

# Understanding North Carolina's E-Verify Contracting Prohibition

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**NOTE: This document was revised August 25, 2014, to reflect changes to city and county contracts made by the General Assembly during the 2014 session.**

During the 2013 session of the North Carolina General Assembly, the legislature enacted the RECLAIM NC Act ([S.L. 2013-418; HB786](#)) which prohibits state and local governments from entering into certain contracts if the contractor or that contractor's subcontractors are not compliant with North Carolina's E-Verify law. The E-Verify statutes were amended during the 2014 session ([HB369](#)) to scale back the application of the prohibition for city and county contracts to *only* purchase and construction or repair contracts in the formal bidding range (previously, the prohibition applies to all city and county contracts). The following pages provide answers to frequently asked questions as well as examples of contract provisions and affidavits used in a good faith effort to ensure compliance with the law. The text of the statutes applicable to local governments is reprinted at the end of this document. For the reader's convenience, specific questions may be referenced by clicking on the question in the table of contents below.

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## I. Overview of the E-Verify Contracting Prohibition

### 1. What is the E-Verify contracting prohibition?

[Section 2 of S.L. 2013-418 \(H786\)](#) specifically prohibits governmental units from entering into certain contracts “unless the contractor and the contractor’s subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes.” ([Article 2 of Chapter 64](#) establishes North Carolina’s E-Verify requirements for private employers). It is important to note that the prohibition applies to *subcontractors* as well as contractors.

The prohibition is included in the following statutes: G.S. 153A-499 (counties), G.S. 160A-20.1 (cities); G.S. 143-129 (purchase and construction/repair contracts in the formal bidding range); 143-48.5 (state agencies); and G.S. 147-33.95 (state information technology contracts).

### 2. What is E-Verify?

[E-Verify](#) is a free, web-based system operated by the U.S. Department of Homeland Security’s Citizenship and Immigration Service (USCIS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the legal employment status of newly hired employees. Employers submit information taken from a new hire’s Form I-9 (Employment Eligibility Verification Form) through E-Verify to the SSA and USCIS to determine whether the information matches government records and whether the new hire is authorized to work in the United States. The employer receives an electronic verification of the new hire’s legal employment status. For more information on E-Verify, see two bulletins authored by our former SOG colleague, Sajal Zota (click [here](#) and [here](#)).

### 3. Who is required to use E-Verify when hiring new employees?

Certain public and private employers are required to use the E-Verify system to electronically verify the legal employment status of newly hired employees. The public entities required to use the E-Verify system are:

- All state agencies, departments, and institutions, public universities, community colleges, and local school boards (G.S. 126-7.1)
- Cities (G.S. 160A-169.1)
- Counties (G.S. 153A-99.1)

Private employers subject to the E-Verify requirement are those who do business in this state and employ 25 or more workers in this state.<sup>1</sup> The requirement applies regardless of the location of the employer’s headquarters, but only for newly hired employees working in North Carolina (it does not apply to employees working in another state). Private employers with 24 or fewer employees are not required to use E-Verify, even if they employ 25 or more employees in other states. In addition, the E-Verify requirement does not apply to seasonal temporary employees who are employed less than nine months in a calendar year. More

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<sup>1</sup> G.S. 64-25(4).

information about North Carolina's E-Verify requirement is available on the North Carolina Department of Labor's [website](#).

It is not clear whether the E-Verify hiring requirement applies to an employer who does not employ 25 or more workers in this state on a permanent basis if that employer brings more than 25 workers into this state on a temporary or time-limited basis.

#### **4. If a contractor is not subject to state E-Verify requirements, does its subcontractor still have to comply?**

Yes. The requirements of North Carolina's E-Verify law apply to all employers who are doing business in this state and employ 25 or more employees in this state even if that employer is a subcontractor to an out-of-state contractor or vendor who is not subject to state E-Verify requirements.

