~waste and sludge generated by water and wastewater treatment facilities~~, the relatively limited availability of existing and proven proprietary technology involving solid waste and sludge management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste and sludge management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article ~~8, or any other general, special or any~~ local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall ~~include~~include all of the following:

- (1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure

adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed ~~contract;contract.~~

- (2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of ~~such the~~ proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of ~~such proposal;the proposal.~~
- (3) ~~Such~~ Any other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to ~~such a~~ request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon ~~such any~~ other factors and information ~~as that~~ the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, ~~such the~~ determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article 8, ~~or any other general, or any local or special~~ law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

- (1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain ~~such a~~ solid waste or sludge management facility, ~~upon such terms and conditions for such consideration and for such term or facility upon such terms and conditions, for such consideration, and for such duration, not to exceed 40 years, as may be agreed upon by the unit of local government and such person;the person.~~
- (2) Payment by the unit of local government of a fee or other charge to ~~such the~~ person for acceptance, processing, recycling, management and disposal of solid waste; waste or sludge.
- (3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste or sludge management facility guaranteed quantities of solid wastes; and wastes or sludge.
- (4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste or sludge management facility.

(f) The construction work for any facility or structure ~~which that~~ is ancillary to ~~the a~~ solid waste or sludge management facility and ~~which that~~ does not involve storage

and processing of solid waste or sludge or the separation, ~~extraction~~ extraction, and recovery of useful or marketable forms of energy and materials from solid waste at ~~the a~~ a solid waste management ~~facility,~~ facility shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1. ~~Such ancillary~~ Ancillary facilities ~~shall include but shall are not necessarily be limited to the following:~~ roads, water and sewer lines to the facility limits, transfer stations, scale ~~house,~~ houses, administration ~~buildings~~ buildings, and residue and bypass disposal sites."

**SECTION 2.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5<sup>th</sup> day of July, 2005.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 8:26 p.m. this 12<sup>th</sup> day of July, 2005