

1 preparation and coordination of bid packages, scheduling, cost control,
2 value engineering, evaluation, preconstruction services, and
3 construction administration.

4 (2) "Construction manager" means a person, corporation, or entity that (i)
5 provides construction management services for a project throughout
6 the preconstruction and construction phases and (ii) who is licensed as
7 a general contractor if those services are provided at risk.

8 (b) Design services for a project must be performed by a licensed architect or
9 engineer. The public owner shall contract directly with the architect or engineer.

10 (c) The construction manager shall (i) contract directly with the public entity for
11 all construction and (ii) guarantee the cost of the project. The construction manager
12 shall publicly advertise, as prescribed for the appropriate public entity in G.S. 143-129,
13 prequalify subcontractors and receive bids from the prequalified subcontractors for the
14 performance of all major elements of the construction work. A construction manager
15 may perform a portion of the work itself only if (i) bidding produces no responsible,
16 responsive bidder for that portion of the work, the lowest responsible bidder will not
17 execute a contract for the bid portion of the work, or the subcontractor defaults and a
18 prequalified replacement cannot be obtained in a timely manner and (ii) the public
19 entity approves of the construction manager's performance of the work. All bids shall
20 be opened publicly. The construction manager shall act as the fiduciary of the public
21 entity in opening and awarding bids. The construction manager shall award the contract
22 to the lowest responsible bidder, taking into consideration quality, performance, the
23 time specified in the bids for performance of the contract, the cost of construction
24 oversight, time for completion, and other factors deemed appropriate by the public
25 entity and advertised as part of the bid solicitation. The public entity shall open and
26 review all bids with the construction manager. The public entity may require the
27 selection of a different subcontractor for any portion of the work, based on the lowest
28 responsible bid as determined herein, provided that the construction manager is
29 compensated for any additional cost incurred.

30 When contracts are awarded pursuant to this section, the public entity shall make
31 available to subcontractors the dispute resolution process adopted by the State Building
32 Commission pursuant to G.S. 143-135.26(12) or another dispute resolution process
33 adopted by the public body, including mediation, to resolve project disputes.

34 A construction manager must make a good faith effort to recruit and select minority
35 businesses, as defined in G.S. 143-128(f), for participation in the total value of contracts
36 awarded under this section as follows:

37 (1) For State projects, the minority participation goal is twelve and one-
38 half percent (12.5%).

39 (2) For projects of other public owners, the minority participation goal
40 shall be the verifiable percentage goal adopted by the public owner in
41 accordance with G.S. 143-128(f).

1 The public entity shall adopt written guidelines specifying the actions that a
2 construction manager must take to ensure a good faith effort in the recruitment and
3 selection of minority businesses for participation in contracts awarded by the
4 construction manager. The construction manager shall file an affidavit with the public
5 owner at the completion of the subcontractor's bidding attesting that the construction
6 manager has made the good faith effort required under this section.

7 (d) Notwithstanding G.S. 143-64.32 or G.S.143-64.34, a public entity may not
8 waive the requirements of subsection (c) of this section."

9 **SECTION 3.** G.S. 143-128 reads as rewritten:

10 **"§ 143-128. Requirements for certain building contracts.**

11 (a) Preparation of specifications. – Every officer, board, department, commission
12 or commissions charged with responsibility of preparation of specifications or awarding
13 or entering into contracts for the erection, construction, alteration or repair of any
14 buildings for the State, or for any county, municipality, or other public body, must have
15 prepared separate specifications for each of the following subdivisions or branches of
16 work to be performed:

- 17 (1) Heating, ventilating, air conditioning and accessories (separately or
18 combined into one conductive system) and/or refrigeration for cold
19 storage (where the cold storage cooling load is 15 tons or more of
20 refrigeration), and all work kindred thereto.
- 21 (2) Plumbing and gas fittings and accessories, and all work kindred
22 thereto.
- 23 (3) Electrical wiring and installations, and all work kindred thereto.
- 24 (4) General work relating to the erection, construction, alteration, or repair
25 of any building above referred to, which work is not included in the
26 above-listed three subdivisions or branches.

27 All such specifications must be so drawn as to permit separate and independent
28 bidding upon each of the subdivisions or branches of work enumerated ~~above~~ in this
29 subsection for contracts that will be bid under the separate-prime system or dual bidding
30 system. The above enumeration of subdivisions or branches of work shall not be
31 construed to prevent any officer, board, department, commission or commissions from
32 preparing additional separate specifications for any other category of work.

33 (a1) Construction methods. – The State, a county, municipality, or other public
34 body shall award contracts for the erection, construction, alteration, or repair of
35 buildings pursuant to any of the following methods:

- 36 (1) Separate-prime bidding.
- 37 (2) Single-prime bidding.
- 38 (3) Dual bidding pursuant to subsection (d1) of this section.
- 39 (4) Construction management services contracts pursuant to G.S. 143-
40 64.31A.
- 41 (5) Alternative contracting methods authorized pursuant to G.S. 143-
42 135.26(9).

1 (b) ~~Building projects over five hundred thousand dollars (\$500,000); separate~~
2 ~~prime contracts, under the separate-prime contract system. – Except as provided in~~
3 ~~subsection (d) of this section, when the entire cost of the erection, construction,~~
4 ~~alteration, or repair of a building exceeds five hundred thousand dollars (\$500,000),~~
5 When the State, county, municipality, or other public body uses the separate-prime
6 contract system, it shall accept bids for each subdivision or branch of work for which
7 specifications are required to be prepared under subsection (a) of this section and shall
8 award the respective work specified separately to responsible and reliable persons, firms
9 or corporations regularly engaged in their respective lines of work. When the estimated
10 cost of work to be performed in any single subdivision or branch for which separate
11 bids are required by this subsection is less than twenty-five thousand dollars (\$25,000),
12 the same may be included in the contract for one of the other subdivisions or branches
13 of the work, irrespective of total project cost.

