

An Overview of Contract Bidding Requirements for North Carolina Local Governments

September 2007



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Frayda S. Bluestein

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Preface

This overview of the contract bidding requirements for North Carolina local governments is designed to provide general guidance to public officials and others interested in the public contracting process. It is a revision of a previously published guide, *An Outline of Statutory Provisions Controlling Purchasing by Local Governments in North Carolina*, by Warren Jake Wicker. Wicker first conceived of and created this guide in 1959. It is a tribute to his dedication to public officials that the original work was updated eighteen times between 1959 and 1996. This edition is dedicated to Jake Wicker with the hope that it will maintain both the quality and the brevity exemplified by his earlier work.

Introduction

This publication is, as the title suggests, an overview. It is intended to give readers a general introduction to the statutory procedures that govern contracting by local government agencies and to serve as a “roadmap” through those procedures. It does not provide exhaustive or detailed explanations. For more information, consult the statutes referenced in the text, as well as the following School of Government publications:

A Legal Guide to Purchasing and Contracting for North Carolina Local Governments, Frayda S. Bluestein, School of Government, second edition, 2004, with 2007 supplement.

Construction Contracts with North Carolina Local Governments, A. Fleming Bell, II, School of Government, fourth edition, 2007.

Ethics, Conflicts, and Offices: A Guide for Local Officials, A. Fleming Bell, II, School of Government, second edition, forthcoming, 2007.

Local Government Finance in North Carolina, David Lawrence, School of Government, second edition, 1990.

Local Government Property Transactions in North Carolina, David Lawrence, School of Government, second edition, 2000.

A number of bulletins, legislative updates, and other publications on issues affecting public purchasing and contracting are available through the School of Government’s Publications Sales Office (919.966.4119) or online at www.sog.unc.edu.

Part I Coverage and Applicability of Bidding Requirements

A. Types of Local Government Covered

The main competitive bidding requirements for local government are contained in Article 8 of Chapter 143 of the North Carolina General Statutes [hereinafter G.S.]. Most of the formal bidding requirements are set forth in G.S. 143-129, and the informal requirements can be found in G.S. 143-131. These statutes apply to the “expenditure of public money” within established dollar limits and on certain types of contracts (described below). The statutes do not identify the specific entities covered. Therefore, unless a specific statute provides otherwise, these bidding requirements apply to all local government entities, including municipalities, counties, local school units, special districts, and other special purpose local governments.

Community colleges, although considered local governments for some purposes, are subject to different rules for certain types of contracts under separate specific statutory provisions. Community colleges are required to purchase all supplies, materials, and equipment “in accordance with contracts made by or with the approval of the Department of Administration.” [G.S. 115D-58.5(b)] The main procedures that govern these contracts (and the contracts of most state agencies) are found in Article 3 of G.S. Chapter 143 and in the policies and regulations of the Department of Administration, Division of Purchase and Contract. These rules generally require community colleges to purchase from sources to which statewide contracts have been awarded (commonly known as state contract vendors). They also generally require the use of state policies and state approval for bidding of other purchases. Flexibility to purchase from other sources is provided in limited circumstances under G.S. 115D-58.14. For construction or repair contracts, community colleges are subject to the same procedures as other local governments. Most of these procedures are found in Article 8 of G.S. Chapter 143.

Several types of local governments are either exempt from bidding requirements or are subject to laws that establish special contracting procedures.

These local governments include hospital authorities [G.S. 131E-23(d)], housing authorities [G.S. 157-9], regional solid waste management authorities [G.S. 153A-427(b)], soil and water conservation districts [G.S. 131E-23(d)], joint municipal power agencies [G.S. 159B-11(10)], and transportation authorities [special purchasing procedures under G.S. 143-129(h)].

B. Types of Contracts Covered

Statutory bidding requirements generally apply to two categories of contracts: (1) contracts for the purchase of apparatus, supplies, materials, or equipment and (2) contracts for construction or repair work. The first category is generally understood to include all types of personal property. The second category is generally understood to include both horizontal construction (roads, utilities, and other infrastructure) and vertical construction (buildings and other structures). Special rules apply to building construction projects.

Contracts that are not subject to bidding because they do not fall within either of these categories include (1) service contracts (but note special rules for contracts with architects, engineers, surveyors, and construction managers at risk, discussed below), (2) contracts for the purchase of real property, and (3) contracts for the lease of personal property (but note that lease-purchase or lease contracts with an option to purchase are subject to bidding). Contracts that fall below the informal bidding threshold (see Part III) also are not subject to any procedural requirements.

