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SENATE BILL DRS45381-LM-77 (03/15)

Short Title: Job Order Contracting Method. (Public)

Sponsors: Senator Tucker (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING PUBLIC CONTRACTS TO UTILIZE THE JOB ORDER
3 CONTRACTING METHOD OF CONSTRUCTION OR REPAIR CONTRACTS.

4 Whereas, the General Assembly recognizes it is in the best interest of the State to
5 modernize, repair, and renovate facilities and infrastructure in a cost-effective and efficient
6 manner that represents the best overall value to the taxpayers and has the greatest benefit to the
7 State's economy; and

8 Whereas, the job order contracting method of procuring construction or repair
9 services can be an attractive option to governmental entities in comparison to existing
10 procurement methods; and

11 Whereas, the State and governmental entities in the State should be able to utilize
12 cost-effective and efficient options for the delivery of construction or repair projects, including
13 job order contracting, in accordance with the national trend to allow governmental entities to
14 utilize job order contracts as a project delivery method; and

15 Whereas, the benefits of the job order contracting project delivery system include
16 accelerated responsiveness to and completion of projects, cost-savings, transparency, and
17 reduction of construction or repair contracting complexity; and

18 Whereas, the job order contracting approach should be used for the purposes of
19 reducing project costs, expediting project completion, or decreasing administrative expenses
20 associated with construction or repair projects; and

21 Whereas, the availability of job order contracting as a project delivery method will
22 not preclude the use of other methods of project delivery; Now, therefore,
23 The General Assembly of North Carolina enacts:

24 **SECTION 1.** G.S. 143-49 reads as rewritten:

25 "**§ 143-49. Powers and duties of Secretary.**

26 The Secretary of Administration has the power and authority, and it is the Secretary's duty,
27 subject to the provisions of this Article:

28 ...

29 (17) To establish procedures to permit State government, or any of its
30 departments, institutions, or agencies, to join with any federal, State, or local
31 government agency, entity, or subdivision, or any nonprofit organization in
32 this State or another State in cooperative purchasing plans, projects,
33 arrangements, or ~~agreements~~ agreements, including for construction or repair
34 work through job order contracting pursuant to G.S. 143-128.1D, if the
35 interest of the State would be served thereby. The procedures shall not
36 require a governmental entity secure informal quotes or any additional



1 competition for construction or repair work through job order contracting if
2 the initial contract was competitively bid as provided by G.S. 143-128.1D."

3 **SECTION 2.** G.S. 143-128 reads as rewritten:

4 **"§ 143-128. Requirements for certain building contracts.**

5 ...

6 (a1) Construction methods. – The State, a county, municipality, or other public body
7 shall award contracts to erect, construct, alter, or repair buildings pursuant to any of the
8 following methods:

- 9 (1) Separate-prime bidding.
- 10 (2) Single-prime bidding.
- 11 (3) Dual bidding pursuant to subsection (d1) of this section.
- 12 (4) Construction management at risk contracts pursuant to G.S. 143-128.1.
- 13 (5) Alternative contracting methods authorized pursuant to G.S. 143-135.26(9).
- 14 (6) Design-build contracts pursuant to G.S. 143-128.1A.
- 15 (7) Design-build bridging contracts pursuant to G.S. 143-128.1B.
- 16 (8) Public-private partnership construction contracts pursuant to
17 G.S. 143-128.1C.
- 18 (9) Job order contracting contracts pursuant to G.S. 143-128.1D.

19"

20 **SECTION 3.** Article 8 of Chapter 143 of the General Statutes is amended by
21 adding a new section to read as follows:

22 **"§ 143-128.1D. Job order contracting contracts.**

23 (a) Definitions. – For purposes of this section, the following definitions shall apply:

- 24 (1) Adjustment factor. – The job order contractor's competitively bid adjustment
25 to the governmental entity's prices as published in the unit price catalog.
- 26 (2) Governmental entity. – Every officer, board, department, commission, or
27 commissions charged with responsibility of preparation of specifications or
28 awarding or entering into contracts for construction or repair work for the
29 State or for any county, municipality, political subdivision of the State, or
30 other public body.
- 31 (3) Indefinite quantity. – One or more of the construction or repair tasks listed in
32 the unit price catalog.
- 33 (4) Job order. – A firm, fixed priced, lump sum order issued by a governmental
34 entity to a job order contractor for a definite project scope of construction or
35 repair work as compiled from the unit price catalog to be performed pursuant
36 to a job order contract.
- 37 (5) Job order contract. – A competitively bid, fixed priced, indefinite quantity
38 procurement contract, as compiled from a unit price catalog of construction
39 or repair tasks that is awarded to the most qualified job order contractor
40 bidder, as described in subsection (b) of this section, by or under the
41 authority of a governmental entity. In a job order contract, the contractor
42 agrees to an indefinite quantity contract that provides for the use of job
43 orders for construction or repair projects.
- 44 (6) Job order contract technical specifications. – The technical specifications
45 detailing the quality of materials and workmanship to be used by the job
46 order contractor in accomplishing the tasks listed in the unit price catalog.
- 47 (7) Job order contractor. – A contractor awarded a job order contract.
- 48 (8) Project. – The specific requirements and work to be accomplished by the job
49 order contractor in connection with an individual job order.
- 50 (9) Project scope of work. – The documents and related drawings,
51 specifications, and writings referenced therein which together set forth the