14 Bids may also be accepted from and awards made to separate contractors for other
15 categories of work.

16 Each separate contractor shall be directly liable to the State of North Carolina, or to
17 ~~the county or municipality, county, municipality, or other public body~~ and to the other
18 separate contractors for the full performance of all duties and obligations due
19 respectively under the terms of the separate contracts and in accordance with the plans
20 and specifications, which shall specifically set forth the duties and obligations of each
21 separate contractor. For the purpose of this section, "separate contractor" means any
22 person, firm or corporation who shall enter into a contract with the State, or with any
23 county, municipality, or other public body, for the erection, construction, alteration or
24 repair of any building or buildings, or parts thereof.

25 (c) ~~Building projects five hundred thousand dollars (\$500,000) or less. — When~~
26 ~~the entire cost of the erection, construction, alteration, or repair of a building is five~~
27 ~~hundred thousand dollars (\$500,000) or less, the State, county, municipality, or other~~
28 ~~public body may accept bids under the single prime contract system, the separate prime~~
29 ~~contract system, or both. The provisions of subsection (b) of this section apply to the~~
30 ~~use of the separate prime contract system under this subsection. The provisions of~~
31 ~~subsection (d) of this section apply to the use of the single prime contract system under~~
32 ~~this section, except that bidding in the alternative between the single prime and separate~~
33 ~~prime systems is not required. Contracts bid in the alternative between the single prime~~
34 ~~and separate prime systems under this subsection must be awarded to the lowest~~
35 ~~responsible bidder or bidders, as provided in subsection (d) of this section.~~

36 (d) ~~Single-prime and alternative contracts. – The State, a county, municipality, or~~
37 ~~other public body may accept bids under the single prime contract system or a~~
38 ~~contracting method approved by the State Building Commission under G.S. 143-135.26.~~

39 ~~If the State, county, municipality, or other public body accepts bids under the single-~~
40 ~~prime contract system, it must also seek bids for the project under the separate prime~~
41 ~~contract system, except as otherwise authorized under G.S. 143-135.26, and award the~~
42 ~~contract to the lowest responsible bidder or bidders for the total project, taking into~~

1 ~~consideration quality, performance and the time specified in the bids for the~~
2 ~~performance of the contract.~~

3 When bids are accepted under the single-prime contract system all bidders must
4 identify on their bid the contractors they have selected for the subdivisions or branches
5 of work for:

- 6 (1) Heating, ventilating, and air conditioning;
- 7 (2) Plumbing;
- 8 (3) Electrical; and
- 9 (4) General.

10 No contractor whose bid is accepted shall substitute any person as subcontractor in
11 the place of the subcontractor listed in the original bid, except (i) if the listed
12 subcontractor's bid is later determined by the contractor to be nonresponsive or the
13 listed subcontractor refuses to enter into a contract for the complete performance of the
14 bid work, or (ii) with the approval of the awarding authority for good cause shown by
15 the contractor. The terms, conditions, and requirements of each contract between the
16 contractor and a subcontractor performing work under a subdivision or branch of work
17 listed in this subsection shall be substantially the same as incorporate by reference the
18 terms, conditions, and requirements of the contract between the contractor and the State,
19 county, municipality, or other public body.

20 The requirements of this subsection governing the identification of bidders,
21 substitution of contractors, and the terms and conditions of subcontractor's contracts
22 apply to all single-prime bidding and single-prime contracts, ~~regardless of whether~~
23 ~~bidding in the alternative between the single prime and separate prime systems has been~~
24 ~~waived by the State Building Commission including those bids in the alternative~~
25 ~~pursuant to subsection (d1) of this section. When contracts are awarded pursuant to this~~
26 ~~section, the public body shall make available to subcontractors the dispute resolution~~
27 ~~process adopted by the State Building Commission pursuant to G.S. 143-135.26(12) or~~
28 ~~another dispute resolution process adopted by the public body, including mediation, to~~
29 ~~resolve project disputes.~~

30 ~~(d1) Local school administrative units; building projects over five hundred~~
31 ~~thousand dollars (\$500,000). Dual bidding. – When the entire cost of the building~~
32 ~~project is more than five hundred thousand dollars (\$500,000), a local school~~
33 ~~administrative unit shall seek bids as provided in subsection (b) or (d) of this section or~~
34 ~~this subsection. The local school administrative unit The State, a county, municipality,~~
35 ~~or other public entity may accept bids for the erection, construction, alteration, or repair~~
36 ~~of a building under both the single-prime and separate-prime contracting systems and~~
37 ~~shall award the contract to the lowest responsible bidder under the single-prime system~~
38 ~~or to the lowest responsible bidder under the separate-prime system, taking into~~
39 ~~consideration quality, performance, and time specified in the bids for performance of~~
40 ~~the contract. In determining the system under which the contract will be awarded to the~~
41 ~~lowest responsible bidder, the local school administrative unit public entity may~~
42 ~~consider cost of construction oversight, time for completion, and other factors it deems~~

1 appropriate. The ~~local school administrative unit~~ public entity shall not open any bid
2 solicited under subsection (d) of this section unless the unit receives at least three
3 competitive bids from reputable and qualified contractors regularly engaged in their
4 respective lines of ~~endeavor and unless the unit receives a bid from at least one general~~
5 ~~contractor under the separate prime system.~~ endeavor. The bids received as
6 separate-prime bids shall be submitted ~~three hours~~ one hour prior to the deadline for the
7 submission of single-prime bids. The amount of a bid submitted by a subcontractor to
8 the general contractor under the single-prime system shall not exceed the amount bid, if
9 any, for the same work by that subcontractor to the ~~local school administrative unit~~
10 public entity under the separate-prime system. Each single-prime bid that identifies the
11 contractors selected to perform the three major subdivisions or branches of work
12 described in subsection (d) of this section and that lists the contractors' respective bid
13 prices for those branches of work shall constitute a single competitive bid, and each full
14 set of separate-prime bids for all of the branches of work described in subsection (d) of
15 this section shall constitute a single competitive bid. If after advertisement as required
16 by G.S. 143-129, the ~~local school administrative unit~~ public entity has not received the
17 minimum number of competitive bids as required by this subsection, the ~~unit~~ public
18 entity shall again advertise for bids. If the required minimum number of bids is not
19 received as a result of the second advertisement, the ~~unit~~ public entity may let the
20 contract to the lowest responsible bidder that submitted a bid for the project, even
21 though the ~~unit~~ public entity received only one bid. A contractor must provide an
22 affidavit to the ~~local school administrative unit~~ public entity that it has made the good
23 faith effort required pursuant to ~~G.S. 143-128(f)~~, subsection (f) of this section and
24 failure to file the affidavit that demonstrates that the contractor made the required good
25 faith effort is grounds for rejection of the bid. All provisions of ~~Article 8 of Chapter 143~~
26 ~~of the General Statutes~~ this Article that are not inconsistent with this subsection or other
27 applicable provisions of the law shall apply to ~~local school administrative units~~ public
28 entities subject to this section. The provisions of subsection (b) of this section apply to
29 separate-prime contracts awarded pursuant to this section.

