



North Carolina Department of Administration

Michael F. Easley, Governor

Gwynn T. Swinson, Secretary

MEMORANDUM

TO: Public Entities & Local Units of Government
FROM: Gwynn T. Swinson
DATE: January 28, 2002
RE: Notification of Changes to Construction Law for Public Entities (SB-914)

As you may be aware, many changes were made to the public construction law during the 2001 legislative session. The Department of Administration will have oversight responsibilities for much of this legislation. To ensure that those affected by the legislation are made aware and informed, I have attempted to provide you with a cursory overview of SB 914 and the implications it may have for your agency or department.

The attached information reflects highlights of SB 914. However, I strongly suggest that you review and discuss the bill with the appropriate individuals within your organization. You may access the bill in its entirety at www.ncleg.net; click on "Quick Search" and enter "S914". It is imperative that all public entities become familiar with and understand the new legislation.

The Department of Administration, in collaboration with the Institute of Government and University of North Carolina-General Administration, will provide training on SB 914 on February 20, 2002. The training will be conducted via web cast and teleconferencing at several community college campuses throughout the State. Some of the topics we anticipate covering include an overview of changes made by SB 914, construction methods, dispute resolution procedures, reporting requirements, and minority business enterprise provisions. For additional information on the upcoming training, please visit our website at: www.state.nc.us/doa.

I believe you will find the training to be helpful, informative and accessible. If the need arises, we may consider conducting follow-up training in the future. During the next several months, you will probably interact with the Office for Historically Underutilized Businesses and State Construction Office regarding SB 914. I want to assure you that my staff and I are here to assist you in any way possible. We look forward to working with you as we "strive to build a better One North Carolina".

GTS/spw

Mailing Address:
1301 Mail Service Center
Raleigh, NC 27699-1301

Telephone: (919) 807-2425
Fax (919) 733-9571
State Courier #51-01-00
e-mail: Gwynn.Swinson@ncmail.net

Location Address:
116 West Jones Street
Raleigh, North Carolina



SENATE BILL 914 HIGHLIGHTS

- SB 914 ratified by the General Assembly on December 6, 2001 makes major changes to the construction laws governing public entities. This legislation is applicable to building projects for which bids are solicited and/or advertised on or after January 1, 2002. The intent of the bill is to allow more flexibility in bidding construction contracts and to improve the good faith effort process for selection of minority contractors. Public entities, which include state agencies, local units of government, community colleges, state universities, public school systems, hospital and airport authorities are subject to this legislation.
- Five (5) construction methods are authorized: Separate/Multi Prime Contracting, Single Prime Contracting, Dual Bidding (bids received under both single prime and multi-prime), Construction Management-at-Risk and Alternative Contracting Methods.
- Informal bidding contracts are increased from \$100,000 to \$300,000. The formal bidding process applies to projects over \$300,000.
- Public entities shall also solicit minority participation for informal contracts and maintain records on minority recruitment and selection. This information shall be reported to the Office for Historically Underutilized Businesses upon completion of the project.
- Bonding threshold was also raised from \$100,000 to \$300,000 – performance and payment bonds are required on projects over \$300,000.
- All public entities must develop Dispute Resolution procedures and make them available to all parties involved on a project (architects, contractors and subcontractors). The State Building Commission will develop procedures, which you may use if you wish. Public entities shall be responsible for 1/3 of the dispute resolution proceeding costs when multiple parties are involved in the dispute.
- Minority participation goals of 10% apply to private and public projects in which state grant funds or appropriations are received, and the total construction project is \$100,000 or more (regardless of amount of state funds involved). This also applies to private facilities built for the intended purpose of sale or lease to state or local public entities.
 - Local units of government and public entities must adopt participation goals; public entities that adopted goals prior to December 1, 2001 may still use those goals.
 - Public entities must develop outreach plans to identify minority contractors and bidders.
 - Bidders must file an affidavit with the public entity to which it is bidding documenting the good faith efforts taken for recruitment and selection of minority participation on a project. Contractors should be aware that failure to file the affidavit or any required documentation is grounds for rejection of the bid.
 - Contractors will receive points for their good faith efforts under a new point system.
 - Public entities that are notified by the Secretary of Administration of their failure to comply with the minority goals program must develop a compliance plan to address deficiencies identified by the Secretary. For more serious compliance problems, the Secretary may also prevent the public entity from bidding projects for up to one year.
 - A contractor who has been determined by a court or appropriate administrative agency to have unlawfully discriminated against another business based on race, gender, or other unlawful grounds is prohibited from bidding on State construction contracts for 2 years.
 - All public records created under the new minority business participation law (GS 143-128.2) must be retained for at least 3 years after the project is completed.
 - SB 914 requires, beginning on April 1, 2003, public entities to report to the Secretary of Administration on the construction methods used during the previous year.
 - SB 914 requires public entities to report to the Secretary their minority participation goals and related information on minority business utilization. Most public entities will report this information semi-annually. The universities will report quarterly.