

CHAPTER 30 - STATE CONSTRUCTION OFFICE

SUBCHAPTER 30G - STATE BUILDING COMMISSION PROCEDURES AND CRITERIA FOR AUTHORIZATION TO USE AN ALTERNATIVE CONTRACTING METHOD

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 30G .0101 AUTHORITY

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by law to perform a multiplicity of duties with regard to the State's capital facilities development and management program. In the specific area of State capital improvement project requirements for building contracts, the SBC is empowered by G.S. 143-135.26 to adopt procedures which allows a State agency or institution, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128. The use of any other alternative method shall be approved in advance by the SBC for any single project.

*History Note: Authority G.S. 143-135.26;
Temporary Adoption Eff. July 1, 1996;
Eff. August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

01 NCAC 30G .0102 POLICY

Generally, it is the policy of the SBC that the public's interest is typically best served by the letting of public construction contracts pursuant to the regular statutory procedures, particularly the provisions of G.S. 143-128. Nevertheless, in addition to those situations when a project cannot be completed using the standard methods, the SBC will recognize certain extraordinary circumstances that are appropriate, in the public's interest, and will justify an exemption from the methods of contracting authorized under G.S. 143-128. Such extraordinary circumstances must be created by some unusual or unforeseen occurrence or situation and includes those situations set forth in 01 NCAC 30G .0105(b); any request made for an exemption as a result of such extraordinary circumstance must demonstrate to the SBC that requisite justification exists to obtain the exemption.

*History Note: Authority G.S. 143-135.26(9)(b);
Temporary Adoption Eff. July 1, 1996;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2018.*

01 NCAC 30G .0103 DEFINITIONS

For the purposes of the rules in this Section, the following definitions shall apply:

- (1) "Alternative contracting method" includes but is not limited to:
 - (a) the single-prime contracting system, not otherwise authorized under G.S. 143-128,
 - (b) the design-build delivery system, or
 - (c) the construction management delivery system.
- (2) "Chairman" means the Chairman of the State Building Commission.
- (3) "Construction management delivery system" means the alternative contracting method where the public owner contracts for a fee with a single person, but not the project general contractor, who administers contracts with separate contractors for the construction of the project and who is responsible as agent to the public owner for the coordination and management of the project, but where the public owner remains liable to the separate contractors.
- (4) "Design-build delivery system" means that the public owner contracts for a fee with a single person for the design, management and construction of a project.
- (5) "Director" means the Director of the State Construction Office.
- (6) "Exemption" means the grant of authorization by the SBC for the use of a method of contracting not otherwise authorized under G.S. 143-128.
- (7) "Person" means a person, firm or corporation.

- (8) "Project" means the building or facility for which an exemption is requested by the public owner, and upon which the work will be performed.
- (9) "Public owner" means a state agency or institution, a local government unit, or any other entity subject to the provisions of G.S. 143-129.
- (10) "SBC" means the State Building Commission.
- (11) "Work" means the erection, repair, construction, renovation or alteration to be performed upon a building or facility.

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01 NCAC 30G .0104 GENERAL PROCEDURES

(a) Application Form - The SBC shall establish a form of application to be used by public owners requesting an exemption, which shall upon request be provided to public owners. A completed application shall contain all of the information necessary to enable the SBC to determine the appropriateness and merits of approving an exemption.

(b) Rules for Application - The SBC, upon request, shall provide public owners with a copy of the rules it adopts under the authority of G.S. 143-135.26(9).

(c) Review of Application:

- (1) The public owner shall submit the application to the State Construction Office, Attention: Director, Department of Administration, New Education Building, Suite 450, 301 North Wilmington Street, Raleigh, North Carolina 27601-2827. The Director shall review the application upon its receipt. If the Director determines that the application is not complete, he shall return the application to the public owner along with a written notice of the reasons for the return. Despite the return of an application, a public owner may request in writing to the Director that the SBC consider the application as originally submitted, and the notice of return to the public owner shall so state this option. An application shall be considered abandoned if it is returned pursuant to this section, and no further action is taken by the public owner to satisfy the reasons for its return.
- (2) Completed applications shall be considered within 60 days of receipt by the Director of the completed application. Once scheduled for consideration by the SBC, the public owner shall be given notice of the date, time and location of the SBC meeting at which the application shall be considered.
- (3) The SBC shall only accept written applications. After due consideration of these applications, the SBC shall take one of the following actions:
 - (A) Delay consideration of the application;
 - (B) Deny the application; or
 - (C) Approve the application.