## **II. Units of Government Subject to the E-Verify Contracting Prohibition**

### **5. Which units of government are subject to the law?**

The answer depends on the type of governmental unit. For state agencies, the E-Verify contracting prohibition applies to *all* contracts, regardless of the type of contract. For *all* units of government (cities, counties, school boards, water and sewer authorities, etc.), the prohibition only applies to purchase and construction/repair contracts in the formal bidding range.<sup>2</sup>

### **6. What about cities and counties?**

Only purchase and construction/repair contracts in the formal bidding range entered into by cities and counties are subject to the E-Verify contracting prohibition. Prior to 2014, all contracts entered into by cities and counties were subject to the prohibition. During the 2014 legislative session, the General Assembly enacted legislation scaling back the prohibition to only apply to formal purchase and construction contracts.

### **7. What about public schools?**

Only purchase and construction/repair contracts in the formal bidding range entered into by local boards of education are subject to the E-Verify contracting prohibition.

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<sup>2</sup> Under G.S. 143-129, the formal bid threshold for purchase contracts is \$90,000; for construction/repair contracts, the formal bid threshold is \$500,000.

## **8. What about utilities commissions, water and sewer authorities, transit authorities, and other local government authorities?**

Regardless of whether the commission or authority is an independent political subdivision of the state or is legally a subunit of a city or county, the prohibition applies only to purchase and construction or repair contracts in the formal bidding range.

## **9. What about Councils of Government (COG's)**

Only purchase and construction/repair contracts in the formal bidding range entered into by COG's are subject to the E-Verify contracting prohibition.

## **10. What about departments within county government like Health, DSS or the Sheriff's Office?**

These departments are subject to the same E-Verify contracting prohibition as other subunits of county government. Despite their semi-independent governance structure, they are still units of county government under the Local Government Budget and Fiscal Control Act (G.S. Chapter 159), and are subject to the same budget and contracting requirements and restrictions as other county departments.

## **11. What about public health authorities and similar agencies?**

Some local health departments are not county agencies but instead are either a public health authority (Hertford), a public hospital authority (Cabarrus), or part of a multi-county district health department (6 districts in NC comprised of 21 counties). These entities are considered public authorities for purposes of the Local Government Budget & Fiscal Control Act (G.S. Chapter 159). As such, they are considered units of local government for purposes of the E-Verify contracting prohibition, and only purchase and construction or repair contracts in the formal bidding range entered into by these entities are covered.

### **III. Contracts Subject to the E-Verify Contracting Prohibition**

#### **12. What contracts are subject to the E-Verify contracting prohibition?**

For all units of local government, including cities and counties, only purchase and construction or repair contracts in the formal bidding range are subject to the prohibition. For state agencies, the prohibition applies to all contracts, regardless of the type of contract. The table below summarizes which categories contracts are subject to the prohibition:

Type of Contract	City	County	Other Gov't Unit	State Agency
Construction – Formal	✓	✓	✓	✓
Construction – Informal				✓
Purchase – Formal	✓	✓	✓	✓
Purchase – Informal				✓
Design Services (Mini-Brooks Act)				✓
All Other (service, lease, grant to nonprofit, etc.)				✓

It is important to keep in mind *who* the E-Verify hiring requirement applies to – if contractor or vendor employs less than 25 employees (not counting temporary seasonal workers employed nine months or less within a calendar year), it is not subject to the E-Verify requirement and the prohibition would not apply to that contract *even if the contract falls into one of the categories checked above.*

### 13. Doesn't the prohibition apply to *all* city and county contracts?

Prior to October 1, 2014, it did. As of October 1, 2014, it only applies to purchase and construction or repair contract in the formal bidding ranges. G.S. 153A-4999(b) (counties) and G.S. 160A-20.19(b) (cities) were amended during the 2014 legislative session to apply the prohibition only to contracts subject to G.S. 143-129, which are purchase and construction or repair contracts in the formal bidding range. Subsection (b) of these statutes now reads:

(b) Contractors Must Use E-Verify. – No county [or city] may enter into a contract subject to G.S. 143-129 unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

The addition of the phrase “subject to G.S. 143-129” scaled back the prohibition from its previous application to all city and county contracts, leaving only purchase and construction or repair contracts in the formal bidding range subject to the prohibition.

