

March 15, 2001

H 623. BUILDING COMM. VOTE ON PUBLIC CONTRACTS. TO ALLOW THE STATE BUILDING COMMISSION TO AUTHORIZE ALTERNATIVE CONTRACTING METHODS FOR PUBLIC CONTRACTS BY A MAJORITY VOTE OF ITS MEMBERS. Amends GS 143-135.26(9) as title indicates. GS 143-135.26(9) currently requires approval by two-thirds of members present and voting.

Intro. by McMahan.

Ref. to State Government	GS 143
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September 4, 2001

H 623. PUBLIC CONSTRUCTION LAW CHANGES. Intro. 3/15/01. Senate committee substitute makes the following changes to 1st edition. Changes title to *AN ACT TO MAKE CHANGES IN THE LAWS GOVERNING THE PUBLIC CONSTRUCTION LAWS TO PROVIDE FOR EFFICIENCIES AND FLEXIBILITY IN BUILDING DESIGN, CONSTRUCTION, AND PLAN REVIEW, TO PROMOTE ENERGY EFFICIENCY IN STATE-OWNED BUILDINGS, AND TO AMEND THE LAW GOVERNING LANDSCAPE SERVICES*, and rewrites bill as follows. GS 143-128-Revises GS 143-128 to authorize the state, counties, municipalities, and other public bodies to award contracts for the erection, construction, alteration, or repair of buildings pursuant to any of 5 methods, as they choose: separate-prime bidding (currently available); single-prime bidding (currently available with limitations); dual bidding (where both separate-prime and single-prime bids are received, and the public body is free to choose the lowest responsible bidder from either set of bids; only schools may currently use); construction management services contracts (not currently available); and alternative contracting methods authorized by the State Building Comm'n pursuant to GS 143-135.26(9) (currently available). Separate specifications for separate branches of work need only be drawn if the contract is to be bid under either the separate-prime or the dual bidding system. These provisions apply to contracts of over \$300,000 (now, \$100,000), except that provisions regarding minority contracting apply to contracts over \$100,000 (present dollar limit).

Construction Management. Defines construction management services and construction manager, and provides that selection of a construction manager (CM) is subject to the guidelines in GS Ch. 143, Art.3D. CM must provide construction management services for a project throughout the preconstruction and construction phases and must be licensed as a general contractor if those services are provided at risk. Specifies that design services must be provided by a licensed architect or engineer who contracts directly with owner. CM contracts directly with public entity for all construction and guarantees cost of project. CM publicly advertises project as required by GS 143-129, and prequalifies and receives bids from prequalifying subcontractors. CM may only do work itself in limited, specified circumstances. Bids are opened publicly, with CM acting as public entity's fiduciary in opening and awarding them. Public entity opens and reviews all bids with CM. Public entity may require a different subcontractor be selected for any portion of the work so long as CM is compensated for any additional cost. Award standard is lowest responsible bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation (new factors not found in current formal bid award standard). If bids are awarded by CM method, public entity must make a dispute resolution process available to subcontractors, which may include the dispute resolution process adopted by the State Building Comm'n under GS 143-135.26(12). Requires CM to make a good faith effort to recruit and select minority businesses, as defined in GS 143-128(f) for participation in total value of contracts awarded; sets 12.5% goal for state, and other public owners set own goals under GS 143-128(f). Public entity must adopt written guidelines specifying what CM must do to ensure a good faith effort, and CM must file an affidavit after subcontractor bidding attesting that it has done so.

All governmental entities may participate in dual bidding under bill, and separate-prime bids must be submitted one hour (now, three hours) prior to the deadline for the submission of single-

prime bids. Deletes requirement that bids may not be opened unless the unit receives a bid from at least one general contractor under the separate-prime system.

Makes clear that all building contractors must submit affidavits to the awarding authority that they have made a good faith effort under GS 143-128(f) (minority recruitment). Failure to file the affidavit is grounds for rejection of the bid or proposal. Adds State Building Commission's dispute resolution process to those that the public body may provide for in the contract documents whenever separate contracts are awarded and separate contractors engaged.

GS 143-129-Increases formal bidding limit for construction contracts to \$300,000 from \$100,000. Increases formal bidding limit for purchases to \$90,000 from \$50,000. Provides that contracts subject to GS Ch. 143, Art. 3D (currently, contracts for architectural, engineering, and services) are not subject to GS Ch. 143, Art. 8 (the bidding article).

GS 133-1.1(a)-Increases the minimum dollar amounts above which contracts involving the expenditure of public funds for buildings, utilities, etc., must use a licensed engineer or architect, to \$300,000 from \$100,000 for the repair of public buildings where major structural change in framing or foundation support systems is not included; to \$135,000 from \$45,000 for such repairs where such change is included; and to \$135,000 from \$45,000 for the construction of, or additions to, public buildings or state-owned and operated utilities.

GS 44A-26(a)-Increases the threshold at which performance and payment bonds are required. They are required of any contractor with a contract more than \$50,000, when the project exceeds \$300,000. (Limits were \$15,000 and \$100,000, respectively.) Makes conforming changes.

The University of North Carolina. Amends GS 116-31.11(a) to increase UNC Board of Governors' authorization under that statute concerning fee negotiations, contracts, and capital improvements from \$500,000 to \$2,000,000, and amends GS 143-341(3) (Dep't of Administration's architecture and engineering powers) to specify that (3) does not apply to the design, construction, or renovation of projects by UNC under GS 116-31.11, except for (3)b.(assistance to agencies in preparing appropriation requests) and (3)b1. (feasibility of statement of needs). Amends GS 133-1.1(d) to specify that the provisions of that statute (requiring a registered architect or engineer) do not apply to various specified UNC projects that are subject to specified policies and that are inspected by the State Electrical Inspector and by some part or affiliate of UNC as specified. Repeals GS 143-64.34, which took effect July 1, 2001, and reenacts prior GS 143-64.34, along with 143-135.3, 150B-1(f), and 143-135.1, all as they were enacted in SL1997-412.

