

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-44
HOUSE BILL 516**

**AN ACT TO ASSIST WAKE COUNTY WITH THE CONSTRUCTION AND
RENOVATION OF PUBLIC SCHOOL FACILITIES.**

Whereas, Wake County is faced with a critical need for school facilities as a result of unusual growth in student population; and

Whereas, the voters of Wake County gave approval in November 2000 to a five hundred million dollar bond referendum to support the construction and renovation of public school facilities in Wake County between 2001 and 2004; and

Whereas, the Wake County Board of Education is planning a program of construction and renovation that will include the construction of 14 new school facilities and renovation of 32 existing school facilities between 2001 and 2004; and

Whereas, the Wake County Board of Education has substantial professional staff devoted to planning, design, and administration of the construction and renovation of school facilities that will enable the Wake County Board of Education to implement the provisions of this act; and

Whereas, the Wake County Board of Education has already completed the design, construction, and renovation of over one billion dollars in school projects over the past 15 years; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Prequalified Bidders; Solicited Bid List. Notwithstanding G.S. 143-129, the Wake County Board of Education ("Board") may prequalify contractors for school facility construction, rebuilding, or renovation contracts and may solicit bids from all prequalified contractors.

In prequalifying a contractor for the purposes of this section, the Board may consider the contractor's experience on the type of project to be bid; ability to administer and meet the project schedule; financial strength; safety record and procedures including drug testing procedures; employee training and retention; and the contractor's performance on past or current projects. The Board's consideration of these factors shall be based upon objective information provided in the public record of the prequalification process. The prequalification process shall be conducted quarterly during the fiscal year. Notification of disqualified bidders shall be provided within 14 days of the prequalification submittal date. Prequalification submittal dates shall be advertised through public advertising.

The Board shall attempt to prequalify and maintain a list of at least five contractors per building trade and shall not award a contract pursuant to this section unless it receives at least three bids from the group of prequalified contractors or act otherwise in accordance with G.S. 143-128(d1). The Board shall award the contract or contracts to the lowest responsible bidder or bidders having already prequalified the bidder or bidders for each project. Notwithstanding the provisions of this section, if the Board does not receive at least three or more proposals for the project pursuant to this section, the Board may award the contract to the lowest responsible bidder even if only one proposal is received. The Board shall establish a written policy containing its prequalification procedures within 90 days following the effective date of this act. The

existence of and availability of these procedures shall be contained in each advertisement or solicitation for prequalification submittals or bids.

SECTION 2. Prequalified Construction Management. Notwithstanding G.S. 143-128, 143-129, and 143-132, the Board may contract with a construction manager to assume liability for the completion of a project. The construction manager shall not contract with the Board or any contractor for any individual construction contracts associated with the project.

Notwithstanding G.S. 143-129, the Board may prequalify construction managers for a school facility construction, rebuilding, or renovation contract or project and shall solicit bids from all prequalified construction managers.

In prequalifying a construction manager for the purposes of this section, the Board may consider each construction manager's relevant experience on the type of project to be bid; ability to administer and meet the project schedule; the company's financial strength; prompt payment record on other past or current Board projects; safety record and procedures including drug testing procedures; employee training and retention; and performance on past or current projects. The Board's consideration of these factors shall be based upon objective information provided in the public record of the prequalification process. The prequalification process shall be conducted quarterly during our fiscal year. Notification of disqualified bidders shall be provided within 14 days of the prequalification submittal date. Prequalification submittal dates shall be advertised through public advertising.

The Board shall attempt to prequalify and maintain a list of at least five construction managers and shall not award a contract pursuant to this section unless it receives at least three bids from the group of prequalified construction managers. The Board shall award the contract or contracts to the lowest responsible bidder having already prequalified the bidder for the project. Notwithstanding the provisions of this section, if the Board does not receive three or more proposals for the project pursuant to this section, the Board may award the contract to the lowest responsible bidder even if only one proposal is received.

If the Board contracts with a construction manager who is liable for the completion of the project, that construction manager shall (i) receive bids under the separate-prime system, (ii) award and administer contracts with the construction manager liable to the various separate contractors in accordance with G.S. 143-128(a), 143-129, and 143-132, and (iii) otherwise comply with and be subject to Article 8 of Chapter 143 of the General Statutes as if it were a public owner, except as expressly provided by this act.

SECTION 3. Design Plus Construction Management. Notwithstanding G.S. 143-128, 143-129, and 143-132, the Board may use the design plus construction management method of construction as follows:

- (1) The Board shall seek to prequalify and solicit at least five design plus construction management teams, each consisting of an architect and construction manager, to bid on the project and shall receive sealed proposals from at least three of those teams. The request for proposals shall contain a design-criteria package that defines the project scope, including preliminary design and performance specifications, in a manner sufficient to allow the bidders to respond.
- (2) The Board shall interview at least three of the design plus construction management teams that submit proposals. The Board shall award the contract to the best-qualified team, taking into account the time of completion of the project and the cost of the project as the major factors.
- (3) The construction manager shall receive bids under the separate prime system and shall award and administer such contracts in accordance with G.S. 143-128(a), 143-129, and 143-132. The construction manager shall comply with and be subject to Article 8 of Chapter 143

of the General Statutes as if it were a public owner, except as expressly provided in this act.

SECTION 4. Other Methods. Nothing in this act limits the Board's use of any method of contracting already authorized by law under Articles 3D and 8 of Chapter 143 of the General Statutes. Except as expressly provided in this act, the provisions of Article 3D and 8 of Chapter 143 of the General Statutes shall remain in full force and effect.

SECTION 5. Bonds. Any construction manager contracting with the Board pursuant to this act shall be a "contractor" and that contract shall be a "construction contract" pursuant to G.S. 44A-25. Any such construction manager shall provide payment and performance bonds to the Board in accordance with Article 3 of Chapter 44A of the General Statutes.

SECTION 6. The Wake County Board of Education shall make an annual report to the North Carolina State Building Commission, beginning in January 2002 and continuing in January of each successive year, concerning the comparative costs and effectiveness, efficiency, and economy, if any, achieved by its implementation of this act. The Board shall submit a final report to the Commission in January 2005.

SECTION 7. This act applies only to the Wake County Board of Education.

SECTION 8. This act is effective when it becomes law and expires July 1, 2005.
In the General Assembly read three times and ratified this the 7th day of May, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives