

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE DRS65018-LM-38 (02/10)**

Short Title: Catawba County/Local Bid Preference.

(Local)

Sponsors: Senator Allran.

Referred to:

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CATAWBA COUNTY TO GIVE PREFERENCE TO A LOCAL  
BIDDER WHEN PURCHASING GOODS OR SERVICES OR ENTERING INTO  
CONTRACTS FOR THE CONSTRUCTION OR REPAIR OF BUILDINGS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 143-128 reads as rewritten:

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

...

(b) Separate-prime contracts. – When the State, county, municipality, or other public body uses the separate-prime contract system, it shall accept bids for each subdivision of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars (\$25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost. ~~The~~ Except as authorized in G.S. 143-129(b1), the contracts shall be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county, municipality, or other public body and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, "separate contractor" means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public entity to erect, construct, alter or repair any building or buildings, or parts of any building or buildings.

...

(d) Single-prime contracts. – All bidders in a single-prime project shall identify on their bid the contractors they have selected for the subdivisions or branches of work for:

- (1) Heating, ventilating, and air conditioning;
- (2) Plumbing;
- (3) Electrical; and



1 (4) General.

2 ~~The Except as authorized in G.S. 143-129(b1), the~~ contract shall be awarded to the lowest  
3 responsible, responsive bidder, taking into consideration quality, performance, the time  
4 specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. A  
5 contractor whose bid is accepted shall not substitute any person as subcontractor in the place of  
6 the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later  
7 determined by the contractor to be nonresponsible or nonresponsive or the listed subcontractor  
8 refuses to enter into a contract for the complete performance of the bid work, or (ii) with the  
9 approval of the awarding authority for good cause shown by the contractor. The terms,  
10 conditions, and requirements of each contract between the contractor and a subcontractor  
11 performing work under a subdivision or branch of work listed in this subsection shall  
12 incorporate by reference the terms, conditions, and requirements of the contract between the  
13 contractor and the State, county, municipality, or other public body.

14 When contracts are awarded pursuant to this section, the public body shall make available  
15 to subcontractors the dispute resolution process as provided for in subsection (f1) of this  
16 section.

17 (d1) Dual bidding. – The State, a county, municipality, or other public entity may accept  
18 bids to erect, construct, alter, or repair a building under both the single-prime and  
19 separate-prime contracting systems ~~and and, except as authorized in G.S. 143-129(b1),~~ shall  
20 award the contract to the lowest responsible, responsive bidder under the single-prime system  
21 or to the lowest responsible, responsive bidder under the separate-prime system, taking into  
22 consideration quality, performance, compliance with G.S. 143-128.2, and time specified in the  
23 bids to perform the contract. In determining the system under which the contract will be  
24 awarded to the lowest responsible, responsive bidder, the public entity may consider cost of  
25 construction oversight, time for completion, and other factors it considers appropriate. The bids  
26 received as separate-prime bids shall be received, but not opened, one hour prior to the deadline  
27 for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to  
28 the general contractor under the single-prime system shall not exceed the amount bid, if any,  
29 for the same work by that subcontractor to the public entity under the separate-prime system.  
30 The provisions of subsection (b) of this section shall apply to separate-prime contracts awarded  
31 pursuant to this section and the provisions of subsection (d) of this section shall apply to  
32 single-prime contracts awarded pursuant to this section.

33 ...."

34 **SECTION 2.** G.S. 143-128.2 reads as rewritten:

35 "**§ 143-128.2. Minority business participation goals.**

36 ...

37 (c) Each bidder, which shall mean first-tier subcontractor for construction manager at  
38 risk projects for purposes of this subsection, on a project bid under any of the methods  
39 authorized under G.S. 143-128(a1) shall identify on its bid the minority businesses that it will  
40 use on the project and an affidavit listing the good faith efforts it has made pursuant to  
41 subsection (f) of this section and the total dollar value of the bid that will be performed by the  
42 minority businesses. A contractor, including a first-tier subcontractor on a construction  
43 manager at risk project, that performs all of the work under a contract with its own workforce  
44 may submit an affidavit to that effect in lieu of the affidavit otherwise required under this  
45 subsection. The apparent lowest responsible, responsive bidder or the lowest responsible,  
46 responsive bidder given preference under G.S. 143-129(b1) shall also file the following:

47 ...

