
Coates' Canons Blog: 2010 Local Government Purchasing and Contracting Legislative Update

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[Updated 8/26/2010 to include link to list of approved computer equipment manufacturers and television manufacturers.]

This wasn't a big year for changes to local government purchasing and contracting in North Carolina, although there were significant changes affecting North Carolina state agency purchasing and contracting. Since this blog focuses on local governments, this post highlights those small changes affecting them, and mentions in passing the changes affecting State entities.

Conflicts of Interest

My colleague Frayda Bluestein has already blogged (twice) about the Ethics Bill, **Session Law 2010-169** (H961) and its impact on the **disputes arising out of public records requests** and on **personnel privacy**. The bill also made one very small change to the self-dealing statute, **G.S. 14-234**. G.S. 14-234(a)(3) already prohibited any public officer or employee from receiving or asking for any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves. (A violation of G.S. 14-234 is a Class 1 misdemeanor, punishable by up to 120 days imprisonment and a fine.) Section 2 of Session Law 2010-169, which goes into effect on December 1, 2010, makes the following change to G.S. 14-234(a)(3) (the underlined words are new): "No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves." Practically speaking, I don't know that this amendment changes the scope of the law too much—it seems to me that favors, services, and promises of future employment were probably already covered by the prohibition on gifts, rewards, or promises of rewards, but now we're all clear: if you ask Bill Gates for a job at Microsoft in exchange for recommending that your local government buy Microsoft Office, you've committed a Class 1 misdemeanor.

Purchase and Disposal of Computer Equipment and Televisions

Session Law 2010-67 (S887/H1426) requires the Department of Environment and Natural Resources (DENR) to develop a list of manufacturers who are in compliance with certain new requirements pertaining to recycling of used equipment and televisions and to post this list on the Department's website. (DENR is supposed to provide this list to the State's Office of Information Technology, which in turn is required to share this list with local governments, although local governments should be able to access this list on DENR's website as well.) As of August 1, 2010, local governments are prohibited from purchasing computer equipment or televisions from or entering into contracts with any manufacturer that is not on this list. Because DENR is still developing the list, local governments who plan to purchase computer equipment or televisions before the list is finalized should either (1) wait to buy the items until the list is made available or (2) seek advice from DENR. I'll post an update on the blog once the list is available. *[8/26/2010 Update:] The list is now available here (click on "List of Registered Manufacturers" on the left side of the page).*

Session Law 2010-67 also creates an Electronics Management Fund (funded by new fees imposed on computer equipment and television manufacturers) that will be used to provide funding to local governments for the management of discarded computer equipment, televisions, and other electronic devices. To qualify for the funding, a local government must (1) update its solid waste management plan to include certain specific information listed in new **G.S. 130A-309.137**, (2) submit the plan (presumably to DENR, although the Session Law doesn't say to whom the plans should be submitted), (3) "establish a separate local budget account for the receipt and expenditure of funds received from the" Fund, and (4) "contract with a recycler that is certified as adhering to Responsible Recycling ('R2') practices or that is certified as an e-Steward recycler adhering to the e-Stewards Standard for Responsible Recycling and Reuse of Electronic Equipment® to process the discarded computer equipment, televisions, and other electronic devices that the unit of local government

collects.” (Note that this type of contract would be considered a service contract and would not be subject to bidding unless your local policy requires bidding of service contracts.)

Operational Leases for Schools

G.S. 115C-530 authorizes local boards of education to enter into operational leases of property for use as school buildings or school facilities. It also authorizes school boards to enter into contracts for the repair or renovation of that property so long as certain requirements are met. However, the statute did not authorize school boards to build **new** buildings on leased property. In fact, G.S. 115C-521(d) prohibits school boards from erecting school buildings on property that is not owned in fee simple by the board. **Session Law 2010-196** (H1292) amends G.S. 115-530 to authorize school boards to enter into contracts for the construction of new buildings built on leased property. It also clarifies that the **bidding statutes** apply to the construction, repair, or renovation of these buildings, even if the work is undertaken by a private developer. Bottom line: school boards may only construct new school buildings on property that is owned in fee simple by the board (per G.S. 115C-521(d)). However, if the school board has entered into an operational lease of property, a new school building may be constructed on that property as long as the requirements in G.S. 115C-530 are met. (And school boards also have the authority to enter into capital leases for the construction of new schools as well as for renovation of existing school buildings under **G.S. 115C-531** and **G.S. 115C-532**, as long as the requirements in those statutes are met. Notice that G.S. 115C-531 and G.S. 115C-532 will be repealed on July 1, 2011, unless the General Assembly makes a change to the repeal date during next year’s legislative session.)

