

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**HOUSE BILL 1776**

Short Title: UNC Construction Specifications.

(Public)

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Sponsors: Representative McComas.

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Referred to: Rules, Calendar, and Operations of the House.

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May 31, 2004

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF  
2 NORTH CAROLINA TO ESTABLISH CAMPUS STANDARDS FOR BUILDING  
3 COMPONENTS BY CONDUCTING PUBLIC EVALUATION AND SELECTION  
4 PROCESSES AND THEREAFTER SPECIFYING THE COMPONENTS BY  
5 BRAND WHEN WRITING CONSTRUCTION SPECIFICATIONS.  
6

7 The General Assembly of North Carolina enacts:

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

9 **"§ 133-3. Specifications to carry competitive items; substitution of materials.**

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

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

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

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