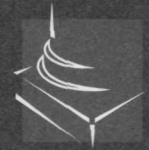


LOCAL GOVERNMENT LAW



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CHANGES IN LOCAL GOVERNMENT PURCHASING AND PROPERTY DISPOSAL LAWS EFFECTIVE JULY 1, 1997

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The General Assembly has enacted significant changes in the laws governing local government purchasing and property disposal that will become effective July 1, 1997. This bulletin summarizes those changes, which are contained in Chapter 174 of the 1997 Session Laws (Senate Bill 891). Other legislation affecting public purchasing and contracting that may be enacted this session will be summarized in the chapter on public purchasing and contracting in *North Carolina Legislation 1997*, to be released after the legislative session ends.

Thresholds raised. The new law raises the formal bid threshold for purchase of apparatus, supplies, materials, and equipment in G.S. 143-129 from \$20,000 to \$30,000. In addition, it raises the threshold in G.S. 160A-266 for use of the "private sale" procedure for disposing of personal property from \$10,000 to \$30,000. Finally, the law raises the ceiling below which informal procedures may be used for disposing of property under G.S. 160A-266(c) from \$500 to \$5,000, and simplifies the reporting requirements for property sold under this authority.

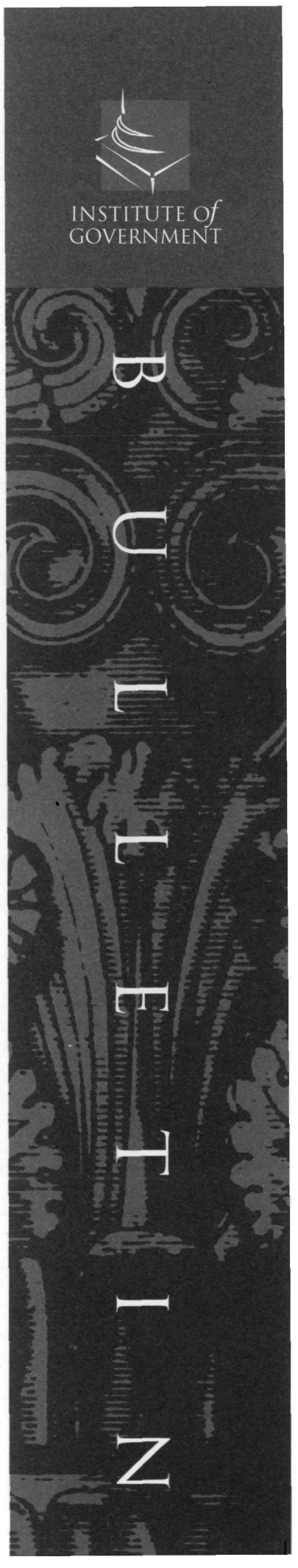
Delegation authorized. A new paragraph added to G.S. 143-129(a), the formal bidding statute, authorizes the governing board to delegate authority to the manager or chief purchasing official to (1) award contracts, (2) reject bids, (3) readvertise to receive bids, and (4) waive bid bond or deposit requirements, and performance and payment bond requirements, where such waiver is otherwise authorized by law. Previously, the statute required that the governing board take all of these actions. Under the new law, the governing board can adopt a blanket resolution to effect this delegation for all purchase contracts, or for particular contracts on a case-by-case basis, and can restrict the delegation by dollar amount or any other condition it deems appropriate or necessary. Note that the authorization to delegate these functions *does not apply to construction or repair contracts*, but only to purchase contracts.

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The new authority to delegate responsibility for awarding contracts creates a question of interpretation under the formal bidding statute. G.S. 143-129(b) requires that bids be opened in public and "recorded in the minutes of the board or governing body." When the manager or purchasing official awards contracts administratively under a delegation of authority, the bids will still be opened in public, but they will not be presented to the governing board for award. It is unclear whether the requirement that bids be recorded in the minutes still applies when the board takes no action on the contract. The usefulness of the delegation would be lost if the statute were read to require that the bids be reported to the board and recorded in the minutes *before* the manager or purchasing official could make an award. A better reading of the statute is that the manager or purchasing official should submit a report to the governing board after the award is made, summarizing the bids received and contracts awarded, and this report must be included in the minutes of the meeting at which it is received. This approach would provide a permanent record of the procurement and would avoid any claim that the statutory requirements have not been met. At a minimum, the individual to whom awarding authority has been delegated should maintain a record of the award, including the bids received and contract awarded, and these records will be available to the public under the public records law.