30 (e) Project expediter; scheduling; public body to resolve project disputes. – The
31 State, county, municipality, or other public body may, if specified in the bid documents,
32 provide for assignment of responsibility for expediting the work on ~~the a project~~ under
33 the separate-prime system to a single responsible and reliable person, firm or
34 corporation, which may be a prime contractor. In executing this responsibility, the
35 designated project expediter may recommend to the State, county, municipality, or other
36 public body whether payment to a contractor should be approved. The project expediter,
37 if required by the contract documents, shall be responsible for the preparation of the
38 project schedule and shall allow all contractors and subcontractors performing any of
39 the branches of work listed in subsection (d) of this section equal input into the
40 preparation of the initial schedule. Whenever separate contracts are awarded and
41 separate contractors engaged for a project pursuant to this section, the public body may
42 provide in the contract documents for resolution of project disputes through alternative

1 dispute resolution processes such as ~~mediation or arbitration~~mediation, arbitration, or
2 the dispute resolution process adopted by the State Building Commission.

3 (f) Minority goals. – The State shall have a verifiable ~~ten percent (10%)~~twelve
4 and one-half percent (12.5%) goal for participation by minority businesses in the total
5 value of work for each building project. Each city, county, or other public body shall
6 adopt, after a notice and public hearing, an appropriate verifiable percentage goal for
7 participation by minority businesses in the total value of work for each building project.

8 As used in this subsection:

9 (1) The term "minority-business" means a business:

- 10 a. In which at least fifty-one percent (51%) is owned by one or
11 more minority persons, or in the case of a corporation, in which
12 at least fifty-one percent (51%) of the stock is owned by one or
13 more minority persons; and
14 b. Of which the management and daily business operations are
15 controlled by one or more of the minority persons who own it.

16 (2) The term "minority person" means a person who is a citizen or lawful
17 permanent resident of the United States and who is:

- 18 a. Black, that is, a person having origins in any of the black racial
19 groups in Africa;
20 b. Hispanic, that is, a person of Spanish or Portuguese culture with
21 origins in Mexico, South or Central America, or the Caribbean
22 Islands, regardless of race;
23 c. Asian American, that is, a person having origins in any of the
24 original peoples of the Far East, Southeast Asia and Asia, the
25 Indian subcontinent, the Pacific Islands;
26 d. American Indian or Alaskan Native, that is, a person having
27 origins in any of the original peoples of North America; or
28 e. Female.

29 (3) The term "verifiable goal" means:

- 30 a. For purposes of the separate prime contract system, that the
31 awarding authority has adopted written guidelines specifying
32 the actions that will be taken to ensure a good faith effort in the
33 recruitment and selection of minority businesses for
34 participation in contracts awarded under this section.
35 b. For purposes of the single-prime contract system, that the
36 awarding authority has adopted written guidelines specifying
37 the actions that the prime contractor must take to ensure a good
38 faith effort in the recruitment and selection of minority
39 businesses for participation in contracts awarded under this
40 section; the required actions must be documented in writing by
41 the contractor to the appropriate awarding authority.

- 1 c. For purposes of an alternative contracting system authorized by
2 the State Building Commission under G.S. 143-135.26(9), that
3 the awarding authority has adopted written guidelines
4 specifying the action to be taken to ensure a good faith effort in
5 the recruitment and selection of minority businesses for
6 participation in contracts awarded under this section.

7 The State, counties, municipalities, and all other public bodies shall award public
8 building contracts without regard to race, religion, color, creed, national origin, sex, age,
9 or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be
10 construed to require contractors or awarding authorities to award contracts or
11 subcontracts to or to make purchases of materials or equipment from minority-business
12 contractors or minority-business subcontractors who do not submit the lowest
13 responsible bid or bids.

14 A contractor must provide an affidavit to the awarding authority that it has made the
15 good faith effort required pursuant to this subsection. Failure to file the affidavit that
16 demonstrates that the contractor made the required good faith effort is grounds for
17 rejection of the bid or proposal.

18 (g) Exceptions. – This section shall not apply to:

- 19 (1) The purchase and erection of prefabricated or relocatable buildings or
20 portions thereof, except that portion of the work which must be
21 performed at the construction site.
22 (2) The erection, construction, alteration, or repair of a building when the
23 cost thereof is ~~one hundred thousand dollars (\$100,000) or less~~ three
24 hundred thousand dollars (\$300,000) or less, provided that subsection
25 (f) of this section shall apply to the erection, construction, alteration, or
26 repair of a building when the cost thereof is one hundred thousand
27 dollars (\$100,000) or more."

28 **SECTION 4.** G.S. 143-129(a), as amended by S.L. 2001-328, reads as
29 rewritten:

30 "(a) Bidding Required. – No construction or repair work requiring the estimated
31 expenditure of public money in an amount equal to or more than ~~one hundred thousand~~
32 ~~dollars (\$100,000)~~ three hundred thousand dollars (\$300,000) or purchase of apparatus,
33 supplies, materials, or equipment requiring an estimated expenditure of public money in
34 an amount equal to or more than ~~fifty thousand dollars (\$50,000)~~ ninety thousand dollars
35 (\$90,000) may be performed, nor may any contract be awarded therefor, by any board
36 or governing body of the State, or of any institution of the State government, or of any
37 political subdivision of the State, unless the provisions of this section are complied with.