- 1 specific requirements and work to be accomplished by the job order
2 contractor in connection with an individual job order.
- 3 (10) Proposal. – The job order contractor prepared documents quoting those
4 construction or repair tasks listed in the unit price catalog that the job order
5 contractor requires to complete the project scope of work and the appropriate
6 quantities of tasks. The pricing of each task shall be accomplished by
7 multiplying the task unit price by the proposed quantity of tasks and the
8 contractor's competitively bid adjustment factor. The proposal shall also
9 contain a schedule for the completion of a specific project scope of work as
10 requested by the governmental entity. The proposal may also contain
11 approved drawings, work schedule, permits, or other documentation as the
12 governmental entity may require for a specific job order.
- 13 (11) Subcontractor. – Any person, firm, or corporation, other than the employees
14 of the job order contractor, who contracts to furnish labor or labor and
15 materials at the work site or in connection with a job order, whether directly
16 or indirectly, on behalf of the job order contractor.
- 17 (12) Unit price catalog. – A compilation of specific construction or repair tasks
18 and the unit prices to undertake each construction or repair task. The listed
19 tasks shall be based on generally accepted industry standards and
20 information, where available, for various items of work to be performed by
21 the job order contractor. The prices shall include the cost of materials, labor,
22 and equipment for performing the items of work. The prices shall not
23 include overhead and profit. All unit prices shall be developed using local
24 prevailing wages.
- 25 (b) Contracting Procedures. – A governmental entity shall award a job order contract
26 subject to the following requirements:
- 27 (1) The governmental entity shall prepare a set of solicitation documents for job
28 order contracts. The solicitation documents shall include a unit price catalog
29 and preestablished unit prices, job order contract technical specifications,
30 and any other information deemed necessary to describe adequately the
31 needs of the governmental entity. Any architect, engineer, or consultant
32 retained by the governmental entity to assist in the development of the job
33 order contract solicitation documents shall not assist the job order contractor
34 in preparing the contractor's bid.
- 35 (2) The governmental entity shall provide a guaranteed minimum amount of
36 construction or repair work of not less than thirty thousand dollars (\$30,000)
37 to be awarded under the job order contract. Once the guaranteed minimum
38 amount has been met, the governmental entity may, for any reason, elect to
39 not award any additional amount of construction or repair work under the
40 job order contract.
- 41 (3) In response to a request for bids, a job order contractor shall bid one or more
42 adjustment factors to the unit prices listed in the unit price catalog based on
43 the job order contract technical specifications. The combined average lowest
44 adjustment factor shall constitute the lowest bid.
- 45 (4) The governmental entity shall award the job order contract to the lowest
46 responsive, responsible bidder when awarding a single job order contract.
- 47 (5) The governmental entity may award multiple job order contracts through a
48 single request for bid as follows:
- 49 a. Job order contracts shall be awarded to the bidders that bid the lowest
50 adjustment factors as described in this subsection.

- 1 b. The governmental entity shall not award more than five job order
2 contracts under a single solicitation.
- 3 c. The governmental entity may issue job orders on a rotating basis or
4 other method, as determined by the governmental entity, provided
5 that method is included in the solicitation documents, but in no
6 circumstance shall the government entity require additional
7 competition among the contractors who have been awarded job order
8 contracts.
- 9 (6) The governmental entity may prequalify job order contractors as provided in
10 subsection (c) of this section and may award to bidders as provided in
11 subdivisions (4) and (5) of this subsection.
- 12 (c) Prequalification. – Notwithstanding the provisions of G.S.143-135.8, a
13 governmental entity may establish a procedure to prequalify job order contractors which
14 includes, at a minimum, a requirement that each job order contractor provides the following
15 information:
- 16 (1) If the job order contractor is a partnership, limited partnership, or other
17 association, the job order contractor shall list all of the partners or
18 association members known at the time of bid submission who will
19 participate in the job order contract.
- 20 (2) Evidence that the job order contractor, including partners and association
21 members, have the capacity to complete projects of similar size, scope, or
22 complexity, evidence that proposed key personnel have sufficient experience
23 and training to competently manage the construction of the project, and a
24 financial statement that assures the governmental entity that the job order
25 contractor has the capacity to complete projects under the contract.
- 26 (3) The licenses, registration, and credentials required to perform construction,
27 including, but not limited to, information on the revocation or suspension of
28 any license, credential, or registration.
- 29 (4) Evidence that establishes the job order contractor has the capacity to obtain
30 all required payment and performance bonds and liability insurance required
31 by law.
- 32 (5) Information concerning workers' compensation experience history, worker
33 safety programs, and apprenticeship programs.
- 34 (6) A full disclosure regarding all of the following that are applicable:
- 35 a. Any serious or willful violation of Chapter 95 of the General Statutes
36 or the federal Occupational Safety and Health Act of 1970 (Public
37 Law 91-596), as amended, that have been settled in any way against
38 the job order contractor, including partners and association members.
- 39 b. Any debarment, disqualification, or removal from a federal, State, or
40 local government construction or repair project.
- 41 c. Any instance where the job order contractor, or the job order
42 contractor's owners, officers, or managing employees, submitted a
43 bid on a construction or repair project that was found by the
44 awarding body to be nonresponsive or not responsible.
- 45 d. Any instance where the job order contractor, or the job order
46 contractor's owners, officers, or managing employees, defaulted on a
47 construction contract.
- 48 e. Any violations of Chapter 87 of the General Statutes, or other
49 applicable licensure requirements, against the job order contractor,
50 including partners or association members.