Purchase from established contracts ("piggybacking") authorized. A new paragraph added to G.S. 143-129 allows local governments to purchase without a separate bidding procedure from any contractor that has, within the past 12 months, contracted to furnish the item to (1) the federal government or any federal agency, (2) the state of North Carolina or any agency or political subdivision of the state, or (3) any other state or agency or political subdivision of that state, if the contractor is willing to extend the same or more favorable price and other terms to the local government. The new law specifies that the prior contract must be one that was entered into following a public, formal bid process "substantially similar" to the one contained in G.S. 143-129. So, for example, if the Town of Cary has obtained a good price after formally bidding roll-out containers, and the successful bidder is willing to extend that price to the Town of Apex, Apex could purchase without conducting a separate bidding procedure.

Similarly, the new law provides authority for purchasing from federal contractors, and from state contract vendors, whether or not the unit has opted to become a party to the contract in advance or otherwise participate in the manner specified by the Department

of Administration, Division of Purchase and Contract. The new statute specifies, however, that Department of Administration rules still apply if local governments choose to participate in state contracts in the manner specified by the Department, rather than purchasing directly from the state contract vendor under the authority provided by the new law.

Several restrictions apply to purchases made under the piggybacking authority. First, the governing board must approve all such purchases. The provision authorizing the board to delegate the authority to award contracts *does not apply* to purchases made under this authority. Second, the board must award the contract at a regularly scheduled meeting and notice of the intent to award the contract without bidding must be published no less than 10 days prior to the meeting at which the contract is awarded. Finally, purchases may be made under this authority only when the responsible officials determine it to be in the best interest of the unit. This suggests that some effort should be made to determine that the price and terms offered by the supplier are as good as or better than those that could be obtained through bidding.

"Sole source" purchases exempted. Until the enactment of this new law, the only statutory authority for "sole source" purchases in G.S. 143-129 was for purchases by public hospitals. The new law rewrites G.S. 143-129(f) to create an exemption from formal bidding for purchase contracts "when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration." Several restrictions apply to purchases made under this new exemption.

First, as with the piggybacking exemption discussed above, contracts made under the sole source exemption must be approved by the governing board, notwithstanding any existing delegation of authority to the manager or chief purchasing official. The new statute also requires that the local government keep a record of purchases made under this exception, which should probably include a written explanation or justification for use of the exception.

Trade-ins with purchase specifically authorized. Until now, local governments have not had clear authority to trade in surplus equipment when purchasing new equipment in a single transaction. The new law creates a new section, G.S. 143-129.7, to specifically allow trade-ins as part of a formal bidding procedure, to exempt local governments from the property disposal requirements contained in G.S. Chapter 160A, Article 12 when property is traded in, and to specifically authorize the trade-in allowance to be considered in awarding a contract to the lowest responsible bidder.

Waiver of bid bonds for all purchase contracts authorized. Prior law authorized the governing board to waive the bid bond or bid deposit requirement for all purchase contracts estimated to cost under \$100,000. The new law removes the dollar limit, authorizing the waiver for all purchase contracts. In addition, as noted above, the waiver authority can be delegated to the manager or purchasing official. The waiver can be made on a case-by-case basis, or it could be made generally applicable to all purchase contracts, leaving it to the board or other official to require bid security in specific cases where it is deemed appropriate. Specifications should clearly indicate whether bid security will be required.

Informal bids made confidential until contract is awarded. Under the prior law, informal bids received under G.S. 143-131 became public records as soon as they were received or recorded. The new law specifies that these bids are not subject to public inspection until the contract is awarded.

Some technical and clarifying changes made. The new law specifies that opening a package or envelope containing a sealed bid without the permission of the bidder prior to the time set for bid opening is a misdemeanor only if the person *has knowledge* that it contains a bid. This eliminates potential criminal

liability for erroneous opening of an unmarked or improperly marked package or envelope that contains a bid. The law also clarifies that all bids received under G.S. 143-129 must be sealed. Finally, a small change in wording has been made in G.S. 160A-266 to clarify that the private sale procedure is not generally available for the sale of real property.

The act also contains a provision that raises any dollar thresholds contained in local acts to the levels established in the new law.

These changes in the purchasing laws were sought by the North Carolina League of Municipalities, at the request of Carolinas Association of Governmental Purchasing and the North Carolina Government Finance Officers Association. They have the potential to make public purchasing more efficient and to reduce delays and costs in acquiring goods necessary to carry out local government activities. It remains essential, however, that local government officials balance the need for efficiency with the need to spend public money wisely and fairly. Public purchasing officials should carefully consider all options when taking advantage of newly authorized exemptions from bidding to make sure that adequate competition is considered, and that goods are obtained at reasonable prices.

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