

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS75078-LM-82A\* (03/08)

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

(Public)

Sponsors: Senator Brock.

Referred to:

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



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1 thousand dollars (\$100,000) that requires negotiation with prospective  
 2 ~~contractors, the Secretary shall request and the Attorney General shall assign~~  
 3 ~~a representative of the office of the Attorney General to assist in negotiation~~  
 4 ~~for the award of the contract.~~ contractors. It shall be the duty of such  
 5 representative to assist and advise in obtaining the most favorable contract  
 6 for the State, to evaluate all proposals available from prospective contractors  
 7 for that purpose, to interpret proposed contract terms and to advise the  
 8 Secretary or his representatives of the liabilities of the State and validity of  
 9 the contract to be awarded. All contracts and drafts of such contracts shall be  
 10 prepared by the office of the Attorney General and copies thereof shall be  
 11 retained by such office for a period of three years following the termination  
 12 of such contracts. The term "contractual services" as used in this subsection  
 13 and G.S. 143-52.2 shall mean work performed by an independent contractor  
 14 requiring specialized knowledge, experience, expertise or similar capabilities  
 15 wherein the service rendered does not consist primarily of acquisition by this  
 16 State of equipment or materials and the rental of equipment, materials and  
 17 supplies. The term "negotiation" as used ~~herein~~ in this subdivision shall not  
 18 be deemed to refer to contracts entered into or to be entered into as a result  
 19 of a competitive bidding process.

20 ...

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

40 ...

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

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

47 **"§ 143-51. Reports to Secretary required of all agencies as to ~~needs.~~ needs and purchases.**

48 (a) It shall be the duty of all departments, institutions, or agencies of the State  
 49 government to furnish to the Secretary of Administration when requested, and on forms to be  
 50 prescribed by him, estimates of all ~~supplies, materials, contractual services and~~

1 ~~equipment~~ goods and services needed and required by such department, institution or agency for  
2 such periods in advance as may be designated by the Secretary of Administration.

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

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

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

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

1       ...."

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

3   "**§ 143-53. Rules.**

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

5       ...

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

8       ...

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

21       ...

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

24       ...."

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

26   "**§ 143-55. Requisitioning for supplies by agencies; must purchase through sources**  
27       **certified.**

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

38       ...."

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