38 For purchases of apparatus, supplies, materials, or equipment, the governing body of
39 any political subdivision of the State may, subject to any restriction as to dollar amount,
40 or other conditions that the governing body elects to impose, delegate to the manager or
41 the chief purchasing official, or both, the authority to award contracts, reject bids, or
42 readvertise to receive bids on behalf of the unit. Any person to whom authority is

1 delegated under this subsection shall comply with the requirements of this Article that
2 would otherwise apply to the governing body."

3 **SECTION 5.** G.S. 143-129(e), as amended by S.L. 2001-328, is amended by
4 adding a new subdivision to read:

5 "(11) Contracts executed pursuant to Article 3D of Chapter 143 of the
6 General Statutes."

7 **SECTION 6.** G.S. 133-1.1(a) reads as rewritten:

8 "(a) In the interest of public health, safety and economy, every officer, board,
9 department, or commission charged with the duty of approving plans and specifications
10 or awarding or entering into contracts involving the expenditure of public funds in
11 excess of:

- 12 (1) ~~One Three~~ hundred thousand dollars ~~(\$100,000)~~(\$300,000) for the
13 repair of public buildings where such repair does not include major
14 structural change in framing or foundation support systems,
15 (2) ~~Forty five thousand dollars (\$45,000)~~One hundred thirty-five thousand
16 dollars (\$135,000) for the repair of public buildings where such repair
17 includes major structural change in framing or foundation support
18 systems, or
19 (3) ~~Forty five thousand dollars (\$45,000)~~One hundred thirty-five thousand
20 dollars (\$135,000) for the construction of, or additions to, public
21 buildings or State-owned and operated utilities,

22 shall require that such plans and specifications be prepared by a registered architect, in
23 accordance with the provisions of Chapter 83A of the General Statutes, or by a
24 registered engineer, in accordance with the provisions of Chapter 89C of the General
25 Statutes, or by both architect and engineer, particularly qualified by training and
26 experience for the type of work involved, and that the North Carolina seal of such
27 architect or engineer together with the name and address of such architect or engineer,
28 or both, be placed on all such plans and specifications."

29 **SECTION 7.** G.S. 44A-26(a) reads as rewritten:

30 "(a) When the total amount of construction contracts awarded for any one project
31 exceeds ~~one three~~ hundred thousand dollars ~~(\$100,000)~~(\$300,000), a performance and
32 payment bond as set forth in (1) and (2) is required by the contracting body from any
33 contractor with a contract more than ~~fifteen thousand dollars (\$15,000)~~fifty thousand
34 dollars (\$50,000). In the discretion of the contracting body, a performance and payment
35 bond may be required on any construction contract as follows:

- 36 (1) A performance bond in the amount of one hundred percent (100%) of
37 the construction contract amount, conditioned upon the faithful
38 performance of the contract in accordance with the plans,
39 specifications and conditions of the contract. Such bond shall be solely
40 for the protection of the contracting body ~~which awarded the~~
41 ~~contract~~that is constructing the project.

- 1 (2) A payment bond in the amount of one hundred percent (100%) of the
2 construction contract amount, conditioned upon the prompt payment
3 for all labor or materials for which a contractor or subcontractor is
4 liable. The payment bond shall be solely for the protection of the
5 persons furnishing materials or performing labor for which a
6 ~~contractor or subcontractor~~ contractor, subcontractor, or construction
7 manager is liable."

8 **SECTION 8.(a)** G.S. 116-31.11, as enacted and expired by S.L. 1997-412, is
9 reenacted and reads as rewritten:

10 **"§ 116-31.11. Powers of Board regarding certain fee negotiations, contracts, and**
11 **capital improvements.**

12 (a) Notwithstanding G.S. 143-341(3) and G.S. 143-135.1, the Board shall, with
13 respect to the design, construction, or renovation of buildings, utilities, and other
14 property developments of The University of North Carolina requiring the estimated
15 expenditure of public money of ~~five hundred thousand dollars (\$500,000)~~ two million
16 dollars (\$2,000,000) or less:

- 17 (1) Conduct the fee negotiations for all design contracts and supervise the
18 letting of all construction and design contracts.
19 (2) Develop procedures governing the responsibilities of The University
20 of North Carolina and its affiliated and constituent institutions to
21 perform the duties of the Department of Administration and the
22 Director or Office of State Construction under G.S. 133-1.1(d) and
23 G.S. 143-341(3).
24 (3) Develop procedures and reasonable limitations governing the use of
25 open-end design agreements, subject to G.S. 143-64.34 and the
26 approval of the State Building Commission.

27 (b) The Board may delegate its authority under subsection (a) of this section to a
28 constituent or affiliated institution if the institution is qualified under guidelines adopted
29 by the Board and approved by the State Building Commission and the Director of the
30 Budget.

31 (c) The University shall use the standard contracts for design and construction
32 currently in use for State capital improvement projects by the Office of State
33 Construction of the Department of Administration.

34 (d) A contract may not be divided for the purpose of evading the monetary limit
35 under this section."

36 **SECTION 8.(b)** Section 5.1 of S.L. 1997-412 is repealed.

37 **SECTION 8.(c)** Sections 5, 7, 8, and 10 of S.L. 1997-412 are reenacted.

38 **SECTION 8.(d)** G.S. 143-341(3) reads as rewritten:

39 "(3) Architecture and Engineering:

- 40 a. To examine and approve all plans and specifications for the
41 construction or renovation of:
42 1. All State buildings; and

1 2. All community college buildings requiring the estimated
2 expenditure for construction or repair work for which
3 public bidding is required under G.S. 143-129 prior to
4 the awarding of a contract for such work; and to examine
5 and approve all changes in those plans and specifications
6 made after the contract for such work has been awarded.

7 b. To assist, as necessary, all agencies in the preparation of
8 requests for appropriations for the construction or renovation of
9 all State buildings.

