

## **Chapter 133.**

### **Public Works.**

#### Article 1.

##### General Provisions.

#### **§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.**

It shall be unlawful for any architect, engineer, or other individual, firm, or corporation providing design services for any city, county or State work supported wholly or in part with public funds, knowingly to specify any building materials, equipment or other items which are manufactured, sold or distributed by any firm or corporation in which such designer or specifier has a financial interest by reason of being a partner, officer, employee, agent or substantial stockholder. (1933, c. 66, s. 1; 1977, c. 730.)

#### **§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.**

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

- (1) Three hundred thousand dollars (\$300,000) for the repair of public buildings where such repair does not include major structural change in framing or foundation support systems, or five hundred thousand dollars (\$500,000) for the repair of public buildings by The University of North Carolina or its constituent institutions where such repair does not include major structural change in framing or foundation support systems,
  - (1a) One hundred thousand dollars (\$100,000) for the repair of public buildings affecting life safety systems,
  - (2) One hundred thirty-five thousand dollars (\$135,000) for the repair of public buildings where such repair includes major structural change in framing or foundation support systems, or
  - (3) One hundred thirty-five thousand dollars (\$135,000) for the construction of, or additions to, public buildings or State-owned and operated utilities, shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of Chapter 83A of the General Statutes, or by a registered engineer, in accordance with the provisions of Chapter 89C of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all these plans and specifications.
- (b) (1) On all projects requiring the services of an architect, an architect shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:

- a. The inspections of the construction, repairs or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and
  - b. To the best of his knowledge and in the professional opinion of the architect, the contractor has fulfilled the obligations of such plans, specifications, and contract.
- (2) On all projects requiring the services of an engineer, an engineer shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:
  - a. The inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and
  - b. To the best of his knowledge and in the professional opinion of the engineer, the contractor has fulfilled the obligations of such plans, specifications, and contract.
- (3) No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled the obligations of such plans, specifications, and contract.
- (c) The following shall be excepted from the requirements of subsection (a) of this section:
  - (1) Dwellings and outbuildings in connection therewith, such as barns and private garages.
  - (2) Apartment buildings used exclusively as the residence of not more than two families.
  - (3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.
  - (4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.
  - (5) Pre-engineered garages, sheds, and workshops up to 5,000 square feet used exclusively by city, county, public school, or State employees for purposes related to their employment. For pre-engineered garages, sheds, and workshops constructed pursuant to this subdivision, there shall be a minimum separation of these structures from other buildings or property lines of 30 feet.
- (d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply to projects where any of the following apply:
  - (1) The plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector.
  - (2) The project is exempt from the State Building Code.
  - (3) The project has a total projected cost of less than \$100,000 and does not alter life safety systems.

(e) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(f) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority.

(g) On all facilities which are covered by this Article, other than those listed in subsection (c) of this section and which require any job-installed finishes, the plans and specifications shall include the color schedule. (1953, c. 1339; 1957, c. 994; 1963, c. 752; 1973, c. 1414, s. 2; 1979, c. 891; 1981, c. 687; 1983 (Reg. Sess., 1984), c. 970, s. 1; 1989, c. 24; 1997-412, s. 11; 1998-212, s. 11.8(e); 2001-496, ss. 6, 8(e); 2003-305, s. 1; 2005-300, s. 1; 2007-322, s. 1.)

### **§ 133-2. Drawing of plans by material furnisher prohibited.**

It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, State, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

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

(a) All architects, engineers, designers, or drafters, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or drafter may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. Specifications may list one or more preferred brands as an alternate to the base bid in limited circumstances. Specifications containing a preferred brand alternate under this subsection must identify the performance standards that support the preference. Performance standards for the preference must be approved in advance by the owner in an open meeting. Any alternate approved by the owner shall be approved only where (i) the preferred alternate will provide cost savings, maintain or improve the functioning of any process or system affected by the preferred item or items, or both, and (ii) a justification identifying these criteria is made available in writing to the public. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts.

(b) Specifications for the purposes of competitively bidding components, systems, construction services, or maintenance services that relate to elevators pursuant to subsection (a) of this section:

- (1) Shall not list preferred brands as an alternate to the base bid.
- (2) Shall not require a specified time greater than five years that a bidder must have conducted business within this State.
- (3) Shall include the statement, "Cited examples are used only to denote the quality standard of product desired and do not restrict bidders to a specific brand, make, manufacturer or specific name.", when utilizing brand name specification.
- (4) Shall include a reference to G.S. 143-59. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1; 2002-107, s. 5; 2002-159, s. 64(c); 2024-3, s. 10.1(a).)

**§ 133-4. Violation of Chapter made misdemeanor.**

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a Class 3 misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall only be subject to a fine of not more than five hundred dollars (\$500.00). (1933, c. 66, s. 4; 1993, c. 539, s. 969; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 133-4.1. Guaranteed energy savings contracts.**

Except for G.S. 133-1 and [G.S.] 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes. (1993 (Reg. Sess., 1994), c. 775, s. 8; 2002-161, s. 11.1.)