

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

FILED SENATE
Feb 14, 2017
S.B. 90
PRINCIPAL CLERK

S

D

SENATE BILL DRS35001-MDz-4* (10/19)

Short Title: Enhance Oversight of Service Contracts/PED. (Public)

Sponsors: Senators Randleman, Krawiec, and Edwards (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE OVERSIGHT OF STATE SERVICE CONTRACTS, AS
3 RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION
4 OVERSIGHT COMMITTEE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding
7 two new sections to read:

8 "**§ 143-50.2. Oversight of certain service contracts.**

9 (a) Creation of Business Case Justification Template. – The Secretary of the Department
10 of Administration, in consultation with the Office of State Budget and Management, shall develop
11 a business case justification template to be used by State agencies to document the business case
12 for selecting the provider of one or more agency services. The template shall provide for inclusion
13 of at least all of the following:

- 14 (1) A detailed description of the manner in which the service is currently provided.
15 (2) The unit and total cost of performing the service during the most recently
16 completed fiscal year.
17 (3) A description of the metrics to be used to evaluate the service, the current level
18 of performance for each metric, and the expected level of performance for each
19 metric once the selection has been made.
20 (4) Identification of resources required to effectively procure the service, if
21 applicable.
22 (5) An assessment of the availability of private providers who could provide the
23 service.
24 (6) Justification for a waiver from competitive bidding requirements, if applicable.
25 (7) Justification for use of multiple private providers to perform the service, if
26 applicable.
27 (8) Information security requirements that a private provider would need to satisfy,
28 if applicable.
29 (9) Identification of roles, organizational placement, responsibilities, and
30 qualifications of key project team members, including demonstrated
31 competency incorporating government-vendor partnerships into the
32 procurement process, if applicable.
33 (10) Identification of funding requirements and funding sources for the proposed
34 contract period, if applicable.
35 (11) A description of the transition process for selecting the provider of the service.



* D R S 3 5 0 0 1 - M D Z - 4 *

1 (b) Documentation and Approval of Provider Selection Required. – A State agency shall
2 not select the provider of an agency service until it has done all of the following, regardless of
3 whether the new provider of that service will be the State agency itself or a private provider:

4 (1) Documented the business case for making the selection on the business case
5 justification template developed pursuant to subsection (a) of this section.

6 (2) Obtained written approvals from all of the following, as applicable, upon a
7 determination that there is an adequate business case for making the selection:

8 a. If the total cost of providing the service is five million dollars
9 (\$5,000,000) or less, the State Purchasing Officer. The State Purchasing
10 Officer may delegate the authority to make approvals pursuant to this
11 sub-subdivision to the head of a State agency if the State Purchasing
12 Officer determines that at least all of the following conditions are
13 satisfied:

14 1. The State agency's procurement staff have demonstrated
15 competency with respect to the skills necessary to effectively
16 utilize government-vendor partnerships to achieve best value.

17 2. The results of recent Division of Purchase and Contract
18 compliance reviews of the agency's procurement processes have
19 been satisfactory.

20 b. If the total cost of providing the service exceeds five million dollars
21 (\$5,000,000):

22 1. The State Purchasing Officer.

23 2. The Office of State Budget and Management.

24 (3) Consulted with the Joint Legislative Commission on Governmental Operations
25 about the selection. The requirement to consult shall be deemed satisfied if the
26 Commission does not have a meeting at which the matter is heard within 15
27 days of receiving the required submission, unless the chairs of the Commission
28 notify the agency during that period that they need additional time to review the
29 selection, in which case G.S. 12-3(15)b. shall govern when the requirement to
30 consult shall be deemed to have been satisfied.

31 (c) Exceptions. – Subsection (b) of this section shall not apply if any of the following
32 conditions are satisfied:

33 (1) The proposed new provider of the agency service is a county, municipality, or
34 some other governmental entity other than the State agency required or
35 authorized to provide the service.

36 (2) The total cost of providing the agency service does not exceed one million
37 dollars (\$1,000,000).

38 (3) The procurement of a contract to obtain the service would not be subject to the
39 Secretary of Administration's authority under G.S. 143-49(3) to purchase or
40 contract for services.

41 (d) Definitions. – The following definitions apply in this section:

42 (1) Agency service. – A service that a State agency is required or authorized to
43 provide.

44 (2) Private provider. – A non-State entity other than a county, municipality, or
45 other governmental entity.

46 (3) Service contract. – A contract between a State agency and a private provider
47 that is a new contract for one or more agency services, is for the renewal of an
48 existing contract for one or more agency services, or is an extension of an
49 existing contract for one or more agency services.