Many local governments have policies that require them to conduct bidding procedures for contracts that are not subject to the mandatory bidding requirements, and some may do so on a case-by-case basis by local discretion. In these situations, the local unit is not required to use the statutory procedures, but it may opt to use some or all of them, or it may develop procedures of its own. While establishment of local procedures is not legally mandated, failure to comply with established local procedures may invalidate the resulting contract.

Some types of contracts are subject to additional requirements that do not explicitly replace the bidding requirements, in which case both sets of requirements must be met. For example, additional procedures affecting the purchase of voting systems are set forth in G.S. 163-165.7 through 163-165.10.

Part II **Formal Bidding Requirements** [G.S. 143-129]

A. Coverage

The formal bidding requirements cover construction or repair contracts estimated to cost more than \$500,000 and the purchase of apparatus, supplies, materials, or equipment [hereinafter purchase contracts] estimated to cost more than \$90,000. The threshold applies to the estimated cost of the total contract (not each item). The bidding requirements also cover lease-purchase contracts and leases containing an option to purchase. [G.S. 160A-19; G.S. 153-165] Contracts shall not be divided for the purpose of evading the bidding requirements. [G.S. 143-133]

B. Exceptions

Some of the exceptions listed below apply only to purchase contracts, while others apply to both purchase and construction or repair contracts. As noted above, community colleges are subject to state rules for purchase contracts. Therefore, exceptions in this section that apply to purchase contracts do not apply to or community colleges. Exceptions to the bidding requirements for community colleges can be found in the procedures and policies of the Division of Purchase and Contract.

1. Exceptions that apply to purchase contracts only
 - a. Purchases from other governmental agencies [G.S. 143-129(e)(1)]
 - b. Competitive group purchasing [G.S. 143-129(e)(3)]
 - c. Gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas [G.S. 143-129(e)(5)(informal bidding required)]
 - d. Sole sources [G.S. 143-129(e)(6)(requires governing board approval, specified criteria must be met)] Separate provisions for sole sources apply to hospitals under this exception.
 - e. Information technology goods or services purchased through state Office of Information Technology [G.S. 143-129(e)(7)] or under request for proposals (RFP) procedures authorized under G.S. 143-129.8 [G.S. 143-129.8]
 - f. State contract purchases [G.S. 143-129(e)(9)]
 - g. Federal contract purchases [G.S. 143-129(e)(9a)]
 - h. Used apparatus, supplies, materials, or equipment (does not include remanufactured, refabricated, or demo items) [G.S. 143-129(e)(10)]
 - i. Previously bid or “piggybacking” contracts [G.S. 143-129 (g)(requires governing board approval at a regular meeting upon ten days public notice)]

- j. Purchase of goods and services from nonprofit work centers for the blind and severely disabled [G.S. 143-129.5]
- 2. Exceptions that apply to construction or repair contracts only
 - a. Change order work [G.S. 143-129(e)(4)]
 - b. Construction management at risk projects [G.S. 143-129(e)(11); but note requirements of G.S. 143-128.1 for these projects.]
 - c. Force account work (see Part IV, section G) [G.S. 143-135; note dollar limitations and bidding requirements for materials purchased for these projects]
 - d. Projects using unemployment-relief labor paid for in whole or in part with state or federal funds [G.S. 143-129(d)]
 - e. Contracts with North Carolina Department of Transportation for street construction and repair [G.S. 136-41.3]
- 3. Exceptions that apply to both construction and purchase contracts
 - a. Special emergency involving the health and safety of the people or their property [G.S. 143-129(e)(2)]
 - b. Guaranteed energy savings contracts [G.S. 143-129(e)(8); but note the requirements of G.S. 143-64.17 through 143-64.17G for these projects]
 - c. Solid waste management facilities [G.S. 143-129.2]