10 b1. To certify that a statement of needs pursuant to G.S. 143-6 is
11 feasible. For purposes of this sub-subdivision, "feasible" means
12 that the proposed project is sufficiently defined in overall scope;
13 building program; site development; detailed design,
14 construction, and equipment budgets; and comprehensive
15 project scheduling so as to reasonably ensure that it may be
16 completed with the amount of funds requested. At the discretion
17 of the General Assembly, advanced planning funds may be
18 appropriated in support of this certification. This
19 sub-subdivision shall not apply to requests for appropriations of
20 less than one hundred thousand dollars (\$100,000).

21 c. To supervise the letting of all contracts for the design,
22 construction or renovation of all State buildings and all
23 community college buildings whose plans and specifications
24 must be examined and approved under a.2. of this subdivision.

25 d. To supervise and inspect all work done and materials used in
26 the construction or renovation of all State buildings and all
27 community college buildings whose plans and specifications
28 must be examined and approved under a.2. of this subdivision;
29 and no such work may be accepted by the State or by any State
30 agency until it has been approved by the Department.

31 Except for sub-subdivisions b. and b1. of this subdivision, this
32 subdivision does not apply to the design, construction, or renovation of
33 projects by The University of North Carolina pursuant to G.S. 116-
34 31.11."

35 **SECTION 8.(e)** G.S. 133-1.1(d) reads as rewritten:

36 "(d) On projects on which no registered architect or engineer is required pursuant
37 to the provisions of this section, the governing board or awarding authority shall require
38 a certificate of compliance with the State Building Code from the city or county
39 inspector for the specific trade or trades involved or from a registered architect or
40 engineer, except that the provisions of this subsection shall not apply on projects where
41 any of the following apply:

- 1 (1) ~~wherein—Where~~ plans and specifications are approved by the
2 Department of Administration, Division of State Construction, and the
3 completed project is inspected by the Division of State Construction
4 and the State Electrical ~~Inspector, or on projects~~ Inspector.
5 (2) That are exempt from the State Building Code.
6 (3) That are subject to G.S. 116-31.11 and the completed project is
7 inspected by the State Electrical Inspector and by The University of
8 North Carolina or its constituent or affiliated institution.
9 (4) That are subject to G.S. 116-37(j) and the completed project is
10 inspected by the State Electrical Inspector and by the University of
11 North Carolina Health Care System.
12 (5) That are subject to G.S. 116-37(a)(4) and the completed project is
13 inspected by the State Electrical Inspector and by the University of
14 North Carolina Hospitals at Chapel Hill.
15 (6) That are subject to G.S. 116-37(a)(4) and the completed project is
16 inspected by the State Electrical Inspector and the University of North
17 Carolina at Chapel Hill on behalf of the clinical patient care programs
18 of the School of Medicine of the University of North Carolina.
19 (7) That are subject to G.S. 116-40.6(e) and the completed project is
20 inspected by the State Electrical Inspector and by East Carolina
21 University on behalf of the Medical Faculty Practice Plan."

22 **SECTION 9.** G.S. 143-132(b) reads as rewritten:

23 "(b) For purposes of contracts bid in the alternative between the separate-prime
24 and single-prime contracts, pursuant to ~~G.S. 143-128(e) or (d)~~, G.S. 143-128(d1) each
25 single-prime bid shall constitute a competitive bid in each of the four subdivisions or
26 branches of work listed in G.S. 143-128(a), and each full set of separate-prime bids
27 shall constitute a competitive single-prime bid in meeting the requirements of
28 subsection (a) of this section. If there are at least three single-prime bids but there is not
29 at least one full set of separate-prime bids, no separate-prime bids shall be opened."

30 **SECTION 10.(a)** Section 2 of S.L. 1999-102 is repealed.

31 **SECTION 10.(b)** Section 3 of S.L. 1999-102 reads as rewritten:

32 "Section 3. This act is effective when it becomes ~~law and shall expire on June 30,~~
33 ~~2003.~~ law."

34 **SECTION 10.(c)** Section 8 of S.L. 1999-207 reads as rewritten:

35 "Section 8. This act is effective when it becomes ~~law and expires July 1, 2002.~~ law."

36 **SECTION 10.(d)** Notwithstanding Article 8 of Chapter 143 of the General
37 Statutes, New Hanover Regional Medical Center may use force account qualified
38 personnel on its payroll to maintain, repair, renovate, and improve hospital and medical
39 facilities that it owns or manages under the following conditions:

- 40 (1) The work is primarily for purposes of ensuring compliance with the
41 Life Safety Code and other applicable codes, including requirements
42 of the Joint Commission on the Accreditation of Healthcare

1 Organizations, or involves work to the same or related components or
2 areas of the building at the time of the compliance work.

- 3 (2) The force account labor is qualified to perform and is capable of
4 performing the work in an active patient environment.

5 This Section 10(d) expires December 31, 2007.
6

7 **PART II. CONSTRUCTION AND DESIGN ADMINISTRATION**

8 **SECTION 11. G.S. 143-135.26 reads as rewritten:**

9 **"§ 143-135.26. Powers and duties of the Commission.**

10 The State Building Commission shall have the following powers and duties with
11 regard to the State's capital facilities development and management program:

- 12 (1) To adopt rules establishing standard procedures and criteria to assure
13 that the designer selected for each State capital improvement project
14 and the consultant selected for planning and studies of an architectural
15 and engineering nature associated with a capital improvement project
16 or a future capital improvement project has the qualifications and
17 experience necessary for that capital improvement project or the
18 proposed planning or study project. The rules shall provide that the
19 State Building Commission, after consulting with the funded agency,
20 is responsible and accountable for the final selection of the designer
21 and the final selection of the consultant except when the General
22 Assembly or The University of North Carolina is the funded agency.
23 When the General Assembly is the funded agency, the Legislative
24 Services Commission is responsible and accountable for the final
25 selection of the designer and the final selection of the consultant, and
26 when the University is the funded agency, it shall be subject to the
27 rules adopted hereunder, except it is responsible and accountable for
28 the final selection of the designer and the final selection of the
29 consultant. All designers and consultants shall be selected within 60
30 days of the date funds are appropriated for a project by the General
31 Assembly or the date of project authorization by the Director of the
32 Budget; provided, however, the State Building Commission may grant
33 an exception to this requirement upon written request of the funded
34 agency if (i) no site was selected for the project before the funds were
35 appropriated or (ii) funds were appropriated for advance planning
36 only; provided, further, the Director of the Budget, after consultation
37 with the State Construction Office, may waive the 60-day requirement
38 for the purpose of minimizing project costs through increased
39 competition and improvements in the market availability of qualified
40 contractors to bid on State capital improvement projects. The Director
41 of the Budget also may, after consultation with the State Construction
42 Office, schedule the availability of design and construction funds for

1 capital improvement projects for the purpose of minimizing project
2 costs through increased competition and improvements in the market
3 availability of qualified contractors to bid on State capital
4 improvement projects.

5 The State Building Commission shall submit a written report to
6 the Joint Legislative Commission on Governmental Operations on the
7 Commission's selection of a designer for a project within 30 days of
8 selecting the designer.

9 (2) To adopt rules for coordinating the plan review, approval, and permit
10 process for State capital improvement ~~projects~~ and community college
11 buildings, as defined in subdivision (4) of this section. The rules shall
12 provide for a specific time frame for plan review and approval and
13 permit issuance by each agency, consistent with applicable laws, and
14 submission of plans to the State Construction Office. The time frames
15 shall be established to provide for expeditious review, approval, and
16 permitting of State capital improvement projects and community
17 college buildings.

18 (2a) To adopt rules exempting specified types of State capital improvement
19 projects, including community college buildings as defined in
20 subdivision (4) of this section, from plan review, provided that the plan
21 has been reviewed and sealed by a licensed architect, engineer, or
22 both, as appropriate.

23 (3) To adopt rules for establishing a post-occupancy evaluation, annual
24 inspection and preventive maintenance program for all State buildings.

25 (4) To develop procedures for evaluating the work performed by designers
26 and contractors on State capital improvement projects and those
27 community college buildings, as defined in G.S. 143-336, requiring the
28 estimated expenditure for construction or repair work for which public
29 bidding is required under G.S. 143-129, and for use of the evaluations
30 as a factor affecting designer selections and determining qualification
31 of contractors to bid on State capital improvement projects and
32 community college buildings.

33 (5) To continuously study and recommend ways to improve the
34 effectiveness and efficiency of the State's capital facilities
35 development and management program.

36 (6) To request designers selected prior to April 14, 1987, whose plans for
37 the projects have not been approved to report to the Commission on
38 their progress on the projects. The Department of Administration shall
39 provide the Commission with a list of all such projects.

40 (7) To appoint an advisory board, if the Commission deems it necessary,
41 to assist the Commission in its work. No one other than the

1 Commission may appoint an advisory board to assist or advise it in its
2 ~~work; and work.~~

3 (8) To review the State's provisions for ensuring the safety and health of
4 employees involved with State capital improvement projects, and to
5 recommend to the appropriate agencies and to the General Assembly,
6 after consultation with the Commissioner of Labor, changes in the
7 terms and conditions of construction contracts, State regulations, or
8 State laws that will enhance employee safety and health on these
9 projects.

10 (9) ~~Effective July 1, 1996, to~~To authorize a State agency, a local
11 governmental unit, or any other entity subject to the provisions of G.S.
12 143-129 to use a method of contracting not authorized under ~~G.S. 143-~~
13 ~~128, including the use of the single prime contracting system without~~
14 ~~soliciting bids under both the single and separate prime contract~~
15 ~~systems.~~G.S. 143-128. An authorization under this subdivision for an
16 alternative contracting method shall be granted only under the
17 following conditions:

- 18 a. An authorization shall apply only to a single project.
- 19 b. The entity seeking authorization must demonstrate to the
20 Commission that the alternative contracting method is
21 necessary because the project cannot be reasonably completed
22 under the methods authorized under G.S. 143-128 or for such
23 other reasons as the Commission, pursuant to its rules and
24 criteria, deems appropriate and in the public's interest.
- 25 c. The authorization must be approved by ~~two-thirds~~a majority of
26 the members of the Commission present and voting.

27 The Commission shall not waive the requirements of G.S. 143-129 or
28 G.S. 143-132 for public contracts unless otherwise authorized by law.

29 (10) To adopt rules, no later than January 1, 2002, governing review and
30 final approval of plans that are submitted to the State Construction
31 Office pursuant to G.S. 58-31-40. The rules shall provide for the
32 manner of submission of the plan by the owner, the type of structural
33 work that may be completed by the owner pursuant to
34 G.S. 58-31-40(c), and the expeditious review or completion of review
35 of the plan in a manner that ensures that the building will meet the fire
36 safety requirements of G.S. 58-31-40(b).

37 (11) To direct the Department in the development of guidelines for agency
38 evaluation of energy savings contracts pursuant to G.S. 143-64.17F.

39 (12) To develop dispute resolution procedures, including mediation, for
40 subcontractors under the single-prime contracting system and under
41 the construction management system on State capital improvement
42 projects and community college buildings as defined in subdivision (4)

1 of this section, for use by any agency that has not developed its own
2 dispute resolution process.

3 (13) To adopt rules governing the use of open-end design agreements for
4 State capital improvement projects and community college buildings
5 as defined in subdivision (4) of this section, where the fee does not
6 exceed the amount specified in G.S. 143-64.34(b).

7 (14) ~~The Commission shall~~ To submit an annual report of its activities to
8 the Governor and the Joint Legislative Commission on Governmental
9 Operations."