### 14. Does “contractor’s subcontractors” mean only first tier subcontractors or all tiers?

The statutes do not distinguish between different tiers of subcontractors, so presumably the prohibition applies to all subcontractors. While term “subcontractor” is commonly used in the context of construction contracting, Webster’s defines “subcontractor” as “an individual or

business firm contracting to perform part or all of another's contract."<sup>3</sup> Absent interpretation by the courts or clarification by the General Assembly, this broader interpretation is consistent with the standard rules of statutory construction under which terms not otherwise defined are to be given their "plain and definite meaning."<sup>4</sup>

### **15. Does the prohibition apply to contracts with employers that have less than 25 employees?**

No. Only employers who are doing business in this state and employ 25 or more employees in this state are subject to North Carolina's E-Verify requirement under Article 2 of Chapter 64. If the employer is not subject to E-Verify, the contracting prohibition would not apply to contracts with that employer.

However, keep in mind that even if the business itself is not subject to E-Verify hiring requirements, its subcontractors might be and the E-Verify prohibition would apply because it includes both contractors and subcontractors.

### **16. What about contracts with one person, like a HVAC repair man?**

Only businesses that employ 25 or more employees are subject to the North Carolina E-Verify requirement. The E-Verify contracting prohibition does not apply to contracts with individual persons or businesses that have less than 25 employees. However, keep in mind that even if the individual or business itself is not subject to E-Verify hiring requirements, its subcontractors might be and the E-Verify prohibition would apply because it includes both contractors and subcontractors.

### **17. What about amendments to existing contracts?**

Since an amendment to an existing contract technically constitutes a new contract, the E-Verify contracting prohibition appears to apply equally to amendments. However, if the unit of government has taken steps to ensure the contractor's compliance with state E-Verify requirements, it may not be necessary to repeat those steps in amending a contract with that same contractor.

### **18. What about unwritten agreements/oral contracts?**

The E-Verify contracting prohibition applies to oral contracts as well as written ones. However, in light of the North Carolina Court of Appeals' interpretation of the preaudit requirement (see Kara Millonzi's [blog post](#) on these cases), local governments should not enter into *any* oral contracts, *even if* state statutes do not require the contract to be in writing. In addition to the preaudit requirement, state law specifically requires the following contracts to be in writing: *all*

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<sup>3</sup> Merriam-Webster's Collegiate Dictionary, 11<sup>th</sup> ed. (2005).

<sup>4</sup> *Lanvale Properties, LLC v. Cnty. of Cabarrus*, 366 N.C. 142, 154, 731 S.E.2d 800, 810 (2012).

city contracts, all purchase and construction/repair contracts subject to formal bidding requirements, and all contracts for the purchase of goods costing \$500 or more.

### **19. What about contracts not subject to competitive bidding?**

The prohibition does not apply to any local government contracts that are not subject to competitive bidding requirements, such as general services contracts.

### **20. What about contracts for design services (Mini-Brooks Act contracts)?**

The prohibition does not apply to any contracts which are governed by the Mini-Brooks Act (G.S. 143-64.31). Contracts entered into under the qualifications-based selection method of the Mini-Brooks Act are those for architectural, engineering, and surveying services as well as alternative construction delivery methods (construction management at risk, design-build, design-build bridging, and public-private partnerships).

### **21. What about contracts for office supplies or other purchases?**

For all local governments (including cities and counties), only purchase contracts in the formal bidding range – those with an estimated cost of \$90,000 or more – are subject to the E-Verify contracting prohibition. Purchase contracts in the informal bidding range (\$30,000-\$90,000) and purchase contracts below the informal bidding range (below \$30,000) are not subject.

