Public Contracts Checklist

## Basic Legal Requirements for Local Government Gontracts:

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 3rd 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)?
10. 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))