

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

1

SENATE BILL 743*

Short Title: UNC Construction Specifications.

(Public)

Sponsors: Senator Rand.

Referred to: Commerce.

March 22, 2005

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW THE CAMPUSES OF THE UNIVERSITY OF NORTH
2 CAROLINA TO ESTABLISH CAMPUS STANDARDS FOR BUILDING
3 COMPONENTS AND TO SPECIFY THE COMPONENTS BY BRAND WHEN
4 WRITING CONSTRUCTION SPECIFICATIONS.
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 133-3 reads as rewritten:

8 **"§ 133-3. Specifications to carry competitive items; substitution of materials.**

9 ~~All~~(a) Except as provided in subsection (b) of this section, all architects, engineers,
10 designers, or draftsmen, when providing design services, or writing specifications,
11 directly or indirectly, for materials to be used in any city, county or State work, shall
12 specify in their plans the required performance and design characteristics of such
13 materials. However, when it is impossible or impractical to specify the required
14 performance and design characteristics for such materials, then the architect, engineer,
15 designer or draftsman may use a brand name specification so long as they cite three or
16 more examples of items of equal design or equivalent design, which would establish an
17 acceptable range for items of equal or equivalent design. The specifications shall state
18 clearly that the cited examples are used only to denote the quality standard of product
19 desired and that they do not restrict bidders to a specific brand, make, manufacturer or
20 specific name; that they are used only to set forth and convey to bidders the general
21 style, type, character and quality of product desired; and that equivalent products will be
22 acceptable. Where it is impossible to specify performance and design characteristics for
23 such materials and impossible to cite three or more items due to the fact that there are
24 not that many items of similar or equivalent design in competition, then as many items
25 as are available shall be cited. On all city, county or State works, the maximum
26 interchangeability and compatibility of cited items shall be required. The brand of
27 product used on a city, county or State work shall not limit competitive bidding on
28 future works. Specifications may list one or more preferred brands as an alternate to the
29 base bid in limited circumstances. Specifications containing a preferred brand alternate

1 under this section must identify the performance standards that support the preference.
2 Performance standards for the preference must be approved in advance by the owner in
3 an open meeting. Any alternate approved by the owner shall be approved only where (i)
4 the preferred alternate will provide cost savings, maintain or improve the functioning of
5 any process or system affected by the preferred item or items, or both, and (ii) a
6 justification identifying these criteria is made available in writing to the public.
7 Substitution of materials, items, or equipment of equal or equivalent design shall be
8 submitted to the architect or engineer for approval or disapproval; such approval or
9 disapproval shall be made by the architect or engineer prior to the opening of bids. The
10 purpose of this statute is to mandate and encourage free and open competition on public
11 contracts.

12 (b) Notwithstanding subsection (a) of this section, a constituent institution of The
13 University of North Carolina may establish construction specifications for building
14 components and thereafter, without repeating the process, may specify the components
15 by brand in construction bid documents when doing so will further efficiency in the
16 operation, maintenance or upkeep of buildings. Prior to specifying a construction
17 component by brand name pursuant to this subsection, the constituent institution shall
18 conduct a public process in which it (i) specifies in writing the performance and design
19 characteristics required of the construction component, (ii) documents its justification
20 for invoking this subsection, and (iii) after complying with (i) and (ii) of this subsection,
21 provides all suppliers an opportunity to propose one or more products that will meet the
22 performance and design characteristics specified. The constituent institution shall make
23 its selection based on initial and life cycle costs as well as quality and suitability for the
24 designated use."

25 **SECTION 2.** This act is effective when it becomes law.