50 (4) Total cost. – If the proposed service provider is a private provider, the total
51 amount of revenue that a service provider or combination of service providers

1 would be estimated to receive during the first three years of providing the
2 agency service. Otherwise, the total amount of funds that the State agency
3 would be estimated to expend providing the agency service during the first
4 three years of providing the service.

5 **"§ 143-50.3. Periodic review of certain service contracts.**

6 The Department of Administration shall establish a schedule for each State agency to review
7 the business case justification for each agency service, regardless of whether the provider of that
8 service is the State agency itself or a private provider, to verify that the current provider is the
9 most cost-effective provider available. Each State agency shall document the results of its review
10 on the business case justification template developed pursuant to G.S. 143-50.2(a). The schedule
11 shall provide for the review of agency services to occur no less than every five years, but the
12 Department of Administration shall have broad authority to modify the schedule and extend the
13 time for review in appropriate circumstances."

14 **SECTION 2.(a)** The Office of State Budget and Management shall develop and
15 submit a plan to determine whether services provided by State agencies could be both more
16 effectively and appropriately provided by private providers, as that term is defined in
17 G.S. 143-50.2(d)(2), as enacted by Section 1 of this act. No later than December 1, 2017, the
18 Office of State Budget and Management shall report the plan to the Joint Legislative Commission
19 on Governmental Operations and to the Fiscal Research Division of the General Assembly. The
20 plan developed pursuant to this section shall do all of the following:

- 21 (1) Provide for an examination of each service provided by each State agency.
- 22 (2) Include an examination of methods for providing each service through contracts
23 with non-State entities.
- 24 (3) Include an analysis of the costs and benefits to the State of providing each
25 service through contracts with non-State entities.
- 26 (4) If the Office of State Budget and Management determines that a service is not
27 appropriate for performance by a private provider, the plan shall describe the
28 basis for that determination.

29 **SECTION 2.(b)** Each State agency shall fully cooperate with the Office of State
30 Budget and Management in the development and submission of the plan required by subsection
31 (a) of this section.

32 **SECTION 3.(a)** Article 3 of Chapter 143 of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 143-50.4. Contract management system.**

35 (a) Operation of Contract Management System. – The State Purchasing Officer shall
36 operate a contract management system and require each State agency to use the system to manage
37 all service contracts entered by the agency. The system developed pursuant to this subsection shall
38 include the capacity to ensure at least all of the following:

- 39 (1) That payments are made in accordance with the applicable contract terms and
40 conditions.
- 41 (2) That key documents related to contracts can be stored, searched, and retrieved
42 from the system by appropriate personnel.
- 43 (3) That customizable management reports can be generated by State agencies that
44 are parties to contracts or that have contract oversight responsibilities.

45 (b) Reporting. – No later than December 1 of each year, the State Purchasing Officer shall
46 report to the Joint Legislative Commission on Governmental Operations and to the Fiscal
47 Research Division of the General Assembly on service contracts entered into by State agencies.
48 Each report shall include the following information about each service contract entered into
49 between State agencies and non-State entities during the previous fiscal year:

- 50 (1) The description, value, and procurement method of the contract.

- 1 (2) The amount of payments made under the contract during the previous fiscal
2 year.
- 3 (3) The total amount of payments made under the contract.
- 4 (4) A description of the business case for entering the contract as submitted to the
5 Department of Administration and the date on which the business case was
6 submitted and approved in accordance with G.S. 143-50.2(b).
- 7 (5) The results of any reviews of the State agency's procurement processes
8 conducted by the contract management system.
- 9 (c) For purposes of this section, the term "service contract" shall have the same meaning as
10 in G.S. 143-50.2(d)."

11 **SECTION 3.(b)** Notwithstanding G.S. 143-50.4(a), as enacted by subsection (a) of
12 this section, a State agency shall not be required to use the contract management system
13 established pursuant to that section until the agency is notified by the Division of Purchase and
14 Contract of the Department of Administration that the system is operational. The Division shall
15 notify each State agency within 30 days of the contract management system becoming operational.

16 **SECTION 4.** G.S. 143-48.3 is amended by adding a new subsection to read:

17 "(g) The requirements of this section shall be construed consistently with G.S. 143-50.4."

18 **SECTION 5.** G.S. 143-50.1(e) reads as rewritten:

19 "(e) ~~The~~ Consistently with the requirements of G.S. 143-50.4, the Department of
20 Administration shall adopt procedures for the record keeping of the information provided by State
21 agencies and that has been received by the Secretary or the Secretary's designee pursuant to
22 G.S. 114-8.3(c). The Department shall keep the records, and shall include a log with information
23 that provides identification of individual contracts and where the contract documents are located.
24 The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide
25 additional information that may be required to identify the individual contracts."

26 **SECTION 6.** Section 1 of this act becomes effective October 1, 2017. The remainder
27 of this act is effective when it becomes law.