- 1 f. Any bankruptcy or receivership of the job order contractor, including
2 partners or association members, and including information
3 concerning any work completed by a surety.
- 4 g. Any settled adverse claims, disputes, or lawsuits between the owner
5 of a construction or repair project and any job order contractor,
6 including partners or association members, during the five years
7 preceding submission of a bid under this section in which the claim,
8 settlement, or judgment exceeds fifty thousand dollars (\$50,000).
9 Information shall also be provided concerning any work completed
10 by a surety during the five years preceding prequalification under this
11 section.
- 12 h. In the case of a partnership or any association that is not a legal entity
13 under the laws of this State, a copy of the agreement creating the
14 partnership or association and specifying that all partners or
15 association members agree to be fully liable for the performance
16 under the job order contract.
- 17 (7) The information required by this subsection shall be verified under oath by
18 the job order contractor in the same manner in which civil pleadings in civil
19 actions are verified.
- 20 (d) Limitations. – The following limitations apply to contracts awarded pursuant to this
21 section:
- 22 (1) The maximum total dollar amount that may be awarded under a single job
23 order contract shall not exceed twenty million dollars (\$20,000,000) in the
24 first term of the job order contract and, if extended or renewed pursuant to
25 subdivision (2) of this subsection, a maximum of forty million dollars
26 (\$40,000,000) over the subsequent two terms of the job order contract.
- 27 (2) Job order contracts may be executed for an initial contract term of no more
28 than 12 months, with the option of extending or renewing the job order
29 contract for two 12-month periods. The term of the job order contract shall
30 be for the contract term or whenever the maximum value of the contract is
31 achieved, whichever is less. All extensions or renewals shall be priced as
32 provided in the request for bids. The extension or renewal shall be mutually
33 agreed to by the governmental entity and job order contractor.
- 34 (3) The governmental entity may issue job orders to the job order contractor that
35 has been awarded the job order contract. The job order shall be based on a
36 project scope of work prepared by the governmental entity as well as a
37 proposal from the job order contractor who is awarded the job order
38 contract. No single job order may exceed the available aggregate contract
39 value.
- 40 (4) The amounts specified in subdivisions (1) and (2) of this subsection shall be
41 adjusted on January 1, 2018, and each January 1 thereafter, to reflect the
42 percentage change in the North Carolina Consumer Price Index, as
43 determined and published by the Department of Administration.
- 44 (e) Performance and Payment Bonds. – The job order contractor shall provide a
45 payment and performance bond to the governmental entity for job orders in accordance with
46 the provisions of Article 3 of Chapter 44A of the General Statutes when applicable.
- 47 (f) Historically Underutilized Businesses. – A governmental entity shall make a
48 good-faith effort to comply with the provisions of G.S. 143-128.2 and G.S. 143-128.4, if
49 applicable for job orders. Notwithstanding the provisions of G.S. 143-128.2 and
50 G.S. 143-128.4, the goal for participation by minority businesses shall be based on the entire
51 job order contract."

SECTION 4. G.S. 143-129 reads as rewritten:**"§ 143-129. Procedure for letting of public contracts.**

(e) Exceptions. – The requirements of this Article do not apply to:

(3) ~~Purchases~~ Construction or repair work, including construction or repair work through job order contracting pursuant to G.S. 143-128.1D, or purchases of apparatus, supplies, materials, or equipment made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.

(9) ~~Purchases~~ Construction or repair work, including construction or repair work through job order contracting pursuant to G.S. 143-128.1D, or purchases of apparatus, supplies, materials, or equipment from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.

(9a) ~~Purchases~~ Construction or repair work, including construction or repair work through job order contracting pursuant to G.S. 143-128.1D, or purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.

(g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for construction or repair work, including construction or repair work through job order contracting pursuant to G.S. 143-128.1D, or the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any construction or repair work, including construction or repair work through job order contracting pursuant to G.S. 143-128.1D, or purchase of apparatus, supplies, materials, or equipment made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of

1 Administration pursuant to G.S. 143-49(6) shall apply with respect to
2 participation in State term contracts.

3"

4 **SECTION 5.** This act is effective when it becomes law.