

2011 Public Purchasing and Contracting Legislative Update

*Norma R. Houston
UNC School of Government*

The North Carolina General Assembly adjourned on June 18th and will reconvene on July 13th. When it reconvenes in July, the legislature will only consider a narrow list of bills, namely redistricting, election laws, legislative appointments to boards and commissions, bills vetoed by the governor, and bills already in conference ([Res. 2011-9](#)). So, unless the General Assembly changes its rules, the 2011 Long Session is essentially over.

Of the bills introduced that proposed statewide changes to purchasing and contracting laws impacting local governments, only a handful were enacted before the General Assembly adjourned. Some of the public bills not enacted might receive attention in the 2012 short session next summer. Most local bills authorizing purchasing and contracting flexibility for individual local governments were enacted.

Significant Enacted Legislation

Summarized below is enacted legislation having the most significant impact on local government purchasing and contracting. Detailed summaries of other relevant legislation, including bills still pending and local bills, follows this general summary.

Owner-Contractor Building Construction Projects

The legislation most directly related to local government contracting imposes new requirements for building

construction projects supervised by the property owner without a general contractor. North Carolina law requires any building construction project costing \$30,000 or more to be superintended by a licensed general contractor. ([G.S. 87-1](#)) Exempt from this requirement are building construction projects where the property owner intends to solely occupy the building being built on his property for at least 12 months following completion of the project. For these projects, the property owner can act as his own general contractor and supervise the construction without having to hire a licensed general contractor. Local governments sometimes use this exemption as a cost-saving measure on building construction projects, electing to act as their own general contractor and directly supervising their subcontractors in lieu of hiring a general contractor to superintend the project.

[S.L. 2011-376 \(H 648\)](#) now requires property owners who are acting as their own general contractor to submit a verified affidavit to the local building inspector verifying their eligibility for exemption from general contractor licensure requirements. The affidavit must attest to three facts: (1) the person is the owner of the property or is legally authorized to act on the property owner's behalf; (2) the person will personally supervise the building construction; and (3) the person will be physically present for all required building inspections (this last requirement does not apply if the

plans for the building were drawn and sealed by a licensed architect). The local building inspector is required to submit the affidavit to the NC Licensing Board for General Contractors for verification that the property owner is eligible to act as his own general contractor. If the Board determines that the property owner is not entitled to act as his own general contractor, the building permit issued for the construction project must be revoked. Local building inspectors are prohibited from conducting building inspections during construction if the owner is not physically present (this requirement does not apply if the building plans were drawn and sealed by a licensed architect).

These requirements *do* apply to local governments choosing to act as their own general contractor on building construction projects. The legislation does not specify which employee or official must submit the affidavit on behalf of the local government; presumably that individual would be one who is legally authorized to act on behalf of the unit of government, such as the manager, finance officer, or public works director, and is capable of personally supervising the construction project. Given the new formality of a verified affidavit attesting to the person's legal authority to act on behalf of the property owner, and the requirement that this person be physically present at all building inspections (unless the plans are drawn and sealed by a licensed architect), local employees or officials submitting the affidavit should have clear written authorization to undertake this activity on behalf of their unit of government.

State Agency Multiple Award Schedule Contracts

North Carolina law currently requires state agencies to purchase furniture on a multiple award basis. ([G.S. 143-57.1](#)) A multiple award schedule contract is a procurement method that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogue for lines of specified products to eligible purchasers as opposed to a contract for purchase of a single item. The intent of this procurement method is to enable evaluation of vendors on a variety of factors in addition to the cost of the item itself, such as total lifecycle costs, service, warranties, distribution processes, and past vendor performance.

[S.L. 2011-360 \(H 713\)](#) now requires state agencies to use the multiple award schedule contract method for purchases of equipment products in the following categories: communications, construction, forestry, and ground maintenance (each category of equipment products is specifically defined in the legislation). The Department of Administration is instructed to issue RFP's by August 31, 2011 for multiple award schedule contracts for all equipment product categories. Contracts let under this method must be for a term of not less than three years.

Entities authorized to purchase items from state contracts, including local governments, are *eligible* to purchase equipment products from state multiple award schedule contracts, but are *not* required to use this method in their own procurement processes. In fact, the authorization to use this procurement method is *only* for state contracts; local governments must still comply with

formal and informal bidding requirements for purchases unless they are purchasing off a state contract or another exception to competitive bidding requirements applies.