C. Advertising for Bids

1. *Where?* Bidding opportunities must be advertised in a newspaper having “general circulation” (defined in G.S. 1-597) in the jurisdiction that is seeking bids. Notice of bidding opportunities may be provided in other ways *in addition* to published notice. The governing board may authorize the use of advertisement by electronic means instead of published notice. Action to authorize this must be taken at a regular meeting of the governing board. [G.S. 143-129(b)]
2. *When?* The advertisement must appear at least one time and at least seven full days must lapse between the date on which the advertisement appears and the date of the opening of bids. [G.S. 143-129(b)]
3. *What?* The advertisement must (a) “state the time and place where plans and specifications . . . may be had,” (b) “state the time and place for opening of the proposals,” and (c) “reserve to the . . . governing body the right to reject any or all proposals.” [G.S. 143-129(b)]

D. Receipt and Opening of Bids; Number of Bids

1. All proposals must be opened in public. [G.S. 143-129(b)]
2. “Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening . . . shall constitute a Class 1 misdemeanor.” [G.S. 143-129(b)]
Bids *for purchase contracts* may also be received electronically. Procedures for receiving bids electronically must be designed “to ensure the security, authenticity, and confidentiality of the bid to at least the same extent as is provided for with sealed paper bids.” [G.S. 143-129.9(a)(2)]
3. Three bids are required *only for construction or repair contracts in the formal range*. [G.S. 143-132(a)] No minimum number of bids is required for purchase contracts. Where three bids are required, if at least three are not received, a second advertisement must be made, after which a contract may be awarded even if fewer than three bids are received.
4. By operation of the public records law, bids are subject to public inspection once they are opened. [G.S. 132-1] Trade secrets contained in bids are not public if properly identified. [G.S. 132-1.2]

E. Reverse Auctions

1. Local governments are authorized to use reverse auctions as an alternative to the sealed bid procedure in G.S. 143-129 to purchase apparatus, supplies, materials, or equipment. A reverse auction is “a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment.” Bidders’ prices may be revealed during the reverse auction. A local government may conduct reverse auctions independently, through the state electronic procurement system, or through a third party under contract with the local government. [G.S. 143-129.9(a)(1)]
2. The requirements for advertisement of bidding opportunities, timeliness of the receipt of bids, the standard for the award of contracts, and other aspects of the bidding laws apply to reverse auctions to the extent that they are not inconsistent with the reverse auction process. [G.S. 143-129.9(b)]
3. The law prohibits the use of reverse auctions for the purchase of “construction aggregates, including, but not limited to, crushed stone, sand, and gravel.” [G.S. 143-129.9(c)]

F. Bid Deposit or Bond

1. “No [bid] for construction or repair work shall be considered or accepted . . . unless at the time of its filing [it is] accompanied by a deposit . . . equal to not less than five percent (5%) of the [bid amount]. [G.S. 143-129(b)] Bid deposits are not required for purchase contracts. The bid deposit may be in any of the following forms:
 - a. Cash
 - b. Cashier’s check
 - c. Certified check
 - d. Bid bond executed by a surety licensed in North Carolina
2. “The bid deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required [by law].” [G.S. 143-129(b)]

G. Evaluating Bids; Negotiations When Bids Exceed Funds Available

1. Bids must be “responsive,” which means that they substantially meet the requirements of the specifications and laws applicable to the contract. The unit may waive minor deviations, but it is legally prohibited from waiving variations that are material. A material variation is one that, if waived, would give the bidder “an advantage or benefit not enjoyed by the other bidders.” [Professional Food Services Management, Inc. v. North Carolina Department of Administration, 109 N.C. App. 265, 269, 426 S.E.2d 447, 450 (1993)]
2. “In the event the lowest responsible [bid is] in excess of the funds available for the project or purchase, the . . . governing body is authorized to enter into negotiations with the lowest responsible bidder . . . , making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to [the] bidder” if the bidder agrees to the changes. [G.S. 143-129(b)]

H. Withdrawal of Bid Because of Error

A bidder may request permission to withdraw his or her bid after the bid opening if the bidder can submit credible evidence that the bid was based on a mistake that constituted a substantial “unintentional arithmetic error or unintentional omission”—but not a judgment error—in the preparation of the bid. The request to withdraw must be made in writing no later than seventy-two hours after the opening of bids, unless

a longer period has been specified in the instructions to bidders. If the agency determines that the error meets the standard under the statute, the bid may be withdrawn. If not, the bidder forfeits his or her bid deposit. A bidder who requests withdrawal cannot participate in the contract, even on readvertisement. [G.S. 143-129.1]

