Public Contracts Checklist

Below is a brief checklist of basic legal requirements for public contracts

1. Were all (if any) statutorily required *procurement procedures* followed? (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 (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 even if not legally required
   - ✓ NOTE: Defects in writing requirements can be cured by Board ratification

3. Did the proper legal authority *award* the contract?

   - ✓ Governing board only for formal construction, informal and formal sole-source, 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
   - ✓ 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?

   - ✓ Distinguish between "award" and "execute"
   - ✓ Confirm execution authority either explicitly or implicitly (best to have explicit authorization)

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&C) 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)
- ✓ Constitutional limitations on local government indemnifying obligations of other parties (incurring debt) (N.C. Const. Art. V, Sec. 4)

7. 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*?

8. 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))
- ✓ 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)

9. Is the contract compliant 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 been followed? (G.S. 14-234(d1))