State Agency Additional Procurement Methods

Additional procurement methods were authorized under [S.L. 2011-338 \(S 404\)](#) for state agencies and the Department of Administration (DOA) including purchasing goods and contracting for services through negotiations, reverse auctions, and best value procurement methods such as that defined in G.S. 143-135.9(a)(1). This legislation also authorizes DOA to solicit and accept electronic bids as well as establish procedures permitting the State to join with any federal, state, or local government or nonprofit in cooperative purchasing plans, projects, arrangements, or agreements.

While not directly impacting local government purchasing and contracting methods, the additional authorizations for procurement of state contracts and cooperative purchasing plans may provide more opportunities for local governments to purchase items from state contracts at reduced costs and enter into cooperative purchasing arrangements with state agencies.

Employment E-Verify Requirement

As originally introduced, [House Bill 36](#) prohibited state and local government contracts with contractors who knowingly employed illegal immigrants and required contractors to verify and certify their employees' legal status using the E-Verify Program administered by the United

States Department of Homeland Security. The final version of this bill ([S.L. 2011-263](#)) removed provisions relating to government contracts and contractors, and instead requires all employers with 25 or more employees as well as cities and counties to use the E-Verify system to verify the work authorization of newly hired employees. *There is no obligation on local governments to verify that private employers with whom they contract, such as vendors or construction contractors, comply with the E-Verify requirement.* For more information on the E-Verify requirements that apply to local government employers, see the School of Government's Daily Bulletin [legislative summary website](#).

Local Legislation

Several bills were enacted that granted purchasing and contracting flexibility to individual units of local government, including:

- Design/build construction in the City of Charlotte and the Town of Cornelius ([S.L. 2011-180](#)), and Wayne and Currituck Counties ([S.L. 2011-98](#))
- Electronic bidding for informal bids in Winston-Salem ([S.L. 2011-80](#))
- Purchasing flexibility for energy efficiency pilot projects and long-term leases for renewable energy facilities in Mecklenburg and Wake Counties and incorporated municipalities within Wake County ([S.L. 2011-150](#))
- Small business enterprise programs for city contracts in the City of Durham ([S.L. 2011-168](#))
- Clarified contract award procedures in the City of Greensboro ([S.L. 2011-111](#)) and the Town of Mount Airy ([S.L. 2011-140](#))

The following sections provide summaries of statewide and local bills (both enacted and pending) related to public purchasing and contracting. For more legislative summaries on other topics of interest to local governments, please visit the School of Government's [legislative summaries website](#).

I. Public Bill Summaries

A. Purchasing and Contracting

The following bills proposed changes to statewide purchasing and contracting laws:

[Public Contracts/Multiple Award S.L. 2011-360 \(H 713\)](#) *(enacted)*

Amends Article 3 of G.S. Chapter 143 to create a new G.S. 143-52.3 requiring the State to use multiple award schedule contracts for the purchase of certain items. A multiple award schedule contract is defined as a contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogue for lines of equipment and attachments to eligible purchasers. This type of contracting method is required for state agency purchases of equipment products in the following categories: communications, construction, forestry, and ground maintenance (each category of equipment products is specifically defined in the legislation). The Department of Administration is instructed to issue RFP's for multiple award schedule contracts for all equipment product categories by August 31, 2011. Entities authorized to purchase items from state contracts, including local governments, are eligible to purchase equipment products from state multiple award schedule contracts, but are not required

(nor are they authorized) to use this method in their own local procurement.

[Dept. of Admin/Procurement Modernization](#)

[S.L. 2011-338 \(S 404\)](#) *(enacted)*

Amends various sections of Article 3 of G.S. Chapter 143 to modernize procurement methods for DOA and state agencies, including authorizing the purchase of goods and contracting for services through negotiations, reverse auctions, a best value procurement method such as that defined in G.S. 143-135.9(a)(1); authorizing the solicitation, offer, and acceptance of electronic bids; and establishing procedures to permit State government to join with any federal, State, or local government or nonprofit in cooperative purchasing plans, projects, arrangements, or agreements.

[Employers & Local Gov't Must Use E-Verify](#)

[S.L. 2011-263 \(H 36\)](#) *(enacted)*

This bill originally prohibited state and local government contracts (both purchase and construction) with contractors who knowingly employ illegal immigrants (including knowingly employing subcontractors who employ illegal immigrants), and requires contractors to verify and certify their employees' legal status or authorization to work in this country using the E-Verify Program administered by the United States Department of Homeland Security. The final version of the bill, which established a new Article 2 in G.S. Chapter 64, removed provisions relating to government contracts and contractors, and now requires all employers with 25 or more employees as well as cities and counties to use the E-Verify system to verify the work authorization of newly hired employees. There is no obligation

that local governments verify that private employers with whom they contract, such as a vendor or construction contractor, comply with the E-verify requirement. For more information on the E-Verify requirements that apply to local government employers, see the School of Government's [legislative summaries website](#).