10 **SECTION 11.1.** G.S. 58-31-40 is amended by adding the following new
11 subsection to read:

12 "(c) The Commissioner shall review a plan subject to subsection (b) of this section
13 within 30 days of submission, provided that the Commissioner may require one
14 additional 30-day extension if necessary to complete the review. If the Commissioner
15 has neither approved nor denied the plan during the initial 30-day review period, the
16 owner may proceed with the building site preparation, the building foundation, and any
17 structural components of the building that are not subject to inspection for the purposes
18 set forth in subsection (b) of this section. If the Commissioner has neither approved nor
19 denied the plan within 60 days of submission, the owner may request review and final
20 approval under subsection (b) of this section by the Department of Administration, State
21 Construction Office, pursuant to rules adopted under G.S. 143-135.26."

23 PART III. ENERGY EFFICIENCY IN STATE BUILDINGS

24 **SECTION 12.(a)** The title of Part 2 of Article 3B of Chapter 143 of the
25 General Statutes reads as rewritten:

26 "Part 2. Guaranteed Energy Savings Contracts for ~~Local~~ Governmental Units."

27 **SECTION 12.(b)** G.S. 143-64.17 reads as rewritten:

28 "§ 143-64.17. Definitions.

29 As used in this Part:

- 30 (1) "Energy conservation measure" means a facility alteration, training, or
31 services related to the operation of the facility, when the alteration,
32 training, or services provide anticipated energy savings. Energy
33 conservation measure includes any of the following:
- 34 a. Insulation of the building structure and systems within the
35 building.
 - 36 b. Storm windows or doors, caulking, weatherstripping,
37 multiglazed windows or doors, heat-absorbing or heat-reflective
38 glazed or coated window or door systems, additional glazing,
39 reductions in glass area, or other window or door system
40 modifications that reduce energy consumption.
 - 41 c. Automatic energy control systems.

- 1 d. Heating, ventilating, or air-conditioning system modifications
2 or replacements.
- 3 e. Replacement or modification of lighting fixtures to increase the
4 energy efficiency of a lighting system without increasing the
5 overall illumination of a facility, unless an increase in
6 illumination is necessary to conform to the applicable State or
7 local building code or is required by the light system after the
8 proposed modifications are made.
- 9 f. Energy recovery systems.
- 10 g. Cogeneration systems that produce steam or forms of energy
11 such as heat, as well as electricity, for use primarily within a
12 building or complex of buildings.
- 13 h. Other energy conservation measures.
- 14 (2) "Energy savings" means a measured reduction in fuel costs, energy
15 costs, or operating costs created from the implementation of one or
16 more energy conservation measures when compared with an
17 established baseline of previous fuel costs, energy costs, or operating
18 costs developed by the local governmental unit.
- 19 (3) "Guaranteed energy savings contract" means a contract for the
20 evaluation, recommendation, or implementation of energy
21 conservation measures, including the design and installation of
22 equipment or the repair or replacement of existing equipment, in which
23 all payments, except obligations on termination of the contract before
24 its expiration, are to be made over time, and in which energy savings
25 are guaranteed to exceed costs.
- 26 (4) ~~"Local governmental"~~ "Governmental unit" means an agency, board, or
27 commission of the State or any board or governing body of a political
28 subdivision of the State, including any board of a community college,
29 any school board, or an agency, commission, or authority of a political
30 subdivision of the State.
- 31 (5) "Qualified provider" means a person or business experienced in the
32 design, implementation, and installation of energy conservation
33 measures.
- 34 (6) "Request for proposals" means a negotiated procurement initiated by a
35 local governmental unit by way of a published notice that includes the
36 following:
- 37 a. The name and address of the local governmental unit.
- 38 b. The name, address, title, and telephone number of a contact
39 person in the local governmental unit.
- 40 c. Notice indicating that the local governmental unit is requesting
41 qualified providers to propose energy conservation measures
42 through a guaranteed energy savings contract.

- 1 d. The date, time, and place where proposals must be received.
2 e. The evaluation criteria for assessing the proposals.
3 f. A statement reserving the right of the ~~local~~-governmental unit to
4 reject any or all the proposals.
5 g. Any other stipulations and clarifications the ~~local~~-governmental
6 unit may require."

7 **SECTION 12.(c)** G.S. 143-64.17A reads as rewritten:

8 **"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

9 (a) Before entering into a guaranteed energy savings contract, a local
10 governmental unit shall issue a request for proposals. Notice of the request shall be
11 published at least 15 days in advance of the time specified for opening of the proposals
12 in at least one newspaper of general circulation in the geographic area for which the
13 local governmental unit is responsible. No guaranteed energy savings contract shall be
14 awarded by any ~~governing body governmental unit~~ unless at least two proposals have
15 been received from qualified providers. Provided that if after the publication of the
16 notice of the request for proposals, fewer than two proposals have been received from
17 qualified providers, the ~~governing body of the local~~-governmental unit shall again
18 publish notice of the request and if as a result of the second notice, one or more
19 proposals by qualified providers are received, the ~~governing body governmental unit~~
20 may then open the proposals and select a qualified provider even if only one proposal is
21 received.

22 (b) The ~~local~~-governmental unit shall evaluate a sealed proposal from any
23 qualified provider. Proposals shall contain estimates of all costs of installation,
24 modification, or remodeling, including costs of design, engineering, installation,
25 maintenance, repairs, and debt service, and estimates of energy savings.

26 (c) Proposals received pursuant to this section shall be opened by a member or an
27 employee of the ~~governing body of the local~~-governmental unit at a public opening at
28 which the contents of the proposals shall be announced and recorded in the minutes of
29 the ~~governing body governmental unit~~. Proposals shall be evaluated for the ~~local~~
30 governmental unit by a licensed architect or engineer on the basis of:

- 31 (1) The information required in subsection (b) of this section; and
32 (2) The criteria stated in the request for proposals.

33 The ~~local~~-governmental unit may require a qualified provider to include in calculating
34 the cost of a proposal for a guaranteed energy savings contract any reasonable fee
35 payable by the ~~local~~-governmental unit for evaluation of the proposal by a licensed
36 architect or professional engineer not employed as a member of the staff of the ~~local~~
37 governmental unit or the qualified provider.