### **22. What about contracts with an out-of-state vendor?**

If the out-of-state vendor has fewer than 25 workers employed in North Carolina, the vendor is not subject to state E-Verify requirements and the contracting prohibition does not apply, even if that contract is in the formal bidding range. If the unit of government is unsure whether the vendor is subject to state E-Verify requirements, it should take the appropriate steps to either confirm compliance (such as with an affidavit or statement of compliance) or make the vendor aware of its legal obligations under North Carolina law (such as a provision in the contract or purchase order).

### **23. What about IT purchases?**

For all local governments (including cities and counties), the prohibition only applies to IT purchase contracts in the formal bidding range.

### **24. What about purchases made under an exception to competitive bidding requirements, such as piggybacking, buying off a state contract, or purchasing through a group (cooperative) purchasing program?**

For all local governments (including cities and counties), it appears that the E-Verify prohibition would *not* apply to purchases made under one of the exceptions to formal competitive bidding requirements authorized under G.S. 143-129(e) and (g). The E-Verify contracting provision in G.S. 143-129 reads as follows:

(j) No contract *subject to this section* may be awarded by any board or governing body of the State, institution of State government, or any political subdivision of the State unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes. (emphasis added)

Since contracts entered into under one of the exceptions to the competitive bidding statutes are specifically *exempt* from the requirements of G.S. 143-129, that exemption presumably includes the E-Verify prohibition (i.e., the contract is not “subject to this section”). However, in an abundance of caution, governmental units should still consider including a provision in the contract giving notice to the vendor of that vendor’s legal obligations under North Carolina’s E-Verify law.

### **25. What about change orders on construction projects?**

Since change orders are also an exception to competitive bidding requirements, the E-Verify prohibition would not apply (see analysis in Question 24 above). However, if the change order results in the contractor hiring a new subcontractor, the contractor should be reminded that the E-Verify prohibition applies to both contractors and subcontractors, and the local government may wish to consider requiring the contractor to obtain E-Verify compliance documentation from the subcontractor.

### **26. What about p-card purchases, purchase orders, and other small purchases?**

For all local governments (including cities and counties), the E-Verify contracting prohibition would only apply to these transactions if they fall within the formal bidding range for purchase or construction/repair contracts (which is highly unlikely).

### **27. What about warranties and other similar service agreements?**

Since these contracts are service contracts and, as such, are not subject to G.S. 143-129 (the formal bidding statute), they are not covered by the E-Verify contracting prohibition.

### **28. What about personal property leases, including leases with an option to purchase?**

Since a true lease is a service contract and is not subject to G.S. 143-129 (the formal bidding statute), it is not subject to the prohibition. However, if the lease includes an option to purchase, G.S. 160A-19 requires the lease to be treated as a purchase contract. If the estimated cost of the lease contract is \$90,000 or more, the lease is subject to formal bidding requirements under G.S. 143-129 and is covered under the E-Verify contracting prohibition.

### **29. What about finance agreements?**

Since these contracts are service contracts, they are not subject to the prohibition.

### 30. What about economic incentive agreements?

Since these contracts are not subject to formal competitive bidding requirements under G.S. 143-129, they are not covered.

### 31. What about grants to non-profits?

Although not commonly thought of as such, a grant by a unit of government to a non-profit organization is a contract (it is a legally binding agreement where the unit of government agrees to provide the grant funds and the nonprofit recipient agrees to spend the funds for the purposes for which the grant was awarded), and non-profits appear to be subject to the state's E-Verify hiring requirement,<sup>5</sup> the E-Verify contracting prohibition. However, a grant to a non-profit is not subject to competitive bidding requirements, so the E-Verify contracting prohibition would not apply.