[State Government Reorganization](#)

[S.L. 2011-145, Sec. 6.8 \(H 200\)](#) *(enacted)*

The Appropriations Act of 2011 ("budget bill") directed the Joint Legislative Commission on Governmental Operations (Commission) to study the feasibility of creating a single department to support State departments, agencies, and offices with services, including, but not limited to, human resource management, information technology, purchasing, and budget and financial management. In conducting this study, the Commission may consider the Governor's proposed Department of Management and Administration included in Executive Order 85 (issued March 25, 2011). The Commission is required to report its findings and recommendations to the Senate and House Appropriations Committees when the 2012 short session convenes.

[DOT Bid Responses Not Public/Contract Awarded \(S 750\)](#) *(pending)*

Requires bids and documents submitted in response to an advertisement or request for proposal by the NC Department of Transportation remain confidential (i.e., not a public record) until the Department issues a decision to award or not to award the contract.

Status as of June adjournment: Pending in Senate Rules Committee

[Encourage Military Veteran Contractor Use \(H 172\)](#) *(pending)*

Adds military veteran contractors to the list of contractors for which state purchase contracting is encouraged, and requires the state to have a 10% goal of utilizing military veteran contractors for state construction projects. 10% goal requirement also applies to construction projects of any other entity, including local governments, costing \$100,000 or more for which state funds are appropriated or granted. Solicitation of military veteran contractor participation required for purchase and construction or repair contracts in the informal bidding range (just as is currently required for minority business participation). Public entities and contractors must make good faith efforts to achieve military veteran participation goals similar to those currently required for minority business participation. A military veteran business is defined as one that is at least 51% owned by a military veteran and its management and daily business operations are controlled by one or more military veteran owners. A military veteran is defined as a person who served on active or reserve duty with the US Armed Forces or North Carolina National Guard for at least 180 days and has been honorably discharged.

Status as of June adjournment: Pending in House Committee on Government

[Modify/Clarify Public Finance Statutes \(S 426\)](#) *(pending)*

Would not require preaudit certificate on obligations and related documents that have been approved by the Local Government Commission.

Status as of June adjournment: Pending in House Finance Committee

[Standards for Some Nursery Stock Purchases \(S 562\) \(pending\)](#)

Prohibits cities, counties, and community appearance commissions from requiring that any nursery stock that is purchased to be planted within its jurisdiction satisfy any standard that exceeds the American Standard for Nursery Stock adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health or safety.

Status as of June adjournment: Pending in House Agriculture Committee

[Mechanics' Lien and Bond Law Changes \(H 489 / H 773, Sec. 2.6\) \(pending\)](#)

Authorizes a study of North Carolina's mechanics' lien and bond laws and recommend ways to modernize and improve those laws. The study would be conducted by the Legislative Research Commission, which authorizes the Speaker of the House and President Pro Tempore of the Senate to appoint both legislators and members of the public to the study committee if established.

Status as of June adjournment: Pending in conference; may be considered during reconvened session in July.

B. Licensure

The following bills proposed changes to statewide licensure laws:

[Improve Enforcement/General Contractor Laws](#)

[S.L. 2011-376 \(H 648\) \(enacted\)](#)

Amends G.S. 87-14 to strengthen enforcement of state and local building laws and codes by requiring property owners who are serving as their own general contractor to submit an affidavit to the local building inspector verifying their eligibility for exemption from

general contractor licensure requirements. The affidavit must attest that the person is the owner of the property, that the person will personally supervise the building construction, and that the person will be physically present for all required building inspections. The owner is not required to be physically present for building inspections if the plans for the building were drawn and sealed by a licensed architect. The local building inspector is required to submit the affidavit to the NC Licensing Board for General Contractors for verification that the property owner is eligible to act as his own general contractor. If the Board determines that the property owner is not entitled to act as his own general contractor, the building permit issued for the construction project must be revoked. Local building inspectors are prohibited from conducting building inspections during construction if the owner is not physically present (this requirement does not apply if the building plans were drawn and sealed by a licensed architect). The requirements of this legislation apply to local governments that act as their own general contractor on any construction project costing \$30,000 or more.