Performance and Payment Bonds – State Only

The minimum size of a construction project for which performance and payment bonds are required has been increased from \$300,000 to \$500,000 by **Session Law 2010-148** (H1035) for **State departments, State agencies, and UNC and its constituent institutions**. This brings the performance and payment bond requirement in line with the formal bidding threshold (increased from \$300,000 to \$500,000 in 2007 by **Session Law 2007-446**) for those entities covered by the amendment. However, the bidding methods and procedures for **building** construction projects (and the more stringent requirements for HUB participation) still kick in at \$300,000. The effective date of this amendment is October 1, 2010.

Local governments must still require performance and payment bonds for projects exceeding \$300,000 (on each contract costing more than \$50,000).

My advice to local governments doing building construction is to continue treating projects that are estimated to cost close to \$300,000 as formal bids, even though the formal bid threshold is \$500,000. That way you can be sure to satisfy all of the statutory requirements that still use the \$300,000 threshold (**bonding, bidding methods/procedures, HUB participation, and HUB reporting**).

Local Acts and Legislation Affecting State Purchases and Contracts

The General Assembly passed a couple of local acts relating to pilot programs for “green” purchasing and to long-term leases of renewable energy facilities (affecting **Asheville, Chapel Hill, and Carrboro**, and also affecting **Catawba County**), as well as a **local act authorizing the Town of Matthews** to use a public-private partnership to construct a sports facility and entertainment complex.

The General Assembly also made several changes to the laws governing State agency purchases and contracts. **Session Law 2010-194** (S1213/H1851) gives the Secretary of Administration additional oversight over all state agency contracts; requires the Attorney General’s office to review all statewide and state agency term contracts for supplies, materials, printing, equipment, and services costing more than \$1 million; prohibits the award of most **cost plus percentage contracts**; and requires the Secretary of Administration to take steps to streamline the State contracting processes and improve State contract monitoring and management. **Session Law 2010-147, Part VIII** (H1973) encourages the Department of Administration to use “multiple award schedule contracts” (that is, a contract awarded to multiple vendors) when awarding state term contracts. (Note that while local governments are not authorized to award contracts to multiple vendors, they are authorized to purchase off of State term contracts. See **G.S. 143-129(e)(9)**.)



Links

- www.ncleg.net/Sessions/2009/Bills/House/HTML/H961v9.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-234.html
- www.ncleg.net/Sessions/2009/Bills/Senate/HTML/S887v6.html
- portal.ncdenr.org/web/wm/sw/electronics
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-530.html
- ncleg.net/Sessions/2009/Bills/House/HTML/H1292v6.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_143/Article_8.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-531.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-532.html
- www.ncleg.net/Sessions/2009/Bills/House/HTML/H1035v5.html
- www.ncga.state.nc.us/Sessions/2007/Bills/House/HTML/H73v7.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_44A/GS_44A-26.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.2.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-128.3.html
- www.ncleg.net/Sessions/2009/Bills/Senate/HTML/S1114v7.html
- www.ncleg.net/Sessions/2009/Bills/House/HTML/H1814v4.html
- www.ncga.state.nc.us/Sessions/2009/Bills/House/HTML/H1919v4.html
- www.ncleg.net/Sessions/2009/Bills/Senate/HTML/S1213v4.html
- en.wikipedia.org/wiki/Cost-plus_pricing
- www.ncleg.net/Sessions/2009/Bills/House/HTML/H1973v8.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-129.html