### 32. What about grants from the state or federal government?

Grants awarded by state agencies or the federal government are a contract (the state or federal agency agrees to provide the grant funds and the local government recipient agrees to spend the funds for the purposes for which the grant was awarded). However, federal agencies are not subject to state E-Verify requirements, so the E-Verify contracting prohibition does not apply to federal grant agreements. While state agencies are subject to E-Verify requirements, state grant agreements are not subject to the prohibition because state agencies are specifically exempt from Article 2 of Chapter 64 which triggers the E-Verify requirement for private employers.<sup>6</sup> In addition, grants from state or federal agencies are not subject to G.S. 143-129 (the formal competitive bidding statute), so they are not covered under the E-Verify contracting prohibition.

### 33. What about contracts with other units of government?

Contracts with other units of government, including interlocal agreements under Article 20 of Chapter 160A and mutual aid agreements, are *not* subject to the E-Verify contracting prohibition. While state agencies, cities, counties, and local school boards are required to use E-Verify for newly hired employees, these governmental units are specifically exempt from Article 2 of Chapter 64 which triggers the E-Verify requirement for private employers.<sup>7</sup> In

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<sup>5</sup> Under G.S. 64-25(4), the definition of an "employer" includes "[a]ny person, business entity, or *other organization*." (emphasis added)

<sup>6</sup> *Id.* The definition of "employer" specifically excludes "State agencies, counties, municipalities, or other governmental bodies."

<sup>7</sup> *Id.* The E-Verify hiring requirement for state agencies, cities, counties, and local schools are found elsewhere in the General Statutes, specifically in G.S. 126-7.1 (state agencies and public schools); G.S. 160A-169.1 (cities); and G.S. 153A-99.1 (counties).

addition, interlocal agreements and mutual aid agreements are not subject to formal competitive bidding requirements.

**34. What about contracts with individual employees of other units of government (such as hiring deputy sheriff's to provide security at a city event)?**

The E-Verify contracting prohibition does not apply since these contracts are with individual persons and as such, are not subject to the state E-Verify requirement; nor are they subject to formal competitive bidding requirements.

**35. What about contracts that generate revenue for the local government (such as athletic field or facility rentals) as opposed to contracts that require the local government to appropriate money (such as purchase or construction contracts)?**

These contracts would not be subject to the prohibition since they do not involve a contract for purchases or construction/repair in the formal bidding range.

**36. What about other types of transactions with the city or county like building permits, tax payments, and utility deposit refunds?**

Transactions such as permits, tax payments, fees, and refunds are not subject to the E-Verify contracting prohibition.

**37. What about employee-related transactions, such as payroll deposits and travel reimbursements?**

These types transactions are not subject to the E-Verify contracting prohibition.

**38. What about employee health insurance programs?**

Since these contracts are service contracts, they are not subject to the prohibition.

#### **IV. Effect on Existing Contracts**

**39. Does the law apply retroactively?**

No. The E-Verify contracting prohibition first went into effect on September 4, 2013, and only applied to contracts entered into on or after that date. The prohibition does not apply to contracts entered into on or before September 3, 2013. In addition, the change to the law that scales back its application for cities and counties to only purchase and construction or repair contracts in the formal bidding range is effective on October 1, 2014.

**40. What about existing contracts that are renewed after the law went into effect?**

Contracts renewed on or after September 4, 2013, are subject to the E-Verify contracting prohibition when they are renewed. The prohibition would not apply to the existing contract if

it was entered into prior to September 4, 2013. For city and county contracts entered into on or after October 1, 2014, only those for purchase and construction or repair contracts in the formal bidding range are subject to the prohibition.

## V. Penalties and Consequences

### 41. If the contractor or vendor is not E-Verify compliant, what are the consequences for the unit of government?

Although the E-Verify contracting prohibition statutes do not impose any particular consequences or penalties on a local government that enters into a contract in violation of the prohibition, it may be reasonable to assume that a court would hold the contract void if the contract were challenged.

