

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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HOUSE BILL 1518  
Committee Substitute Favorable 7/24/02  
Senate Appropriations/Base Budget Committee Substitute Adopted 9/30/02

Short Title: DOT Contracts.

(Public)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE INFORMAL BID LIMIT FOR DEPARTMENT OF  
TRANSPORTATION PROJECTS, TO MODIFY THE CURRENT  
AUTHORIZATION OF THE DEPARTMENT OF TRANSPORTATION TO  
AWARD DESIGN-BUILD CONTRACTS, AND CONCERNING CONTRACT  
REQUIREMENTS FOR IRON USED IN DOT PROJECTS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 136-28.1 reads as rewritten:

**"§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

(a) All contracts over ~~eight hundred thousand dollars (\$800,000)~~ one million two hundred thousand dollars (\$1,200,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. The Department of Transportation shall use only the contract provisions provided in the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act.

(b) In those cases in which the amount of work to be let to contract for highway construction, maintenance, or repair is ~~eight hundred thousand dollars (\$800,000)~~ one million two hundred thousand dollars (\$1,200,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be

1 awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a  
2 record of all bids submitted, which record shall be subject to public inspection at any  
3 time after the bids are opened.

4 (c) The construction, maintenance, and repair of ferryboats and all other marine  
5 floating equipment and the construction and repair of all types of docks by the  
6 Department of Transportation shall be deemed highway construction, maintenance, or  
7 repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143,  
8 "The Executive Budget Act." In cases of a written determination by the Secretary of  
9 Transportation that the requirement for compatibility does not make public advertising  
10 feasible for the repair of ferryboats, the public advertising as well as the soliciting of  
11 informal bids may be waived.

12 (d) The construction, maintenance, and repair of the highway rest area buildings  
13 and facilities, weight stations and the Department of Transportation's participation in the  
14 construction of welcome center buildings shall be deemed highway construction,  
15 maintenance, or repair for the purpose of G.S. 136-28.1 and G.S. 136-28.3 and Article 1  
16 of Chapter 143 of the General Statutes, "The Executive Budget Act."

17 (e) The Department of Transportation may enter into contracts for construction,  
18 maintenance, or repair without complying with the bidding requirements of this section  
19 upon a determination of the Secretary of Transportation or the State Highway  
20 Administrator that an emergency exists and that it is not feasible or not in the public  
21 interest for the Department of Transportation to comply with the bidding requirements.

22 (f) Notwithstanding any other provision of law, the Department of  
23 Transportation may solicit proposals under rules and regulations adopted by the  
24 Department of Transportation for all contracts for professional engineering services and  
25 other kinds of professional or specialized services necessary in connection with  
26 highway construction, maintenance, or repair. In order to promote engineering and  
27 design quality and ensure maximum competition by professional firms of all sizes, the  
28 Department may establish fiscal guidelines and limitations necessary to promote  
29 cost-efficiencies in overhead, salary, and expense reimbursement rates. The right to  
30 reject any and all proposals is reserved to the Board of Transportation.

31 (g) The Department of Transportation may enter into contracts for research and  
32 development with educational institutions and nonprofit organizations without soliciting  
33 bids or proposals.

34 (h) The Department of Transportation may enter into contracts for applied  
35 research and experimental work without soliciting bids or proposals; provided, however,  
36 that if the research or work is for the purpose of testing equipment, materials, or  
37 supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply.  
38 The Department of Transportation is encouraged to solicit proposals when contracts are  
39 entered into with private firms when it is in the public interest to do so.

40 (i) The Department of Transportation may negotiate and enter into contracts with  
41 public utility companies for the lease, purchase, installation, and maintenance of  
42 generators for electricity for its ferry repair facilities.

43 ~~(j) Notwithstanding any other provision of law, the Board of Transportation may~~  
44 ~~award up to three contracts annually for construction of transportation projects on a~~

1 design-build basis. These contracts may be awarded after a determination by the  
2 Department of Transportation that delivery of the projects must be expedited and that it  
3 is not in the public interest to comply with normal design and construction contracting  
4 procedures. Prior to the award of a design-build contract, the Secretary of  
5 Transportation shall report to the Joint Legislative Transportation Oversight Committee  
6 and to the Joint Legislative Commission on Governmental Operations on the nature and  
7 scope of the project and the reasons an award on a design-build basis will best serve the  
8 public interest."

9 **SECTION 2.** G.S. 136-28.11 reads as rewritten:

10 **"§ 136-28.11. Design-build construction of transportation projects.**

11 (a) Design-Build Contracts Authorized. – Notwithstanding any other provision of  
12 law, the Board of Transportation may award up to three contracts annually for 10  
13 projects in fiscal year 2002-2003, and 25 projects in fiscal years 2003-2004, 2004-2005,  
14 2005-2006, 2006-2007, 2007-2008, and 2008-2009 for construction of transportation  
15 projects on a design-build basis.

16 (b) Design-Build Contract Amounts; Basis of Award. – The Department may  
17 award contracts for the construction of transportation projects on a design-build basis of  
18 any amount. The Department shall endeavor to ensure design-build projects are awarded  
19 on a basis to maximize participation, competition, and cost benefit. On any project for  
20 which the Department proposes to use the design-build contracting method, the  
21 Department shall attempt to structure and size the contracts for the project in order that  
22 contracting firms and engineering firms based in North Carolina have a fair and equal  
23 opportunity to compete for the contracts.

24 (c) Disadvantaged Business Participation Goals. – The provisions of G.S.  
25 136-28.4 and 49 C.F.R. Part 26 shall apply to the award of contracts under this section.

26 (d) Findings Required. – These contracts may be awarded after a determination  
27 by the Department of Transportation that delivery of the projects must be expedited and  
28 that it is not in the public interest to comply with normal design and construction  
29 contracting procedures.

30 (e) Reporting Requirements. – The Department, for any proposed design-build  
31 project projected to have a construction cost in excess of one hundred million dollars  
32 (\$100,000,000), shall present to the Joint Legislative Transportation Oversight  
33 Committee information on the scope and nature of the project and the reasons the  
34 development of the project on a design-build basis will best serve the public interest.  
35 Prior to the award of a design-build contract, the Secretary of Transportation shall report  
36 to the Joint Legislative Transportation Oversight Committee and to the Joint Legislative  
37 Commission on Governmental Operations on the nature and scope of the project and the  
38 reasons an award on a design-build basis will best serve the public interest."

39 **SECTION 3.** G.S. 136-28.7 reads as rewritten:

40 **"§ 136-28.7. Contract requirements relating to construction materials.**

41 (a) The Department of Transportation shall require that every contract for  
42 construction or repair necessary to carry out the provisions of this Chapter shall contain  
43 a provision requiring that all steel and cement iron permanently incorporated into the  
44 construction or repair project be produced in the United States.

1       (b) Subsection (a) shall not apply whenever the Department of Transportation  
2 determines in writing that this provision required by subsection (a) cannot be complied  
3 with because such products are not produced in the United States in sufficient quantities  
4 to meet the requirements of such contracts or cannot be complied with because the cost  
5 of such products produced in the United States unreasonably exceeds other such  
6 products.

7       (c) The Department of Transportation shall apply this section consistent with the  
8 requirements in 23 C.F.R. § 635.410(b)(4).

9       (d) The Department of Transportation shall not authorize, provide for, or make  
10 payments to any person pursuant to any contract containing the provision required by  
11 subsection (a) unless such person has fully complied with such provision."

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