I. Standard and Procedures for Awarding the Contract

The award shall be made to the “lowest responsible bidder, or bidders, . . . taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.” [G.S. 143-129(b)] The term “responsible” has been interpreted to imply “skill, judgment and integrity necessary to the faithful performance of the contract, as well as sufficient financial resources and ability.” [Kinsey Contracting Co. v. City of Fayetteville, 106 N.C. App. 383, 385, 416 S.E.2d 607, 609, *disc. review denied*, 332 N.C. 345, 421 S.E.2d 149 (1992)]

Contracts for construction or repair work in the formal bid range must be awarded by the governing body. [G.S. 143-129(b)] The governing body may delegate to the manager or purchasing agent, or both, the authority to award purchase contracts in the formal range. [G.S. 143-129(a)]

J. Contract Execution; Performance and Payment Bonds

1. All contracts that are subject to the formal bidding requirements must be executed in writing. [G.S. 143-129(c)]
2. Where the sum of all contracts for a construction or repair project exceeds \$300,000, the successful bidder must provide performance and payment bonds for the full amount of each contract exceeding \$50,000. [G.S. 143-129(c); G.S. 44A-26] In place of bonds, the contractor may provide cash, certified checks, or government securities. [G.S. 143-129(c)]

Part III Informal Bidding Requirements [G.S. 143-131]

A. Coverage

The informal bidding requirements cover contracts for construction or repair work and contracts for the purchase or lease-purchase of apparatus, supplies, materials, or equipment involving the expenditure of \$30,000 or more, but less than the limits prescribed by the formal bidding requirements (\$500,000 for construction; \$90,000 for purchase). [G.S. 143-131(a)]

B. Procedures

Informal bids must be secured. There are no specific requirements for the form of bids. They may be obtained verbally, or by electronic or written submission. No advertisement is required. No minimum number of bids is required. Requirements for soliciting minority participation for building projects in the informal range are noted in Part IV. The unit must keep a record of all bids submitted, and this record is not subject to public inspection until the contract has been awarded. [G.S. 143-131]

C. Standard for Awarding the Contract

The award shall be made to the “lowest responsible bidder, or bidders, . . . taking into consideration quality, performance, and the time specified in the proposals for the performance of the contracts.” [G.S. 143-131] The term “responsible” has been interpreted to imply “skill, judgment and integrity necessary to the faithful performance of the contract, as well as sufficient financial resources and ability.” [Kinsey Contracting Co. v. City of Fayetteville, 106 N.C. App. 383, 385, 416 S.E.2d 607, 609, *disc. review denied*, 332 N.C. 345, 421 S.E.2d 149 (1992)]

Part IV Additional Requirements for Construction Contracts

As noted above, several of the requirements in the formal bidding statutes apply only to construction or repair contracts in the formal range. These include the requirement for bid, performance, and payment bonds; the three-bid requirement; and the requirement that contracts be awarded by the governing board (see Part II, sections D, F, I, and J, above). This part lists additional statutory requirements that apply only to construction or repair projects.

A. Building Construction Projects over \$300,000 [G.S. 143-128]

1. Construction bidding methods that may be used
 - a. Separate-prime bidding under G.S. 143-128(b)
 - b. Single-prime bidding under G.S. 143-128(d)
 - c. Dual bidding (separate- and single-prime) under G.S. 143-128(d1)
 - d. Construction management at risk under G.S. 143-128.1
 - e. Alternative method authorized by the State Building Commission under G.S. 143-135.26(9)
2. Minority business participation goals
 - a. A verifiable goal for participation is required for local projects; the state goal of 10 percent is to be used for projects of \$100,000 or more involving state appropriated or grant funds, unless a preexisting local goal is justified. [G.S. 143-128.2(a)]
 - b. Good faith efforts to encourage participation by minority businesses must be made by the public agency [G.S. 143-128.2(b), (e)] and by the bidders [G.S. 143-128.2(f)]. Failure of a bidder to comply with the requirements is “grounds for rejection of the bid.” [G.S. 143-128.2(c)]
 - c. “Minority business” is defined by statute and includes businesses owned by ethnic minorities, women, and socially and economically disadvantaged individuals. [G.S. 143-128.2(f)]
 - d. Agencies must comply with reporting requirements established by the State Department of Administration and must document good faith efforts made and participation obtained for each project. [G.S. 143-128.3]
3. Dispute resolution requirements
 - a. Dispute resolution procedures must be provided for all building construction projects, regardless of the dollar value (but the procedures may establish a minimum amount in controversy

of \$15,000). Local governments may adopt procedures established by the State Building Commission or may establish their own. Procedures must provide the option of using mediation and must be available for all parties involved in the project, including the architect, the contractors, and subcontractors at all levels. [G.S. 143-128(f1)]

B. Building Construction Projects Costing \$30,000 but Less Than \$500,000

1. Minority business participation efforts and reporting
 - a. Public agencies are required to solicit participation by minority business enterprises and to maintain a record of contractors solicited and efforts to recruit minority participation. Advertisement for bids is not required.
 - b. Agencies must comply with reporting requirements established by the State Department of Administration and must document efforts made and minority participation obtained for each project. [G.S. 143-131(b)]
2. Dispute resolution requirements apply (see section A, item 3, above).
3. Performance and payment bonds may apply if a contract in this dollar range is part of a project that exceeds \$300,000 (see Part II, section J, above).

C. Contractor Licensing

Contractors on construction or repair projects must comply with state contractor licensing requirements. The contract threshold for licensure of general contractors is \$30,000. [G.S. 87-1] Licenses are not required for work performed by the unit's own forces. Architects and engineers who prepare specifications for public projects are required to include information about licensure requirements in the invitation to bidders and the specifications. [G.S. 87-15]

D. Use and Selection of Design Professionals/Construction Managers at Risk

1. Use of design professionals [G.S. 133-1.1(a)]
 - a. Plans and specifications for public building construction or repair projects must be prepared by a registered architect or a registered engineer (or both, depending upon the requirements of the project) when the expenditure exceeds
 - i. \$300,000, for projects that do not include "major structural change in framing or foundation support systems;"

- ii. \$100,000, for the repair of public buildings “affecting life safety systems;”
 - iii. \$135,000, for projects that include “major structural change in framing or foundation support systems;” or
 - iv. \$135,000, “for the construction of, or additions to, public buildings . . .”
2. Selection of design professionals/construction managers at risk [G.S. 143-64.31]
- a. Requirements for architectural, engineering, surveying, and construction management at risk services must be “announced,” and providers must be selected based on “demonstrated competence and qualification . . . without regard to fee other than unit price services . . .” Good faith efforts must be used to notify minority firms of the opportunity to submit qualifications for consideration by the public entity. [G.S. 143-64.31]
 - b. Local governments may “in writing exempt particular projects” from the qualification-based selection requirement for
 - i. proposed projects where the estimated professional fee is less than \$30,000; or
 - ii. “[o]ther particular projects . . . in the sole discretion of the . . . unit of local government, stating the reasons therefore and the circumstances attendant thereto.” [G.S. 143-64.32]

E. Competitive Specifications Required [G.S. 133-3]

Specifications for materials to be used in public work shall specify performance and design characteristics. When that is impossible, brand name specifications may be used, but three or more examples of equivalent design must be listed and specifications must indicate that the examples are used to denote the standards required and are not restrictive. If three examples are not available, specifications must list as many as are available. Specifications may list one or more preferred brands in limited circumstances subject to requirements for justification and approval set forth in the statute. Substitutions shall be submitted to the designer for approval or disapproval, which must be made prior to the opening of bids.

**F. Plans Approved by State Department of Insurance
[G.S. 58-31-40]**

County, city, or school district plans and specifications for erection of a building comprising 20,000 square feet or more must be approved by the Department of Insurance as to the safety of the proposed building from fire. [G.S. 58-31-40(b)]

G. Use of Force Account Labor; Limitations [G.S. 143-135]

Formal bidding for construction or repair work as required in G.S. 143-129 does not apply to work undertaken by the local government

1. when the work is performed by “force account qualified labor on the permanent payroll of the agency . . .” *and*
2. when “either the total cost of the project, *including all direct and indirect costs of labor, services, materials, supplies and equipment*, does not exceed \$125,000, or the total cost of *labor* on the project does not exceed \$50,000.