### 42. Is there a penalty if a contractor or vendor does not comply with E-Verify after the contract is executed?

An employer who violates Article 2 of Chapter 64 is subject to civil penalties. Local governments are not subject to these penalties

## VI. Compliance Strategies for Local Governments

### 43. What should local governments do to comply with the prohibition?

The E-Verify contracting prohibition statutes do not place any affirmative obligation on the governmental unit to ensure compliance on the part of a contractor or that contractor's subcontractors. From a practical standpoint, the specific measures a unit of local government employs are best determined by that unit. The affidavit suggested in this [blog post](#) in one way of protecting the local government's interests by putting the burden on the contractor to demonstrate compliance with state E-Verify laws (as discussed below, there is no independent method for determining whether an employer is or is not in compliance). However, an affidavit is not a statutory requirement. Some cities and counties are using the affidavit method extensively; others are opting to include boilerplate language in their standard terms and conditions. Each local government should examine its own procurement and contracting procedures and, *in consultation with its attorney*, determine what approach is both feasible and best protects its interests.

Since the law does not place any specific, affirmative obligation on the local government, one might assume that the unit could take no action at all in ensuring compliance on the part of its contractors and vendors and simply continue to conduct business as usual. However, if a local government enters into a contract with a contractor who is not E-Verify compliant (or one of

the contractor's subcontractors was not compliant) and is sued, a court could rule the contract void.

#### **44. Is there a database or other method to determine if an employer is compliant with North Carolina's E-Verify requirements?**

No. The NC Department of Labor is only authorized to investigate complaints; it is not authorized to maintain a database of employers subject to state E-Verify requirements. The US Citizenship and Immigration Service (USCIS) maintains a [national database](#) of employers who have chosen to self-report their enrollment in the E-Verify system (employers who use E-Verify are not required to enroll in the database). However, this database does not show employers who have enrolled and not chosen to self-report, or (and more importantly), on-going compliance with North Carolina E-Verify requirements which are triggered every time an employer hires a new employee.

#### **45. Are local governments required to monitor continuing compliance by its contractors and vendors?**

No. The E-verify contracting prohibition statutes do not impose any obligation on the local government to monitor E-Verify compliance by its vendors and contractors. In fact, the law appears to limit the prohibition to the point in time when the contract is entered into (“No county may *enter into* a contract . . .”; “No contract subject to this section may be awarded . . .”). While we do not know how broadly a court might interpret the prohibition, it seems unlikely a court would hold a contract void if the contractor becomes non-compliant after the contract is awarded. However, in an abundance of caution, some local government require contractors and vendors to not only confirm their E-Verify compliance when the contract is entered into (or even during the bidding process), but also are including contract language under which the contractor agrees to remain E-Verify compliant during the term of the contract.

#### **46. Are local governments required to ensure compliance by subcontractors?**

While the E-Verify contracting prohibition applies to a contractor's subcontractors as well as the contractor himself, it is likely impractical for local governments to employ the same compliance measures that they use for prime contractors. Given that the legal responsibility for compliance resides with the employer (be it the contractor or a subcontractor), local governments are better served by placing the burden of compliance by subcontractors on the contractor than attempting to assume this obligation themselves. Most of the examples provided in the next section include language to that places this obligation on the contractor.

#### **47. Can a vendor develop its own E-Verify documentation to provide to government clients demonstrating its compliance with E-Verify requirements (or that it is not subject to E-Verify)?**

Yes. Nothing in the E-Verify contracting prohibition statutes prohibits a vendor from developing its own standard compliance document (an affidavit, certificate of compliance, etc.) that it provides proactively to government clients or uses when responding to E-Verify inquiries. If a unit of government has developed its own compliance documents, the vendor should not assume that documentation it has developed will satisfy the unit's requirements.

### **VII. Examples of Contract Provisions, Notices to Vendors, and Affidavits**

The following contract provisions (which includes general conditions in bid documents), notices to vendors, and affidavits have been developed by local governments in response to the E-Verify contracting prohibition. *Units of local government should consult their own attorneys before using any of these examples or developing their own compliance documents.*

#### **A. Contract Provisions**

##### ***Durham County***

E-VERIFY. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

##### ***City of Durham***

E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

##### ***City of Raleigh***

**E-Verify** - I understand that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to

federal law in accordance with NCGS §64-25 et seq. I am aware of and in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes. To the best of my knowledge, any subcontractors employed by me as a part of this contract are in compliance with the requirements of E-Verify and Article 2 of Chapter 64 of the North Carolina General Statutes.

