

# Public Contracts Checklist

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## Basic Legal Requirements for Local Government Contracts:

1. Were all (if any) statutorily required *procurement procedures* followed? (For example, if formal or informal bidding is required, is the awardee the *lowest responsible, responsive bidder*?)
2. Is the contract required to be in *writing*?
  - ✓ Cities – all contracts must be in writing (G.S. 160A-16)
  - ✓ Conveyance of real property (including easement), mining rights, or lease exceeding 3 years (G.S. 22-2)
  - ✓ Construction contracts costing \$500,000 or more, and purchase contracts costing \$90,000 or more (G.S. 143-129)
  - ✓ Sale of goods exceeding \$500 (G.S. 25-2-201(1))
  - ✓ Other UCC and common law contract requirements
  - ✓ *NOTE:* Putting *all* contracts in writing is highly recommended
  - ✓ *NOTE:* Defects in writing requirements can be cured by Board ratification
3. Did the proper legal authority *award* the contract?
  - ✓ Governing board approval required and cannot be delegated for formal construction, informal and formal sole-source, and piggyback contracts (G.S. 143-129); and small jurisdiction exception to conflict of interest prohibition (G.S. 14-234(d1))
  - ✓ Delegated authority authorized for formal purchase contracts (G.S. 143-129)
  - ✓ Board approval is not required for informal construction and informal purchase contracts (G.S. 143-131)
  - ✓ Board approval is not required for contracts below informal range
  - ✓ Board approval is not required for contracts subject to Qualifications-Based Selection process (Mini-Brooks Act; G.S. 143-64.31); board approval is not required for exemption from Mini-Brooks Act (G.S. 143-64.32)
  - ✓ Check local policies for more stringent board approval requirements
  - ✓ Confirm delegated award authority either explicitly or implicitly (best to have explicit delegation)
4. Did the proper legal authority *execute* the contract?
  - ✓ Confirm execution authority either explicitly or implicitly (best to have explicit authorization, such as by local policy or in job description)

5. If in *electronic form*, is the form valid / if an *electronic signature* is used, is it in proper form?

- ✓ Most forms of electronic transactions are valid if the parties agree (Uniform Electronic Transactions Act (Article 40, Chapter 66)
- ✓ Electronic signatures defined and authorized, and procedural requirements for use (Article 11A, Chapter 66)

6. Are all *terms and conditions* (T&Cs) current and in compliance with state law?

- ✓ Construction indemnity agreements – prohibits a party from insulating itself from its own negligence (G.S. 22B-1)
- ✓ Real property improvement dispute venue – prohibits making a contract subject to the laws of another state or setting exclusive venue in other state (G.S. 22B-2)
- ✓ Forum selection – prohibits requiring prosecution of an action or arbitration of a dispute in another state (G.S. 22B-3)
- ✓ Jury trial waiver – prohibits requiring a party to waive its right to a jury trial (does not prohibit mutually agreed to mediation, arbitration, or other alternative dispute resolution processes) (G.S. 22B-10)
- ✓ Incurring 3<sup>rd</sup> party debt – Constitutional limitations on local government indemnifying obligations of other parties (incurring debt) (N.C. Const. Art. V, Sec. 4)
- ✓ Organized Labor Restrictions – prohibits discriminating against a bidder or contractor for adhering or not adhering to an organized labor agreement (G.S. 143-133.5)
- ✓ Employment-related and public accommodation requirements – prohibits cities and counties from imposing employment-related requirements on bidders and contractors as a condition of bidding on a contract (G.S. 153A-449(a) for counties; G.S. 160A-20.1(a) for cities)
- ✓ E-Verify – Prohibits local governments from contracting with contractors and subcontractors not compliant with the state's E-Verify hiring requirement (G.S. 143-133.3)
- ✓ Iran Divestment Act – Prohibits local governments from contracting with an entity that has been identified by the NC State Treasurer's Office as engaging in Iranian investment activities (G.S. 147-86.60)
- ✓ Israel Boycott Contracting Prohibition – Prohibits local governments from contracting with a company that has been identified by the NC State Treasurer's Office as boycotting Israel (G.S. 147-86.82)

7. Does the contract include a *preaudit certificate*? (G.S. 159-28)

- ✓ Preaudit certification required for all public contracts obligating public funds to ensure that sufficient funds are available and unencumbered (G.S. 159-28(a))
- ✓ Preaudit certificate must be affixed to all contracts that are required to be in writing (see #2 above); certificate must be signed by Finance Officer or Deputy Finance

Officer; contract not containing a valid preaudit certificate is void by operation of statute

- ✓ Some question about preaudit certificate requirement if fiscal obligation is in future year (*Meyers v. Town of Plymouth*, 135 N.C. App. 707 522 S.E.2d 122 (1999)); safest course is to *always* include preaudit certificate (violation can result in personal liability for employee or officer disbursing funds)
- 8. Does the contract adequately describe or incorporate by reference the information that relates to the *scope of work* or *other details specific to the basis for the contract*?
- 9. Does the contract comply with applicable *local policies, grant rules (if grant funds are used), and federal regulations* (if federal funds are used)?
- 8. Do any *conflicts of interest* exist that would render the contract void? (G.S. 14-234) If the *small jurisdiction exception* applies, have all required procedures for contract approval been followed? (G.S. 14-234(d1))