State Building Comm'n. Adds to powers and duties of Comm'n the following: (1) To adopt rules for coordinating the plan review, approval, and permit process for community college buildings, with specified time frames including submission of plans to State Construction Office. (2) To adopt rules exempting specified types of state capital improvement projects, including community college buildings, from plan review if plans have been reviewed and sealed by licensed architect, engineer, or both, as appropriate. (3) To adopt rules, no later than Jan. 1, 2002, governing review and final approval of plans that are submitted to the State Construction Office pursuant to GS 58-31-40 (fire safety approval). (4) To direct the Dep't of Administration in the development of guidelines for agency evaluation of energy savings contracts pursuant to new GS 143-64.17F (state agencies must use such contracts when feasible). (5) To develop dispute resolution procedures, including mediation, for subcontractors under the single-prime contracting system and under the construction management system on state capital improvement projects and community college buildings, for use by any agency that has not developed its own process. (6) To adopt rules governing the use of open-end design agreements for state capital improvement projects and community college buildings, where the fee does not exceed amount specified in GS 143-64.34(b).

GS 58-31-40. Places specific time limits on Comm'r of Insurance's review of building plans for fire safety pursuant to statute. Provides owner with two-step remedy process if Comm'r does not act in a timely manner, culminating in review and final approval by State Construction Office.

Guaranteed Energy Savings Contracts. Adds state agencies, boards, and commissions to the coverage of GS CH. 143, Art. 3B, Part 2. Requires state governmental units, including state universities, to evaluate the use of such contracts in reducing energy costs and authorizes their use when feasible and practical. Dep't of Administration is to develop guidelines for agency evaluation of contracts. Directs Dep't to develop a plan for establishing and implementing an energy efficiency goal for all state buildings. The Dep't is to report the plan to the General Assembly no later than May 1, 2002, by filing copies with the Office of the President Pro Tem. of the Senate, the Office of the Speaker of the House of Representatives, the legislative Fiscal Research Division, and the Legislative Library.

Miscellaneous. Revises definition of landscape architecture in GS 89A-1(3). Directs State Board of Examiners for Engineers and Surveyors and Board of Landscape Architects to meet and confer to identify areas of overlap or common practice and to consider means for resolving disputes concerning specified matters. They are to present a joint written report to General Assembly by April 30, 2002.

Authorizes New Hanover Regional Medical Center to use force account qualified personnel on its payroll to maintain, repair, renovate, and improve hospital and medical facilities that it owns or manages, if it does so under specified conditions; despite GS Ch. 143, Art. 8, which places a dollar limit on the use of such labor. This last provision expires Dec. 31, 2007. Repeals expiration dates and other limitations on certain local bills having to do with construction.

UNC provisions become effective July 1, 2001. Amendment to GS 58-31-40 becomes effective Jan. 1, 2002. Remainder of bill is effective when it becomes law.

July 31, 2002

H 623. STATE ENERGY CONSERVATION PROGRAM. Intro. 3/15/01. Conference report recommends the following changes to 2nd edition to reconcile matters in controversy. Deletes the entire senate committee substitute and replaces it as follows. Adds new definitions to GS 143-64.17. Amends GS 143-64.17A and B, making them apply to "governmental units" instead of "local governmental units." Amends the provision in GS 143-64.17A regarding the opening of proposals. Amends the provision in GS 143-64.17B regarding notice of meetings. Repeals GS 143-64.17C. Amends 143-64.17D to provide that a guaranteed energy savings contract shall stipulate that it does not constitute a direct or indirect pledge of the taxing power or full faith and credit of any governmental unit. New GS 143-64.17F provides that state government units shall evaluate the use of guaranteed energy savings contracts and may use them when practical and feasible. Provides for the adoption of relevant rules. New GS 143-64.17H deals with guaranteed energy savings contract reporting requirements. New GS 143-64.17I provides for the use of installment or lease purchase contracts. New GS 143-64.17J deals with financing of the acquisition, installation, or maintenance of energy conservation measures. Amends GS Ch. 142 by adding new Art. 8 entitled State Energy Conservation Finance Act, which: (1) includes definitions, (2) authorizes financing contracts, (3) provides a procedure for issuing financing contracts, (4) provides for security and sets forth other requirements; (5) includes payment provisions, (6) deals with certificates of participation, (7) provides for tax exemption, (8) allows the State Treasurer to enter into other agreements in connection with financing contracts and the issuing of certificates of participation; and (9) addresses investment eligibility of financing contracts. Amends the definition of "unit of local government" in GS 160A-20(h). Provides that nothing in the act limits the use of any method of contracting authorized by local or other applicable law. Makes conforming and technical changes. Effective Jan. 1, 2003, and applies to contracts entered into on or after that date.

September 20, 2002

H 623. STATE ENERGY CONSERVATION PROGRAM. Intro. 3/15/01. Conference report recommends the following changes to 2nd edition to reconcile matters in controversy. Clarifies procedure for local and state gov't units to process proposals for guaranteed energy savings contracts under new GS 143-64.17A. Adds new GS 143-64.17K, providing for inspection and compliance certification for state governmental units.