### *City of Asheville*

**Contractors Must Use E-Verify:** Per Session Law 2013-418, no city may enter into a contract [subject to G.S. 143-129] unless the contractor and the contractor's subcontractors comply with Article 2 of Chapter 64 of the General Statutes.

**E-Verify Employer Compliance:** Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law.

### *City of Jacksonville*

North Carolina General Statutes, specifically §160A-20.1(b), prohibit the City from entering into contracts [subject to G.S. 143-129] with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64. The Contractor shall submit the E-Verify Affidavit, located in the Bid Proposal section, with their bid. Bids that do not include this Affidavit will be considered non-responsive.

## **B. Notice to Vendors and Contractors**

### *Town of Morrisville*

You are receiving this email/letter as you have done, are currently doing or may do business with the Town of Morrisville. As a result of House Bill 786 which became law on September 4th, 2013, the Town of Morrisville is requesting your company fill out and send the attached affidavit to the Town of Morrisville for compliance purposes.

The new law prohibits local governments from contracting with contractors/companies who do not comply with E-Verify requirements and the law also applies to contractor's subcontractors.

Please understand your company is not obligated to fill out and return the affidavit; however failure to do so could inhibit the Town of Morrisville from contracting with your company.

The Town of Morrisville would like to thank you in advance for your time and consideration, and please do not hesitate to email or call if you have any questions.



### Town of Chapel Hill E-Verify Affidavit

STATE OF NORTH CAROLINA

AFFIDAVIT:

COUNTY OF ORANGE

E-VERIFY COMPLIANCE

\*\*\*\*\*

WHEREAS, North Carolina General Statute § 160A-20.1(a) authorizes cities and towns to contract with a private entity to carry out any public purpose that the city or town is authorized to engage in by law; and

WHEREAS, North Carolina General Statute § 160A-20.1(b) prohibits cities and towns from entering into a contract with a private entity unless said entity and its subcontractors complies with the requirements of Article 2 of Chapter 64 of the General Statutes; and

WHEREAS, Article 2 of Chapter 64 of the General Statutes requires an employer that transacts business in the State of North Carolina and employs 25 or more employees in the State of North Carolina to verify the work authorization of its employees through the federal E-Verify program; and

WHEREAS, in accordance of North Carolina General Statute § 160A-20.1(b) and as a condition of bidding on potential contracts, the Town of Chapel Hill, North Carolina, requires contractors to comply with the E-Verify requirements in Article 2 of Chapter 64 of the North Carolina General Statutes as evidenced by submission of this Affidavit.

NOW THEREFORE, I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf of \_\_\_\_\_ (the entity bidding on project hereinafter "Contractor") and as a condition of bidding on \_\_\_\_\_ (the project, hereinafter "Project") with for the Town of Chapel Hill, North Carolina, after first being duly sworn hereby swear or affirm as follows:

1. Contractor is a person, business entity, or other organization that transacts business in the State of North Carolina and employs 25 or more employees in this State. (mark Yes or No)
  - a. YES \_\_\_\_\_, or
  - b. NO \_\_\_\_\_
  
2. Contractor understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with North Carolina General Statute §64-25(5).

3. Contractor affirms that if the answer to question 1 above is “yes” then after hiring an employee to work in the United States it shall verify the work authorization of said employee through E-Verify in accordance with North Carolina General Statute §64-26(a).
4. Contractor acknowledges that a subcontractor that transacts business in the State of North Carolina and employs 25 or more employees in this State must comply with E-Verify.
5. Contractor will ensure that any subcontractor subsequently hired by Contractor will comply with E-Verify.