48 (h) The State, counties, municipalities, and all other public bodies shall award public  
49 building contracts, including those awarded under G.S. 143-128.1, 143-129, and 143-131,  
50 without regard to race, religion, color, creed, national origin, sex, age, or handicapping  
51 condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require

1 contractors or awarding authorities to award contracts or subcontracts to or to make purchases  
2 of materials or equipment from minority-business contractors or minority-business  
3 subcontractors who do not submit the lowest responsible, responsive bid or bids. However, the  
4 provisions of G.S. 143-129(b1) shall apply to minority-business contractors or  
5 minority-business subcontractors under this subsection.

6 ...."

7 **SECTION 3.** G.S. 143-129 reads as rewritten:

8 "**§ 143-129. Procedure for letting of public contracts.**

9 ...

10 (b) Advertisement and Letting of Contracts. – Where the contract is to be let by a board  
11 or governing body of the State government or of a State institution, proposals shall be invited  
12 by advertisement in a newspaper having general circulation in the State of North Carolina.  
13 Where the contract is to be let by a political subdivision of the State, proposals shall be invited  
14 by advertisement in a newspaper having general circulation in the political subdivision or by  
15 electronic means, or both. A decision to advertise solely by electronic means, whether for  
16 particular contracts or generally for all contracts that are subject to this Article, shall be  
17 approved by the governing board of the political subdivision of the State at a regular meeting of  
18 the board.

19 The advertisements for bidders required by this section shall appear at a time where at least  
20 seven full days shall lapse between the date on which the notice appears and the date of the  
21 opening of bids. The advertisement shall: (i) state the time and place where plans and  
22 specifications of proposed work or a complete description of the apparatus, supplies, materials,  
23 or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii)  
24 reserve to the board or governing body the right to reject any or all proposals.

25 Proposals may be rejected for any reason determined by the board or governing body to be  
26 in the best interest of the unit. However, the proposal shall not be rejected for the purpose of  
27 evading the provisions of this Article. No board or governing body of the State or political  
28 subdivision thereof may assume responsibility for construction or purchase contracts, or  
29 guarantee the payments of labor or materials therefor except under provisions of this Article.

30 All proposals shall be opened in public and the board or governing body ~~shall~~ shall, except  
31 as authorized in subsection (b1) of this section, award the contract to the lowest  
32 ~~responsible~~ responsible, responsive bidder or bidders, taking into consideration quality,  
33 performance and the time specified in the proposals for the performance of the contract.

34 In the event the lowest ~~responsible~~ responsible, responsive bids are in excess of the funds  
35 available for the project or purchase, the responsible board or governing body is authorized to  
36 enter into negotiations with the lowest responsible bidder above mentioned, making reasonable  
37 changes in the plans and specifications as may be necessary to bring the contract price within  
38 the funds available, and may award a contract to such bidder upon recommendation of the  
39 Department of Administration in the case of the State government or of a State institution or  
40 agency, or upon recommendation of the responsible commission, council or board in the case  
41 of a subdivision of the State, if such bidder will agree to perform the work or provide the  
42 apparatus, supplies, materials, or equipment at the negotiated price within the funds available  
43 therefor. If a contract cannot be let under the above conditions, the board or governing body is  
44 authorized to readvertise, as herein provided, after having made such changes in plans and  
45 specifications as may be necessary to bring the cost of the project or purchase within the funds  
46 available therefor. The procedure above specified may be repeated if necessary in order to  
47 secure an acceptable contract within the funds available therefor.

48 No proposal for construction or repair work may be considered or accepted by said board or  
49 governing body unless at the time of its filing the same shall be accompanied by a deposit with  
50 said board or governing body of cash, or a cashier's check, or a certified check on some bank or  
51 trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not

1 less than five percent (5%) of the proposal. In lieu of making the cash deposit as above  
2 provided, such bidder may file a bid bond executed by a corporate surety licensed under the  
3 laws of North Carolina to execute such bonds, conditioned that the surety will upon demand  
4 forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract  
5 in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to  
6 execute the contract within 10 days after the award or fails to give satisfactory surety as  
7 required herein.