Purchase of apparatus, supplies, materials, or equipment for use in force account work must comply with the normal bidding requirements. “Construction or repair work shall not be divided for the purposes of evading [this law].” [G.S. 143-135]

Part V Conflicts of Interest and Other Limitations

**A. Public Officers or Employees Benefiting from Contracts
[G.S. 14-234]**

1. State law prohibits public officers and employees from
 - a. deriving a direct benefit from contracts they are involved in making or administering [G.S. 14-234 (a)(1)];
 - b. attempting to influence any other person who is responsible for making or administering a contract from which the public officer or state employee derives a direct benefit [G.S. 14-234 (a)(2)]; or
 - c. soliciting or receiving any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency [G.S. 14-234(a)(3)].
2. A person derives a direct benefit if the person or his or her spouse (1) has more than a 10 percent interest in the entity that is a party

to the contract, (2) derives any income or commission *directly* from the contract, or (3) acquires property under the contract.

3. Exceptions include
 - a. contracts with banks and utilities [G.S. 14-234(b)(1)];
 - b. property conveyed under a court order in a condemnation proceeding [G.S. 14-234(b)(2)];
 - c. employment contracts with the spouse of a public officer [G.S. 14-234(b)(3)];
 - d. remuneration for goods or services provided under public assistance programs, subject to certain conditions [G.S. 14-234(b)(4)];
 - e. contracts with public officers—including city, county, and school governing board members and appointed members of specified boards—in any municipality with a population of no more than 15,000 and any county or school jurisdiction with no incorporated municipality of more than 15,000. Contracts may not exceed, within a twelve-month period, \$12,500 for medically related goods or services and \$25,000 for other goods and services. Additional procedures and reporting requirements apply to contracts under this exception. [G.S. 14-234(d1)] Contracts that are subject to the bidding requirements (formal or informal) are not eligible for this exception and are therefore prohibited even if the other elements of this exception are present. [G.S. 14-234(d2)]

A person who benefits from a contract under any of these exceptions is prohibited from participating in or voting on the contract. [G.S. 14-234(b1); G.S. 14-234(d1)(2)] Violation of G.S. 14-234 is a Class 1 misdemeanor. [G.S. 14-234(e)]

4. Other statutes contain prohibitions affecting particular types of local government. See G.S. 131E-14.2 (public hospitals); G.S. 131E-21 (public hospital authorities); G.S. 160A-415 (city building inspectors); G.S. 153A-355 (county building inspectors); G.S. 160A-511 (members and employees of redevelopment commissions).

B. Prohibited Gifts and Favors [G.S. 133-32]

It is unlawful for a contractor, subcontractor, or supplier who, with respect to any public agency, (1) has a current contract; (2) has performed under a contract within the past year; or (3) anticipates bidding on a future contract, to make gifts or favors to any officer or employee of the agency who has responsibility for (1) preparing plans, specifications, or

estimates; (2) awarding or administering contracts; or (3) inspecting or supervising construction. It is also unlawful for the officer or employee to accept such a gift or favor. [G.S. 133-32(a)] Violation of the statute is a Class 1 misdemeanor. [G.S. 133-32(b)]

Exemptions include “honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets . . . and customary gifts or favors between employees or officers and their friends and relatives.” The statute does not prevent contractors from making donations to support activities at meetings of professional organizations, nor does it prohibit the participation in those activities by governmental officials, if the activities are available to all those attending the meeting. [G.S. 133-32(d)]

C. Restraint of Trade; Bid-Rigging [G.S. Chapter 133, Article 3]

It is a Class H felony for a person to engage in bid-rigging or other forms of restraint of trade relating to either a contract or a subcontract with a public agency that involves construction or repair work or the supplying of equipment, materials, goods, or services. [G.S. 133-24; 133-25] North Carolina courts may suspend from bidding, impose fines on, and revoke licenses of those convicted in this state. [G.S. 133-25] Local governments may temporarily suspend from bidding on their work or requirements any person who is charged with restraint of trade, and they may suspend those convicted in other states or in federal courts for up to three years. [G.S. 133-27]

Local governments may require noncollusion affidavits from those who bid on their requirements [G.S. 133-30], and they may make information about their cost estimates and prospective bidders confidential prior to the receipt of bids. [G.S. 133-33]

D. Misuse of Confidential Information [G.S. 14-234.1]

State law makes it unlawful for any state or local government officer or employee “in contemplation of official action by himself or by [the] governmental unit . . . , or in reliance on [confidential information received] in his official capacity,” to acquire a pecuniary benefit or to aid another person to do so. [G.S. 14-234.1(a)] Violation of the statute is a Class 1 misdemeanor. [G.S. 14-234.1(b)]