This \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Signature of Affiant  
Print or Type Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Contractor: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me, this the  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: .

(Affix Official/Notarial Seal)

### Buncombe County E-Verify Affidavit

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF BUNCOMBE

\*\*\*\*\*

I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf of \_\_\_\_\_ (the entity bidding on project hereinafter "Employer")

after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
  - a. YES \_\_\_\_\_, or
  - b. NO \_\_\_\_\_
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project, Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Signature of Affiant  
Print or Type Name: \_\_\_\_\_

State of North Carolina County of Buncombe

Signed and sworn to (or affirmed) before me, this the \_\_\_\_\_

day of \_\_\_\_\_, 2013.

My Commission Expires:

\_\_\_\_\_

Notary Public

(Affix Official/Notarial Seal)

**STATE OF NORTH CAROLINA**

**AFFIDAVIT**

**COUNTY OF WAKE**

NOW COMES Affiant, first being sworn, deposes and says as follows

1. I have submitted a bid for contract or desire to enter into a contract with the City of Raleigh;

2. As part of my duties and responsibilities pursuant to said bid and/or contract, I attest that I am aware of and in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):

After hiring an employee to work in the United States I verify the work authorization of said employee through E-Verify and retain the record of the verification of work authorization while the employee is employed and for one year thereafter; or

I employ less than twenty-five (25) employees in the State of North Carolina.

3. As part of my duties and responsibilities pursuant to said bid and/or contract, I attest that to the best of my knowledge any subcontractors employed as a part of this bid and/or contract are in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):

After hiring an employee to work in the United States the subcontractor verifies the work authorization of said employee through E-Verify and retains the record of the verification of work authorization while the employee is employed and for one year thereafter; or

Employ less than twenty-five (25) employees in the State of North Carolina.  
Specify subcontractor: \_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Affiant

Sworn to and subscribed before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

[OFFICIAL SEAL]

\_\_\_\_\_  
, Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA

AFFIDAVIT

CITY OF BURLINGTON

\*\*\*\*\*

I, \_\_\_\_\_ (the individual attesting below), being duly authorized by and on behalf of \_\_\_\_\_ (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

- 1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
a. YES \_\_\_\_\_, or
b. NO \_\_\_\_\_
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.
This \_\_\_\_ day of \_\_\_\_\_, 2013.

Signature of Affiant
Print or Type Name: \_\_\_\_\_

State of North Carolina City of Burlington

Signed and sworn to (or affirmed) before me, this the \_\_\_\_ day of \_\_\_\_\_, 2013.

My Commission Expires: \_\_\_\_\_

Signature of Notary Printed Name of Notary

(Affix Official/Notarial Seal)

## VIII. Text of E-Verify Contracting Prohibition Statutes (applicable to local governments)

### Counties:

§ 153A-449. Contracts with private entities; contractors must use E-Verify.

(a) Authority. - A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. A county may not require a private contractor under this section to abide by any restriction that the county could not impose on all employers in the county, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract.

(b) Contractors Must Use E-Verify. - No county may enter into a contract subject to G.S. 143-129 unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

*Note: Underlined language in subsection (b) is effective October 1, 2014.*

### Cities:

§ 160A-20.1. Contracts with private entities; contractors must use E-Verify.

(a) Authority. - A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees, as a condition of bidding on a contract.

(b) Contractors Must Use E-Verify. - No city may enter into a contract subject to G.S. 143-129 unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

*Note: Underlined language in subsection (b) is effective October 1, 2014.*

### Formal Competitive Bidding:

G.S. 143-129. Procedure for letting of public contracts.

...

(j) [Use of E-Verify Required. -] No contract subject to this section may be awarded by any board or governing body of the State, institution of State government, or any political subdivision of the State unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

*Note: Contracts subject to G.S. 143-129 are those for the purchase of apparatus, supplies, materials, or equipment with an estimated cost of \$90,000 or more, and for construction or repair work with an estimated cost of \$500,000 or more.*