38 (d) The ~~local~~-governmental unit shall select the qualified provider that it
39 determines to best meet the needs of the ~~local~~ governmental unit by evaluating the
40 following:

- 41 (1) Prices offered;
42 (2) Proposed costs of construction, financing, maintenance, and training;

- 1 (3) Quality of the products proposed;
- 2 (4) Amount of energy savings;
- 3 (5) General reputation and performance capabilities of the qualified
- 4 providers;
- 5 (6) Substantial conformity with the specifications and other conditions set
- 6 forth in the request for proposals;
- 7 (7) Time specified in the proposals for the performance of the contract;
- 8 and
- 9 (8) Any other factors the ~~local~~ governmental unit deems necessary, which
- 10 factors shall be made a matter of record.

11 (e) Nothing in this section shall limit the authority of local governmental units as
12 set forth in Article 3D of this Chapter."

13 **SECTION 12.(d)** G.S. 143-64.17B reads as rewritten:

14 **"§ 143-64.17B. Guaranteed energy savings contracts.**

15 (a) A ~~local~~-governmental unit may enter into a guaranteed energy savings
16 contract with a qualified provider if all of the following apply:

- 17 (1) The term of the contract does not exceed 12 years from the date of the
- 18 installation and acceptance by the ~~local~~ governmental unit of the
- 19 energy conservation measures provided for under the contract.
- 20 (2) The ~~local~~-governmental unit finds that the energy savings resulting
- 21 from the performance of the contract will equal or exceed the total cost
- 22 of the contract.
- 23 (3) The energy conservation measures to be installed under the contract
- 24 are for an existing building.

25 (b) Before entering into a guaranteed energy savings contract, the ~~local~~
26 governmental unit shall provide published notice of the meeting at which it proposes to
27 award the contract, the names of the parties to the proposed contract, and the contract's
28 purpose. The notice must be published at least 15 days before the date of the meeting.

29 (c) A qualified provider entering into a guaranteed energy savings contract under
30 this Part shall provide a bond to the ~~local~~-governmental unit in the amount equal to one
31 hundred percent (100%) of the total cost of the guaranteed energy savings contract to
32 assure the provider's faithful performance. Any bonds required by this subsection shall
33 be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the
34 savings resulting from a guaranteed energy savings contract are not as great as projected
35 under the contract and all required shortfall payments to the ~~local~~-governmental unit
36 have not been made, the ~~local~~-governmental unit may terminate the contract without
37 incurring any additional obligation to the qualified provider.

38 (d) As used in this section, "total cost" shall include, but not be limited to, costs
39 of construction, costs of financing, and costs of maintenance and training during the
40 term of the contract. "Total cost" does not include any obligations on termination of the
41 contract before its expiration, provided that those obligations are disclosed when the
42 contract is executed.

1 (e) A guaranteed energy savings contract may not require the ~~local~~ governmental
2 unit to purchase a maintenance contract or other maintenance agreement from the
3 qualified provider who installs energy conservation measures under the contract if the
4 ~~local~~ unit of government takes appropriate action to budget for its own forces or another
5 provider to maintain new systems installed and existing systems affected by the
6 guaranteed energy savings contract."

7 **SECTION 12.(e)** G.S. 143-64.17D reads as rewritten:

8 "**§ 143-64.17D. Contract continuance.**

9 A guaranteed energy savings contract may extend beyond the fiscal year in which it
10 becomes effective. Such a contract shall stipulate that it does not constitute a debt,
11 liability, or obligation of any local governmental unit or a pledge of the faith and credit
12 of any ~~unit of local government~~ governmental unit."

13 **SECTION 12.(f)** Part 2 of Article 3B of Chapter 143 of the General Statutes
14 is amended by adding the following new section to read:

15 "**§ 143-64.17F. State agencies to use contracts when feasible.**

16 State governmental units, including State universities, shall evaluate the use of
17 guaranteed energy savings contracts in reducing energy costs and may use those
18 contracts when feasible and practical. The Department of Administration shall develop
19 guidelines for agency evaluation of guaranteed energy savings contracts."

20 **SECTION 12.(g)** The Department of Administration shall develop a plan for
21 establishing and implementing an energy efficiency goal for all State buildings. The
22 Department shall report the plan to the General Assembly no later than May 1, 2002, by
23 filing copies with the Office of the President Pro Tempore of the Senate, the Office of
24 the Speaker of the House of Representatives, the legislative Fiscal Research Division,
25 and the Legislative Library.

26 **SECTION 13.** Nothing in this act limits the use of any method of
27 contracting authorized by local law or other applicable laws.

29 PART IV. LANDSCAPE ARCHITECTURE LAW CHANGES

30 **SECTION 14.(a)** G.S. 89A-1(3) reads as rewritten:

31 "(3) Landscape architecture or the practice of landscape architecture. – The
32 preparation of plans and specifications and supervising the execution
33 of projects involving the arranging of land and the elements used
34 thereon for public and private use and enjoyment, embracing such
35 matters as the location and placement of buildings and structures, the
36 location, routing, and design of streets or other public or private ways
37 and associated drainage systems, soil conservation and erosion control,
38 stormwater management and surface or subsurface drainage, site
39 grading, and planting plans, all ~~drainage, soil conservation, grading~~
40 and ~~planting plans and erosion control,~~ in accordance with the
41 accepted professional standards of public health, safety and welfare."

1 **SECTION 14.(b)** The State Board of Examiners for Engineers and
2 Surveyors and the Board of Landscape Architects are directed to meet and confer to
3 identify areas of overlap or common practice with respect to the scope of their
4 respective professions and to consider means for resolving disputes concerning
5 standards of practice, qualifications, and jurisdiction regarding such areas of overlap.
6 They shall present a joint written report to the General Assembly not later than April 30,
7 2002, concerning their findings and recommendations, and the General Assembly may
8 consider and take action on such report during its session in 2002 or at such other time
9 as it may deem appropriate.

10
11 **PART V. EFFECTIVE DATE**

12 **SECTION 15.** Sections 8(a) through 8(e) of this act become effective July 1,
13 2001. Section 11.1 of this act becomes effective January 1, 2002. The remainder of this
14 act is effective when it becomes law.