[Amend Irrigation Contractors' Licensing Laws \(S 405\) \(pending\)](#)

Makes changes to current requirements for irrigation contractor licensing requirements, including clarifying that the exemption for state and local government from licensure requirements applies only when the unit of government is performing irrigation construction or contracting work on public property using its own employees.

Status as of June adjournment: Pending in House Environment Committee

[Rewrite Landscape Contractor Laws \(S 447\) \(pending\)](#)

Rewrites laws regulating landscape contractors to require licensure of anyone who engages in landscape contracting, prohibits anyone from engaging in landscape contracting without a license, and establishes the NC Landscape Contractors' Licensing Board to regulate this occupation. Exemptions from licensure requirements include state and local governments performing landscaping on public property.

Status as of June adjournment: Pending in House Finance Committee

[Clarify Definition of General Contractor \(H 497\) \(pending\)](#)

Adds firms performing design/build work to the definition of a general contractor.

Status as of June adjournment: Pending in House Judiciary A Subcommittee

II. Local Bill Summaries

The following bills proposed purchasing and contracting flexibility for specified units of local governments:

[Local Energy Efficiency](#)

[S.L. 2011-150 \(H 266\) \(enacted\)](#)

Authorizes several local governments to enter into leases for the siting and operation of renewable energy facilities for up to 20 years without treating the lease as a sale of property and without having to give notice by publication of the lease, and exempting these projects from competitive bidding requirements when letting the contracts if the project is part of a local pilot program aimed at increasing energy efficiency.

Authorization granted for Mecklenburg [\(incorporating the provisions of H 435\)](#) and Wake counties, and the towns of

Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon. Authorization expires June 30, 2015.

[Durham/Small Business Enterprise S.L. 2011-168 \(S 297\) \(enacted\)](#)

Authorizes the City of Durham to establish race and gender neutral small business enterprise programs to enhance opportunities for small businesses in Durham to participate in city contracts, among which are establishing bid and proposal specifications that include subcontracting goals and good faith efforts requirements to enhance participation by small business enterprises in city contracts.

[Wayne County Design Build](#)

[S.L. 2011-98 \(H 284\) \(enacted\)](#)

Authorizes Wayne and Currituck Counties to use design-build method for construction or repair of county-owned buildings. Authorization for both counties expires December 31, 2014.

[Winston-Salem/Informal Bids Electronically](#)

[S.L. 2011-80 \(H 371\) \(enacted\)](#)

Authorizes the City of Winston-Salem to receive bids in the informal range for purchases or construction or repair projects electronically instead of or in addition to paper bids. Procedures for receipt of electronic bids must be designed to ensure the security, authenticity, and confidentiality of the bids to at least the same extent as sealed paper bids.

[Cornelius Design-Build and Investments](#)

[S.L. 2011-180 \(H 442\) \(enacted\)](#)

Authorizes the Town of Cornelius to use design-build delivery methods for public

construction projects. Authorization expires July 1, 2013.

This legislation also incorporates the provisions of [S 56](#) authorizing the City of Charlotte to use design-build construction delivery methods for up to three public construction projects (but not more than one project per fiscal year). Authorization expires June 30, 2016.

[Greensboro Charter Amendments](#)
[S.L. 2011-111 \(H 150\)](#) (enacted)

Amends the City of Greensboro's charter to clarify the City Manager's authority to approve, award, and execute service contracts on behalf of the City as provided by ordinance.

[Mount Airy Charter Amendments](#)
[S.L. 2011-140 \(H 516\)](#) (enacted)

Clarifies the authority of the City Manager regarding contract awards and procedures for notifying the governing board of contract awards and property acquisition.

[Catawba County/Local Bid Preference](#)
[\(S 291\)](#) (pending)

Authorizes Catawba County to award contracts for purchases or construction or repair to the lowest responsible, responsive **resident** bidder for purchase and construction contracts if (1) the resident low bidder's bid is within 5% or \$10,000 (whichever is less) of the nonresident low bidder, and (2) the resident bidder matches the nonresident low bidder's bid. A resident bidder is defined as "a person or corporation who (i) is legally authorized to engage in the sale of goods or services or to perform construction or repair work in this State and (ii) certifies in the bid submitted that the person or corporation has, for at least six months prior to the announcement of

the solicitation of bids, maintained a physical place of business within the corporate boundaries of the political subdivision with at least one employee for whom the person or corporation has paid payroll taxes in this State."

Status as of June Adjournment: Pending in Senate State & Local Government Committee (Note: Catawba County withdrew its request for this bill; no action expected on this bill during the remainder of the Regular Session)