Within five days of the SBC's action upon the application, notice of the same shall be sent to the public owner, and to the Director. Upon a delay of consideration pursuant to Paragraph (a) of this Rule, the SBC shall immediately request from the public owner or other person further information required in order to make a determination, or provide the public owner with notice of the reason for the delay.

(d) Approval of an Application - Approval of an application authorizes the public owner to utilize only the alternative contracting method as proposed by the public owner and no other method of contracting. Approval of an application shall be effective for a period to be determined by the SBC but not exceeding 12 months. Standards used by the SBC in determining the effective length of an approval shall include, but not be limited to, the request of the public owner, the experience of the public owner, the SBC and the Director with the approved method, the recommendation of the Director, and the nature of the project. The SBC may extend the effective time period upon good cause shown by the public owner for no more than an additional 12 months. Good cause must be shown by serious reasons including, but not limited to, unforeseen acts or events that delay the project, acts of war or terrorism, unavoidable casualties or other causes beyond the public owner's control. The extension of an effective time period shall run from the last day of the prior effective time period. The effective time period shall run from the date the SBC approves the application.

(e) Conflicts of Interest - A member of the SBC is not qualified to vote upon any matter or influence any other member's vote upon any matter in which he has a conflict of interest. A conflict of interest, as related to members of

the SBC having an interest in contracts authorized by the SBC, is defined in G.S. 143-135.28, and that definition applies to conflicts of SBC members having an interest in projects for which alternative contracting methods are authorized by the SBC.

(f) Public Records - The Director shall maintain a list of applications which states the name of the public owner, the name of the project, the project amount, a brief description of the category for which the exemption is sought, and a record of the SBC's action. Applications, and a record of the SBC's action upon those applications, shall be available for public inspection.

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01 NCAC 30G .0105 CRITERIA FOR CONSIDERATION

(a) General Considerations - Applications shall be subject to the following general considerations which the SBC shall utilize in reviewing all applications:

- (1) Whether the public owner has adequately justified that the requested exemption is applicable to the project.
- (2) Whether under the circumstances presented the project can be reasonably completed under the methods authorized under G.S. 143-128, and if not, whether the public owner has adequately demonstrated that the proposed alternative contracting method is necessary.
- (3) Whether the exemption sought is appropriate and in the public's interest.
- (4) Whether the public owner has been responsible in the pre-planning stages of the project.

(b) Criteria for Exemptions - The following criteria describe circumstances where the SBC recognizes that a project may not be able to be reasonably completed under the methods authorized by G.S. 143-128, and where the use of an alternative contracting system, not otherwise authorized by G.S. 143-128, may be appropriate and in the public's interest:

- (1) Special Technology or Equipment - The project involves the erection or construction of special or unique technology or equipment whose vendor requires that its services be purchased in conjunction with the technology or equipment; or the vendor guarantees the technology or equipment only if its services are purchased in conjunction with the technology or equipment.
- (2) Unusual Complexity - The project involves one or more of the following conditions:
 - (A) very specialized or complex type of construction involving unconventional construction techniques or materials, or unusual working conditions;
 - (B) major renovations or an addition to an existing facility requiring continuous coordination of occupied programs or operations necessary for the protection of public health or safety; or
 - (C) extensive repairs, renovations or an addition to a major building or facility listed either in the North Carolina or Federal Register of Historic Properties.
- (3) Accelerated Schedule - A fast track schedule is required due to actual or impending judicial intervention by means of a State or Federal court order, or to address actual or impending regulatory mandates or citation for noncompliance.

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