E. Private Use of State’s Purchasing System

Use of the state’s purchasing system to secure goods or services for private and personal use is a Class 1 misdemeanor. [G.S. 143-58.1(a)] Exceptions apply for certain established policies and procedures that benefit a group or groups of people. [G.S. 143-58.1(b)]

Part VI Related Statutory Provisions

A. Accounting and Budgeting

The Local Government Budget and Fiscal Control Act [G.S. 159-7 through 159-42] imposes a number of requirements that must be observed in the contracting process. All contracts (including purchase orders) that obligate budgeted funds must be preaudited under G.S. 159-28a, and the finance officer must certify in writing that the obligation is supported by an appropriation and that sufficient funds remain unencumbered to meet the obligation evidenced by the contract.

B. Installment-Purchase Contracts

Cities, counties, and other specified local governments have broad authority to finance contracts over time and to create a security interest in the property purchased, subject to limitations established in the statute. [G.S. 160A-20] Local schools have authority to finance purchases (by installment- or lease-purchase) only for automobiles, school buses, mobile classroom units, photocopiers, food service equipment, and computer hardware, software, and related support services. [G.S. 115C-528] Community colleges have installment- and lease-purchase authority for the purchase of equipment. [G.S. 115D-58.15] Additional approval and procedural requirements and limitations apply to these installment- or lease-purchase contracts for local school units and community colleges.

C. Continuing Contracts

Contracts that extend beyond the current budget year are authorized for municipalities [G.S. 160A-17]; for counties [G.S. 153A-13]; and, implicitly, for local school units [G.S. 115C-432(b)(4)].

D. Sales and Use Tax Refunds [G.S. 105-164.14(c)]

A refund of sales and use taxes paid by municipalities, counties, local school units, and a number of other local government entities is authorized by G.S. 105-164.14(c).

E. Disposal of Property

1. Basic procedures. G.S. 160A, Article 12, sets forth requirements and procedures for disposal of property by municipalities. Separate statutes make these procedures applicable to other local governments, including counties [G.S. 153A-176]; local school

units [G.S. 115C-518(a)]; community colleges [G.S. 115D-15]; sanitary districts [G.S. 130A-55(20)]; local ABC boards [G.S. 18B-701(12)]; and regional solid waste management authorities [G.S. 153A-427(b)].

Procedures contained in these requirements apply based upon the type of property (real or personal) and the value of the property at the time of sale. [G.S. 160A-266] Real property must always be sold using a competitive procedure. Competitive procedures include sealed bid [G.S. 160A-268]; negotiated offer and upset bid [G.S. 160A-269]; and public auction [G.S. 160A-270]. Personal property valued at less than \$30,000 may be sold by private sale. [G.S. 160A-267] The governing board may delegate the authority to dispose of personal property valued at less than \$30,000 and may authorize the use of informal procedures designed to obtain fair market value for this property. [G.S. 160A-266(c)]

Local governments have greater discretion when disposing of real or personal property with significant historical, cultural, artistic, or architectural characteristics. [G.S. 160A-266(b)] Special, more flexible procedures are available to cities when they sell real property in community development areas. [G.S. 160A-458(4)] Cities and counties may convey or lease property acquired for economic development purposes using procedures set forth in G.S. 159-7.1(d). Cities and counties may also convey property by private sale to nonprofit organizations to which they have the authority to appropriate funds. [G.S. 160A-279]

2. Trade-in with purchase. [G.S. 143-129.7] A local government may dispose of property by including in the specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for a bidder to purchase as a “trade-in” other specified personal property, and the unit may award a contract for the purchase and sale to the best overall bid. Property may be sold under this provision without separately complying with the otherwise applicable procedures of G.S. 160A, Article 12.
3. Exchange, sale, and lease of property between governments [G.S. 160A-274]. State law authorizes governmental units to provide for the joint use of property, to sell or lease property to each other, or to exchange it with each other on a negotiated basis. [G.S. 160A-274] County governments have the right of first refusal when local boards of education dispose of real property. [G.S. 115C-518(a)]

4. Sale of seized and unclaimed property. [G.S. Chapter 15, Article 2] Unclaimed property and bicycles must be sold at public auction after notice and a period during which owners may claim the property. The proceeds of these sales must be deposited in the county or city school fund. Procedures for disposal of confiscated weapons are set forth in G.S. 14-269.1.

