

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

(a) All contracts over five million dollars (\$5,000,000) that the Department of Transportation may let for construction, maintenance, operations, 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. § 635.109 for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. For those federal aid projects, the Department of Transportation shall use only the contract provisions for differing site conditions, suspensions of work ordered by the engineer, or significant changes in the character of the work developed by the North Carolina Department of Transportation and approved by the Board of Transportation.

(b) For contracts let to carry out the provisions of this Chapter in which the amount of work to be let to contract for transportation infrastructure construction or repair is five million dollars (\$5,000,000) or less, and for transportation infrastructure maintenance, excluding resurfacing, that is five million dollars (\$5,000,000) per year 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 awarded to the lowest responsible bidder. Where public advertising is used for a contract subject to this subsection, the Highway Division shall post the advertisement at least 14 calendar days prior to the letting date of the contract. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened. The Highway Divisions shall publish the results of a bidding process no later than three business days after the contract bid upon is awarded.

(b1) Notwithstanding any provision of G.S. 136-28.5 to the contrary, and except as prohibited by other State or federal law, the Department of Transportation shall, at the time and place bids solicited for a contract subject to this section are opened, make public all cost estimates prepared by the Department for the purpose of comparing the bids.

(c) The construction, maintenance, and repair of rail equipment, ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Chapter 143C of the General Statutes, the State Budget Act. In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of rail equipment or ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

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

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the Secretary's designee that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements. For purposes of this section, the term "emergency" includes any of the following that is unanticipated, results in detours or deters the free movement of goods and services, and requires an estimated expenditure of ten million dollars (\$10,000,000) or less in construction, maintenance, or repair costs:

- (1) A bridge closure.
- (2) A road closure.
- (3) A weight restriction.

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

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

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. However, the Department of Transportation shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all proposed contracts to be awarded by the Department of Transportation under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Department of Transportation shall not award a cost plus percentage of cost agreement or contract for any purpose. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

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

(j) Repealed by Session Laws 2002-151, s. 1, effective October 9, 2002.

(k) The Department of Transportation may accept bids under this section by electronic means and may issue rules governing the acceptance of these bids. For purposes of this subsection "electronic means" is defined as means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(l) The Department of Transportation may enter into contracts for public-private participation in providing litter removal from State right-of-way. Selection of firms to perform this work shall be made using a best value procurement process and shall be without regard to other provisions of law regarding the Adopt-A-Highway Program administered by the Department. Acknowledgement of sponsors may be indicated by appropriate signs that shall be owned by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue guidelines, rules, and policies necessary to administer this subsection.

(m) The Department of Transportation may enter into contracts for public-private participation at State-owned rest areas. Selection of firms shall be made using a best value procurement process. Recognition of sponsors in the program may be indicated by appropriate acknowledgment for any services provided. The size, style, specifications, and content of the

acknowledgment shall be determined in the sole discretion of the Department. Revenues generated pursuant to a contract initiated under this subsection shall be shared with Department of Transportation at a predetermined percentage or rate, and shall be earmarked by the Department to maintain the State owned rest areas from which the revenues are generated. The Department of Transportation may issue guidelines, rules, and policies necessary to administer this subsection.

(n) The Department of Transportation may specify a brand name or specific manufacturer of construction materials in order to promote system compatibility or synchronization; long-term maintenance savings or efficiencies; research, testing, or experimental projects; product evaluation; or when it is impossible or impractical to specify the required performance and design characteristics for such materials. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3; 1995, c. 167, s. 1; 1997-196, s. 1; 1999-25, ss. 2, 3; 2001-424, ss. 27.9(a), 27.9(b); 2002-151, s. 1; 2006-68, s. 1; 2006-203, s. 75; 2007-439, ss. 3, 4; 2009-266, s. 1; 2009-475, s. 12; 2010-194, s. 19; 2011-145, s. 28.3; 2011-326, s. 15(t); 2013-340, s. 2.1; 2016-94, ss. 35.5(a), 35.6(a); 2018-5, s. 34.15; 2022-68, s. 12; 2024-15, s. 7(a).)