8 Bids shall be sealed and the opening of an envelope or package with knowledge that it  
9 contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the  
10 permission of the bidder prior to the time set for opening in the invitation to bid shall constitute  
11 a Class 1 misdemeanor.

12 (b1) Price-Match Preference. – The governing body of a county may give preference to  
13 the lowest responsible, responsive resident bidder if both of the following conditions are met:  
14 (i) the bid of the lowest responsible, responsive resident bidder is no greater than five percent  
15 (5%) or ten thousand dollars (\$10,000), whichever is less, of the bid of the lowest responsible,  
16 responsive nonresident bidder; and (ii) the lowest responsible, responsive resident bidder  
17 matches the bid of the lowest responsible, responsive nonresident bidder.

18 For purposes of this subsection, the following definitions apply:

19 (1) Nonresident bidder. – A bidder that is not a resident bidder as defined in  
20 subdivision (2) of this subsection.

21 (2) Resident bidder. – A person or corporation who (i) is legally authorized to  
22 engage in the sale of goods or services or to perform construction or repair  
23 work in this State and (ii) certifies in the bid submitted that the person or  
24 corporation has, for at least six months prior to the announcement of the  
25 solicitation of bids, maintained a physical place of business within the  
26 corporate boundaries of the political subdivision with at least one employee  
27 for whom the person or corporation has paid payroll taxes in this State.

28 (b2) Negotiations With Price-Match Bidder. – The provisions of subsection (b) of this  
29 section that authorize the governing body of a political subdivision to enter into negotiations  
30 with the lowest responsible, responsive bidder if the lowest responsible, responsive bids are in  
31 excess of the funds available for the project or purchase shall also apply to a bidder under  
32 subsection (b1) of this section.

33 ...."

34 **SECTION 4.** G.S. 143-131 reads as rewritten:

35 **"§ 143-131. When counties, cities, towns and other subdivisions may let contracts on**  
36 **informal bids.**

37 (a) All contracts for construction or repair work or for the purchase of apparatus,  
38 supplies, materials, or equipment, involving the expenditure of public money in the amount of  
39 thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129,  
40 made by any officer, department, board, local school administrative unit, or commission of any  
41 county, city, town, or other subdivision of this State shall be made after informal bids have  
42 been secured. All-Except as authorized in G.S. 143-129(b1), all such contracts shall be awarded  
43 to the lowest responsible, responsive bidder, taking into consideration quality, performance,  
44 and the time specified in the bids for the performance of the contract. It shall be the duty of any  
45 officer, department, board, local school administrative unit, or commission entering into such  
46 contract to keep a record of all bids submitted, and such record shall not be subject to public  
47 inspection until the contract has been awarded.

48 ...."

49 **SECTION 5.** G.S. 143-132 reads as rewritten:

50 **"§ 143-132. Minimum number of bids for public contracts.**

1 (a) No contract to which G.S. 143-129 applies for construction or repairs shall be  
2 awarded by any board or governing body of the State, or any subdivision thereof, unless at least  
3 three competitive bids have been received from reputable and qualified contractors regularly  
4 engaged in their respective lines of endeavor; however, this section shall not apply to contracts  
5 which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for  
6 bids as required by G.S. 143-129, not as many as three competitive bids have been received  
7 from reputable and qualified contractors regularly engaged in their respective lines of endeavor,  
8 said board or governing body of the State agency or of a county, city, town or other subdivision  
9 of the State shall again advertise for bids; and if as a result of such second advertisement, not as  
10 many as three competitive bids from reputable and qualified contractors are received, such  
11 board or governing body may then let the contract to the lowest responsible bidder submitting a  
12 bid for such project, even though only one bid is received. However, in letting contracts under  
13 this section, the governing body of a county may give preference to the lowest responsible,  
14 responsive resident bidder as authorized in G.S. 143-129(b1).

15 ...."

16 **SECTION 6.** This act applies to Catawba County only.

17 **SECTION 7.** This act is effective when it becomes law and applies to bids received  
18 on and after that date.